

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

IN RE:)	CASE NO. 18-05665
)	(Jointly Administered)
CURAE HEALTH, INC., et al.,¹)	
)	CHAPTER 11
Debtor(s).)	
)	JUDGE CHARLES M. WALKER
)	

**LIMITED OBJECTION OF CHANGE HEALTHCARE TECHNOLOGIES, LLC TO
DEBTORS' NOTICE INTENT TO ASSUME AND ASSIGN CERTAIN
EXECUTORY CONTRACTS ET AL.**

Change Healthcare Technologies, LLC (“Change”) hereby files this Limited Objection (the “Objection”) to the *Debtors’ Notice of: (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* filed October 29, 2018 [Docket No. 371] (the “Motion”). Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

Change hereby objects the Motion insofar as it provides for the assumption and assignment of one or more unidentified contracts with a \$0.00 cure amount to the Stalking Horse Bidder without any adequate assurance of future performance. In furtherance hereof, Change respectfully shows the Court as follows:

¹ The last four digits of the employer identification number for each of the Debtors follow in parenthesis: (i) Curae Health, Inc. (5638); (ii) Amory Regional Medical Center, Inc. (2640); (iii) Batesville Regional Medical Center, Inc. (7929); (iv) Clarksdale Regional Medical Center, Inc. (4755); (v) Amory Regional Physicians, LLC (5044); (vi) Batesville Regional Physicians, LLC (4952); and (vii) Clarksdale Regional Physicians, LLC (5311).

I. Background

1. The Debtors filed their *Motion to Approve Bidding Procedure and Approve Sale of the Gilmore Medical Center Free and Clear of Liens and Encumbrances* [Docket No. 79] on August 31, 2018. The stalking horse bidder is North Mississippi Health Services, Inc. (the “Stalking Horse Bidder”). On October 29, 2018, the Debtors filed the Motion. Attached as Exhibit 1 to the Motion is a list of contracts to be assumed when the Gilmore Medical Center (“Gilmore Hospital”) is sold at auction pursuant to Section 363 of the Bankruptcy Code, and, among other things, the amount that the Debtors propose to pay to cure any default under assumed contracts as required under 11 U.S.C. § 365.

2. The Motion further states that “on or as soon as practicable after November 13, 2018, [the Debtors shall] provide adequate assurance of future performance . . . with respect to any executory contract or unexpired lease listed in [the Motion], to any party who submits a written request to Caryn E. Wang at cewang@polsinelli.com or (404) 253-6016.” *See* Motion, Page 3.

3. The Motion seeks to fully assume certain unidentified “Evergreen” services agreements with counterparties identified as “McKesson” and “Interqual” (collectively, the “Change Agreements”) and pay a \$0.00 cure amount.

4. Change and certain of its affiliates are entities previously known as or doing business as “McKesson” or related to “McKesson.” Change owns the “Interqual” line of products and services.

5. According to Change’s records, the Debtors have defaulted under certain contracts and are not current on their obligations to Change and its affiliates, including, but not limited to, under that certain McKesson Health Solutions Management Agreement No. 16563, by and among Curae Health, Inc. and McKesson Health Solutions, Inc., dated January 3, 2016, and related

amendments and order forms. Accordingly, the amount necessary to cure any default under the Debtors' contracts with Change and its affiliates is greater than \$0.00.

II. Authority

6. Section 365(b) of the Bankruptcy Code requires that, if defaults have occurred under an executory contract, the debtor must cure such defaults prior to assumption and provide adequate assurance of future performance thereunder. *See also City of Covington v. Covington Landing Ltd. Partnership*, 71 F.3d 1221, 1226 (6th Cir. 1995) (“Section 365 permits the trustee or the debtor in possession to assume or reject an executory contract or unexpired lease, with court approval. If, however, the debtor is in default, the debtor cannot assume the contract until he (A) cures the default or provides adequate assurance that he will; (B) compensates the other party for pecuniary losses or provides adequate assurance that he will; and (C) provides adequate assurance of future performance on the contract.”); *In re Thomas B. Hamilton Co., Inc.*, 969 F.2d 1013, 1021 (11th Cir. 1992) (“§365(b) provides that the trustee may not assume an executory contract if there has been a default, unless the trustee cures the default and provides adequate assurance of future performance.”).

7. Section 365(b)(1)(C) provides that in order to assume the Change Agreements, the Debtors must provide Change with adequate assurance of future performance of the Change Agreements.

III. Objections

8. The Debtors have not identified with sufficient specificity which contracts they seek to assume and assign. Absent such identification, Change objects to the assumption and assignment of any of its contracts with the Debtors.

9. Change objects to any assumption and assignment of the Change Agreements unless the Debtors cure the defaults thereunder by paying all outstanding amounts unpaid, due and owing in amounts to be determined upon identification of the specific contracts at issue, as required under Section 365(b) of the Bankruptcy Code.

10. While the Motion states that the Debtors will provide adequate assurance of future performance on or as soon as practicable after November 13, 2018, Change has not been provided adequate assurance of future performance of the Change Agreements by the Debtors or the Stalking Horse Bidder, and this objection shall serve as a written request for such. Change objects to any assumption of the Change Agreements prior to receipt of such adequate assurance and a determination that such adequate assurance is satisfactory to Change.

11. Change reserves the right to object to the any adequate assurance the Debtors or the Stalking Horse Bidder offers to Change at any appropriate time.

WHEREFORE, Change respectfully requests the Court enter an order (a) denying the Motion, or, in the alternative, postponing consideration of the assumption and assignment of any Change Agreements until such agreements can be properly identified and cure amounts paid, and adequate assurance of future performance provided, and (b) granting such further relief as the Court deems just, equitable and proper.

[SIGNATURES OF COUNSEL ON FOLLOWING PAGE]

Respectfully submitted, this 6th day of November, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Objection to Cure Amount was sent electronically via this Court's CM/ECF System upon all registered users and/or via First Class U.S. Mail, postage prepaid, to those parties listed below on this 6th day of November, 2018.

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