

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re: : Chapter 11
: :
Curae Health, Inc., *et al.*¹ : Case No. 18-05665
: (Jointly Administered)
: :
Debtors. : Judge Walker
: :
: :

Responses due: October 9, 2018
Hearing: October 16, 2018 at 2:00 PM, Courtroom 2, 2nd Floor, Customs House,
701 Broadway, Nashville, TN 37203

**PATIENT CARE OMBUDSMAN’S LIMITED OBJECTION TO ENTRY OF
FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
POSTPETITION SECURED FINANCING AND (B) UTILIZE CASH
COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE
PROTECTION, AND (IV) MODIFYING THE AUTOMATIC STAY**

Suzanne Koenig, the patient care ombudsman (the “**Ombudsman**”) appointed in the above-captioned chapter 11 cases (the “**Cases**”), files this Limited Objection to Entry of Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay (the “**Final Order Approving the DIP Financing Motion**”). In support of this Limited Objection, the Ombudsman respectfully states as follows:

¹ The “**Debtors**” in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

BACKGROUND

1. On August 24, 2018 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division (the “**Court**”).

2. On August 29, 2018, this Court entered the Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay and (V) Scheduling a Final Hearing (the “**Interim Order**”) [Docket No. 60].

3. On September 6, 2018, the Court entered an order directing the appointment of a patient care ombudsman under Section 333 of the Bankruptcy Code [Docket No. 111]. On September 18, 2018, the Office of the United States Trustee for the Middle District of Tennessee appointed Suzanne Koenig of SAK Management Services, LLC to serve as patient care ombudsman in this Case [Docket No. 191].

4. On September 25, 2018, this Court entered that certain Agreed Order (i) Continuing Final Hearing on Debtors’ (A) Cash Management Motion and (B) DIP Financing Motion, (II) Extending Objection Deadlines, and (III) Extending the Deadline for the Debtors to Obtain Entry of a Final Order on the DIP Financing Motion [Docket No. 231]. Pursuant to this Agreed Order, the deadline to object to entry of a Final Order Approving the DIP Financing Motion was extended to October 9, 2018 at 4:00 pm CT.

5. On October 5, 2018, the Ombudsman filed separate applications to approve the retention of SAK Management Services, LLC, as her medical operations advisors, and Greenberg Traurig, LLP, as her counsel [Docket Nos. 277 and 278]. Those applications have not yet been

approved. The objection deadline is October 29, 2018 and the hearing date, if necessary, is November 13, 2018 at 11:00 a.m. CT.

LIMITED OBJECTION

6. The Ombudsman files this limited objection solely for purposes of objecting to entry of a Final Order Approving the DIP Financing Motion to the extent that such Final Order does not include the Ombudsman and her professionals in the Budget and related Carve-Out. The Ombudsman's proposed counsel has discussed this issue with Debtors' counsel and has requested that (a) the Budget be modified to include a line item amount for the Ombudsman and her professionals and (b) the definition of "Case Professionals" in the Final Order Approving the DIP Financing Motion be modified to include the Ombudsman and her professionals. If these modifications can be addressed, the Ombudsman's objection would be resolved. Absent such resolution, the Ombudsman and her professionals would incur fees and expenses in these Cases and to the extent that such fees and expenses are approved by the Court, the Debtors would have no ability to pay such administrative claims.

7. Pursuant to Paragraph 8 of the Interim Order:

Carve-Out. The DIP Liens, DIP Superpriority Claims, Replacement Liens, and the Adequate Protection Superpriority Claims are subordinate only to the follow: . . . (ii) until the issuance of a notice from the DIP Lender that an Event of Default has occurred (the "***Carve-Out Notice***") (which the DIP Lender may issue upon an Event of Default), the allowed, accrued, and unpaid reasonable fees and expense of professionals employed by the Debtors and any Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the "***Case Professionals***") in the amounts set forth in the Budget ((i)-(ii), the "***Initial Carve-Out***"); and (iii) following delivery of a Carve-Out Notice, an aggregate amount not to exceed \$105,000 (the "***Residual Carve-Out,***" and together with the Initial Carve-Out, the "***Carve-Out***". . .

The current Carve-Out and related Budget only include the professionals retained by the Debtors or the Committee. The Ombudsman and her professionals are not included in the definition of "***Case Professionals***" and therefore the Ombudsman and her professionals are not included in the

“*Carve-Out*”. In addition, there are no amounts included in the Budget (as defined in the Interim Order) to pay the Ombudsman and her proposed professionals.

8. The Ombudsman expressly reserves any and all rights to raise any additional or supplemental arguments in support of this Objection at any hearing on entry of the Final Order Approving the DIP Financing Motion.

WHEREFORE, for the reasons set forth herein, the Ombudsman respectfully requests that entry of a Final Order Approving the DIP Financing Motion be denied unless the objections raised herein are addressed.

Dated: October 9, 2018

GREENBERG TRAURIG, LLP

/s/ John D. Elrod

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ John D. Elrod _____
John D. Elrod