

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

In re:)	Chapter 11
)	Case No. 18-05665
Curae Health, Inc., <i>et al.</i> ,)	Judge Walker
)	Hearing Date: 11/27/18 at 11:00 a.m.
Debtors.)	Re: D.I. No. 79, 190, 260, 371

**OBJECTION OF CIGNA HEALTH AND LIFE INSURANCE COMPANY
TO 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,
AND TO PROPOSED ASSUMPTION AND ASSIGNMENT OF
CIGNA PROVIDER AGREEMENTS PURSUANT TO SALE MOTION**

Cigna Health and Life Insurance Company (“Cigna”) hereby objects to the proposed assumption and assignment of the Cigna Provider Agreements (defined below) pursuant to the *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* [D.I. 371] (“Assumption Notice”) and 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, (III) Approving Stalking Horse Purchaser, Break-Up Fee, and Overbid Protections, (IV) Establishing Certain 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* [D.I. 79] (“Sale Motion”), and in support thereof, respectfully states as follows:

BACKGROUND

1. Cigna and the above-captioned debtors (collectively “Debtors”) are parties to the following agreements, pursuant to which the Debtors, through the Gilmore Hospital that they operate (“Hospital”), provide covered healthcare services to eligible participants within the Cigna Provider Network:

- *Hospital Services Agreement* between Debtor Armory Regional Medical Center, Inc. and Cigna, effective August 1, 2017, including all amendments, addendums, exhibits, schedules, etc. related thereto (“HSA”).
- *Provider Group Service Agreement* between Debtor Armory Regional Physicians, LLC and Cigna, effective August 1, 2017, including all amendments, addendums, exhibits, schedules, etc. related thereto (“PSA and, jointly with the HSA, the “Cigna Provider Agreements”).

The HSA may be terminated without cause only upon six (6) months advance written notice.

The PSA may be terminated without cause only upon sixty (60) days advance written notice.

Neither of the Cigna Provider Agreements may be assigned without written consent from Cigna.

2. Pursuant to the Sale Motion, Debtors propose to sell substantially all of their assets related to the Hospital (“Sale”) to a to-be-determined purchaser (“Purchaser”) as of the effective date of the Sale (“Effective Date”) pursuant to a stalking horse Asset Purchase Agreement with North Mississippi Health Services, Inc. (“APA”). As part of the Sale, Debtors seek approval of the assumption and assignment of certain of Debtors’ executory contracts (“Assumed Contracts”) to the Purchaser.

3. The Sale Motion does not include a list of Assumed Contracts. Likewise, although the APA states that the list of contracts to be assumed and assigned as part of the Sale is included on Schedules to the APA, no such Schedules are attached to the filed version of the APA.

4. On September 28, 2018, this Court entered the *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, (III) Approving Stalking Horse Purchaser, Expense Reimbursement, and Overbid Protections, (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* [D.I. 260] (“Sale Procedures Order”).

5. Pursuant to the Sale Procedures Order, the Debtors filed the Assumption Notice. The Assumption Notice includes the following listing:

<i>Cigna Health and Life Insurance Company</i>	Hospital Payor Agreement	[Cure Amount] \$0.00
--	--------------------------	----------------------

No contract entitled “Hospital Payor Agreement” exists between Cigna and the Debtors. The Assumption Notice does not identify any other Cigna contracts, and does not correctly identify either of the Cigna Provider Agreements as contracts to be assumed and assigned.

6. Notwithstanding its reference to a “Hospital Payor Agreement,” the Assumption Notice is effectively meaningless because the Sale Motion and the Assumption Notice expressly provide that the Purchaser may “exclude” a contract from the list of Assumed Contracts at any time. Thus, the Assumption Notice provides no guidance to Cigna with regard to the proposed disposition of the Cigna Provider Agreements in the context of the Sale.

OBJECTION

7. Cigna objects to the Assumption Notice and the Sale Motion because they fail to provide for adequate and definitive notice of the proposed disposition of the Cigna Provider

Agreements. Further, Cigna objects to the lack of adequate assurance of future performance under the Cigna Provider Agreements by any proposed assignee. Finally, Cigna objects to the proposed cure amount of zero dollars.

A. Disposition Of The Provider Agreements.

8. By permitting the Purchaser to alter the list of Assumed Contracts without any notice to the Contract Counterparties, the Assumption Notice provides Cigna with no certainty whatsoever as to the proposed disposition of the Cigna Provider Agreements.

9. Because the Debtors are proposing to sell all of their Hospital operations, any failure to assume and assign the Cigna Provider Agreements as part of the Sale will sever the Cigna Provider Agreements from the Hospital, and thus immediately (as of the Effective Date of the Sale) sever the Hospital and its private practice physicians from Cigna's Provider Network. This *de facto* termination of the Cigna Provider Agreements will have a significant and immediate effect on, among others: (i) those patients who are in the Hospital awaiting or recovering from treatment because the Debtor is currently a Cigna in-network provider under the patients' healthcare coverage; (ii) people with Cigna healthcare coverage who may be contemplating treatment at the Hospital and have already received or are awaiting pre-authorization; and (iii) patients of private practice physicians in Cigna's health services network who have privileges only at the Hospital. Additionally, any failure to assume and assign the Cigna Provider Agreements as part of the Sale may disrupt certain area doctors, employer groups and covered persons. It is for these reasons – the protection of third parties – that the Cigna Provider Agreements require minimum, definitive notice of any no-cause termination.

