

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

IN RE:)	
)	Case No. 3:18-bk-05665
CURAE HEALTH, INC. et al.¹,)	Chapter 11
)	Judge Walker
Debtors.)	
)	Jointly Administered

**OBJECTION OF CARDINAL HEALTH 110, LLC AND CARDINAL HEALTH 414, LLC
TO CURE AMOUNTS SET FORTH IN THE NOTICE OF: (I) DEBTORS’ INTENT TO
ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED
LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF REAL
PROPERTY; AND (II) CURE AMOUNTS RELATED TO THE FOREGOING [DOC.
NO. 371]**

Cardinal Health 110, LLC (“CH 110”) and Cardinal Health 414, LLC (“CH 414”), by and through their undersigned attorneys, hereby make this limited objection to the cure amounts set forth in the Debtors’ *Notice of: (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Nonresidential Leases of Real Property; and (II) Cure Amounts Related to the Foregoing Opportunity to Object to Assumption and Assignment of Executory Contracts and Unexpired Leases* [Doc. No. 371], and in support thereof, state as follows:

1. On August 24, 2018 (the “Petition Date”), Debtor Curae Health Inc. (the “Debtor”) filed a petition for relief under Chapter 11 of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”).

2. CH 110 and the Debtor are parties to a certain Group Commitment Agreement (the “GCA”), pursuant to which CH 110 was appointed the prime distributor for the Debtors

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);

with respect to pharmaceutical and over-the-counter products.

3. CH 414 and the Debtor are parties to a certain Purchasing Agreement and Purchase Participation Letter, pursuant to which CH 414 provides radiopharmaceutical products to the Debtor (the “Purchasing Agreement”).

4. On September 28, 2018, the Court entered 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 Interest, (III) Approving Stalking Horse Purchaser, Expense Reimbursement and Overbid Protection, (IV) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction; (VI) Scheduling a Hearing and Objection Deadlines with Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Doc. No. 260].

5. On October 29, 2018, the Debtor filed a *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* [Doc. No. 371] (the “Notice”).

6. The Cure Schedule attached to the Notice, which sets forth a list of leases and contracts that **may** be assumed and assigned by the Debtors, includes reference to the GCA and the Purchasing Agreement, but provides a cure amount of \$0.00 for both agreements.

7. As of the Petition Date, according to CH 110’s books and records, there was, and remains, due and owing by the Debtors to CH 110, under the terms of the GCA, the sum of \$693,847.21. In addition, CH 110’s books and records further reflect that, post-petition, the Debtors owe an additional \$47,615.28 to CH 110 under the terms of the GCA, which is now

Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

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past due.² Accordingly, the total sum of \$741,462.49 is currently owed by the Debtors to CH 110 pursuant to the terms of the GCA (the “CH 110 Cure Amount”).

8. As of the Petition Date, according CH 414’s books and records, the sum of \$48,419.55 remains due and owing under the terms of the Purchasing Agreement. In addition, CH 414’s books and records further reflect that, post-petition, the Debtors owe an additional \$4,199.14 CH 414 under the terms of the Purchasing Agreement, which is now past due.³ Accordingly, the total sum of \$52,618.69 is currently owed by the Debtors to CH 414 pursuant to the terms of the Purchasing Agreement (the “CH 414 Cure Amount”).

OBJECTION

9. Pursuant to Section 365(b)(1)(A) of the Bankruptcy Code:

If there has been a default in an executory contract or unexpired lease of the debtor, the [debtor-in-possession] may not assume such contract or lease unless, at the time of assumption of such contract or lease, the [debtor-in-possession] . . . cures . . . such default

11 U.S.C. § 365(b)(1)(A).

10. As noted above, Debtors owe CH 110 the CH 110 Cure Amount of \$741,462.49. This amount must be paid as a condition precedent to Debtors’ assumption of the GCA and assignment of same to the Stalking Horse or any other purchaser, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code.

11. As noted above, the Debtors owe CH 414 the CH 414 Cure Amount of \$52,618.69. This amount must be paid as a condition precedent to Debtor’s assumption of the Purchasing Agreement and assignment of same to the Stalking Horse or any other purchaser,

² As of the date of this Objection, post-petition, the Debtors owe Cardinal 110 the total amount of \$226,728.48, net of credits in the amount of \$1,754.37. The amount of \$47,615.28 noted above is past due, with the balance of \$179,113.20 due in the near future.

³ As of the date of this Objection, post-petition, the Debtors owe Cardinal 414 the total amount of \$4,240.87. The amount of \$4,199.14 noted above is past due, with the balance of \$41.73 due in the near future.

pursuant to Section 365(b)(1)(A) of the Bankruptcy Code.

12. CH 110 and CH 414 hereby reserve their rights under Section 365(b) of the Bankruptcy Code, including, but not limited to, the right to require payment of all amounts accrued prior to and/or after the Petition Date under the GCA and/or the Purchasing Agreement, to the extent one or both of those agreements are assumed and assigned, as of the date of such assumption and assignment. CH 110 and CH 414 further reserve the right to modify or supplement this objection and to present such evidence as they deem appropriate in connection with any hearing to consider this objection.

CONCLUSION

WHEREFORE, CH 110 and CH 414 respectfully request that this Court enter an Order:

- (a) Requiring Debtors or the ultimate purchaser to pay to CH 110 the CH 110 Cure Amount as a condition precedent to Debtors' assumption of the GCA and assignment of same to the purchaser;
- (b) Requiring Debtors or the ultimate purchaser to pay to CH 414 the CH 414 Cure Amount as a condition precedent to Debtors' assumption of the Purchasing Agreement and assignment of same to the purchaser; and
- (c) Granting CH 110 and CH 414 such other or further relief as the Court deems appropriate.

Respectfully submitted,

/s/ David M. Anthony

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served via electronic notice/ECF on all parties registered to receive electronic notice in this case, as well via United States Mail, first class, postage prepaid to the following persons:

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this 7th day of November, 2018.

/s/ David M. Anthony
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