

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:  CURAE HEALTH, INC., et al..  Debtors,	Case No.: 3:18-bk-05665  Chapter 11 Judge Walker Jointly Administered
---	---

**LIMITED OBJECTION TO AMENDED 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**

Beckman Coulter, Inc. (“Beckman”), by and through its undersigned counsel, hereby files this *Limited Objection to the Debtors’ Amended 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* (the “Objection”), stating as follows:

**Background**

1. On August 24, 2018 (the “Petition Date”), the above-captioned Debtor filed voluntary petitions for relief under chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “Bankruptcy Code”), commencing the above-captioned chapter 11 cases.

2. The Debtor continues to operate their business and manage property as debtors-in-possession under Section 1107(a) and 1108 of the Bankruptcy Code.

3. On August 31, 2018, the above-captioned debtors (the “Debtors”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, Approving Stalking Horse*

*Purchaser, Break-up Fee, and Overbid Protections, Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* (Docket No. 79) (the “Sale Procedures Motion”)

4. Pursuant to the Sale Procedures Motion, the Debtors sought, among other things, authorization and approval of (a) the sale of the Gilmore Hospital, pursuant to the Gilmore APA, free and clear of all liens, claims, encumbrances and other interests (the “Sale”), (b) the assumption and assignment of certain executory contracts (the “Contracts”) and unexpired leases (the “Leases”), in connection with the Sale, and (c) scheduling a final hearing to approve the Sale, including the assumption and assignment of the Contracts and Leases.

5. An order granting the Sale Procedures Motion was entered by the Court on September 28, 2018 at Docket No. 260.

6. On October 29, 2018, the Debtors filed the subject *Amended 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* (the “Assumption Notice”) (Docket No. 371).

7. Exhibit 1 to the Assumption Notice identifies certain agreements by and between Beckman and the Debtors (collectively, the “Agreement”) that the Debtors propose to be subject to assumption pursuant to Section 365 of the Bankruptcy Code. Exhibit 1 to the Assumption Notice also states a proposed cure amount associated with the Beckman Agreement in the amount of \$79,289.85.

## **Objection**

8. As the Assumption Notice states the Debtors' agreement to provide adequate assurance of future performance upon request, Beckman does not object to the assumption of the Agreement.

9. However, Beckman hereby objects to the proposed cure amount identified on Exhibit 1 of the Assumption Notice as such amount is insufficient to cure all monetary defaults under the Agreement as required by Section 365.

10. On September 18, 2018, Beckman filed proof of claim number 37 in these proceedings asserting a pre-petition claim under the Agreement in the amount of \$87,098.89 (the 'Beckman Proof of Claim').

11. As of this date, the Beckman Proof of Claim has not been objected to by the Debtors or any parties in interest and, therefore, is deemed allowed pursuant to Section 502(a) of the Bankruptcy Code.

12. Accordingly, if the Debtors determine to assume the Beckman Agreement, the amount of the cure claim that must be paid on account of pre-petition amounts outstanding is \$87,098.89.

## **Reservation of Rights**

13. Beckman does not release or waive any claim, right or remedy arising under its Agreement, the Bankruptcy Code, or other applicable law. Nothing in this Objection is, or should be construed as, (i) a consent to the assumption, or the assumption and assignment, of the Agreement absent adequate assurance of future performance or (ii) a release or waiver of any of the requirements under Section 365 of the Bankruptcy Code or other applicable law with respect to the assumption, or the assumption and assignment, of the Agreement. Nothing in this Objection

is, or should be construed as, a release or waiver of any claim, right or remedy of Beckman arising on or after the Petition Date.

14. Additionally, Beckman expressly reserves the right to assert additional cure claims for any and all amounts that may remain outstanding under the Agreement at the time that assumption of the Agreement is proposed to be effective. Any and all such amounts shall be asserted and must be paid in addition to the Beckman Proof of Claim amount under Section 365 in order for the Debtors to assume the Agreement.

WHEREFORE, Beckman Coulter Inc., respectfully requests that this Court enter an appropriate order modifying the Cure amount required to be paid related to the Agreement consistent with this Objection.

Respectfully submitted,

BERNSTEIN-BURKLEY, P.C.

By: /s/ Mark A. Lindsay

Mark A. Lindsay, Esq.

PA I.D.:

707 Grant Street, Suite 2200, Gulf Tower  
Pittsburgh, PA 15219

Phone: (412) 456-8121

Fax: (412) 456-8135

Email: [mlindsay@bernsteinlaw.com](mailto:mlindsay@bernsteinlaw.com)

and

/s/ William L. Norton III

William L. Norton III

BRADLEY

1600 Division St., Suite 700

Nashville, TN 37203

615-252-2397

[bnorton@bradley.com](mailto:bnorton@bradley.com)

*Counsel for Movant, Beckman Coulter, Inc.*

Certificate of Service

The undersigned hereby certifies that on the 7th day of November, 2018, the foregoing document was automatically served via the Courts electronic filing system to those parties registered to receive electronic filings in this case.

/s/ William L. Norton III