10. Adequate, advance notice of the Debtors' definitive final decision to assume and assign either or both of the Cigna Provider Agreements must be provided to ensure that patients,

covered individuals in the community and healthcare providers are smoothly transitioned from the Hospital and are not economically prejudiced through no fault of their own. Such notice will also avoid having Cigna participate in the Sale process – including the Sale Hearing – if the Debtors do not intend to assume and assign the Cigna Provider Agreements.

B. Full And Accurate Identification Of Cigna Provider Agreements.

11. The Assumption Notice identifies a non-existent contract with Cigna: “Hospital Payor Agreement.” No such contract can be assumed or assigned. While Debtors may have intended to identify one or both of the Cigna Provider Agreements, the Assumption Notice fails to do so. To assume and assign either or both of the Cigna Provider Agreements, the Debtors must fully and accurately identify the specific Cigna Provider Agreement(s) to be assumed and assigned.

C. Adequate Assurance.

12. To the extent that the Debtors seek to assume and assign either or both of the Cigna Provider Agreements, they must provide to Cigna with adequate assurance of any proposed assignee’s future performance thereunder (“Adequate Assurance Information”). 11 U.S.C. § 365(b)(1)(C). By letter to Debtors’ counsel dated September 20, 2018, Cigna requested Adequate Assurance Information; however, none has been provided.

13. Healthcare providers within the Cigna Provider Network are carefully evaluated and must be credentialed prior to being accepted into that network. Adequate Assurance Information relating to the Purchaser and its proposed use and operation of the Hospital must be carefully reviewed and evaluated by multiple departments at Cigna in the context of, and consistent with, the terms and functions of the Cigna Provider Agreements. Cigna will need adequate time to complete this review and evaluation. Accordingly, no hearing on the proposed

assumption and assignment of the Cigna Provider Agreements should be held until at least ten (10) days after Adequate Assurance Information for any proposed assignee of the Cigna Provider Agreements are provided to Cigna and its undersigned counsel.

D. Protective Cure Objection.

14. When a contract is assumed under section 365 of the Bankruptcy Code, the non-debtor third-party to that contract must be “made whole at the time of the debtor’s assumption of the contract.” *Id.* (emphasis added). Accordingly, any cure amount for the Cigna Provider Agreements must include all accrued and unpaid amounts due under the Cigna Provider Agreements as of the Effective Date. *See* 11 U.S.C. § 365(b)(1).

15. The proposed cure amount of \$0 in the Assumption Notice is inaccurate and inadequate. Amounts due and owing to Cigna under the Cigna Provider Agreements accrue and are satisfied on a rolling basis.¹ Accordingly, amounts will continue to become due and owing to Cigna under the Cigna Provider Agreements on and after the date of any deadline to object to a proposed cure amount, and no cure amount can be fixed prior to the Effective Date.

16. To the extent that the Debtors seek to assume and assign either or both of the Cigna Provider Agreements, the Debtors must pay the full amount due and unpaid thereunder as of the Effective Date. *See* 11 U.S.C. § 365(b)(1); *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (“The cure of a default under an unexpired lease pursuant to 11 U.S.C. § 365 is more akin to a condition precedent to the assumption of a contract obligation than it is to a claim in bankruptcy”).

E. Reservation of Right To Affirmatively Object To Any Proposed Assignment Of The Cigna Provider Agreements.

¹ As of November 6, 2018, \$9,046.99 was due and owing to Cigna under the Cigna Provider Agreements.

17. The Cigna Provider Agreements are in the nature of personal services contracts. Cigna's approval of a healthcare provider for the Cigna Provider Network is a critical component to all Cigna Provider Agreements. Persons whose healthcare insurance is provided by or through Cigna rely on Cigna's diligence in selecting and maintaining providers for the Cigna Provider Network. For this reason, the Cigna Provider Agreements require Cigna's consent to any proposed assignment. Cigna hereby reserves its rights to decline to give such consent, and oppose any such assignment.

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) denies any proposed assumption and assignment of the Cigna Provider Agreements absent Cigna consent; (ii) denies the Sale Motion except as consistent with the foregoing; and (iii) grants Cigna such additional relief as this Court deems just and equitable.

Dated: November 7, 2018

WYATT TARRANT & COMBS LLP

/s/ B. Anthony Saunders

B. Anthony Saunders
333 Commerce Street
Suite 1400
Nashville, TN 37201
Telephone: (615) 251-6670
Facsimile: (615) 256-1726
Email: tsaunders@wyattfirm.com

and

CONNOLLY GALLAGHER LLP
Jeffrey C. Wisler (DE Bar No. 2795)
The Brandywine Building
1000 West Street, Suite 1400
Wilmington, Delaware 19801
Telephone: (302) 757-7300
Facsimile: (302) 658-0380
Email: jwisler@connollygallagher.com

Counsel to Cigna Health and Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that, on November 7, 2018, a copy of the foregoing document was transmitted electronically to the parties consenting to electronic service in this case through the ECF system maintained by the United State Bankruptcy Court for the Middle District of Tennessee.

/s/ B. Anthony Saunders
B. Anthony Saunders