

Connolly Gallagher LLP
Jeffrey C. Wisler (#002911989)
The Brandywine Building
1000 West Street, Suite 1400
Wilmington, DE 19801
Telephone: (302) 757-7300

Counsel for Cigna HealthCare of New Jersey, Inc.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:) Chapter 11
) Case No. 16-16964 (JKS)
Florham Park Surgery Center, LLC,)
) **Hearing: 12/12/17 at 10:00 a.m.**
Debtor.) **RE: Docket No. 215-1**

**OBJECTION OF CIGNA HEALTHCARE OF NEW JERSEY, INC. TO
MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. § 365 AUTHORIZING
DEBTOR TO ASSUME AND ASSIGN MEDICAL PROVIDER AGREEMENT/NUMBER
AND PROVIDER CONTRACTS WITH HORIZON BLUE CROSS/BLUE SHIELD OF
NEW JERSEY, HORIZON CASUALTY SERVICES, INC., CIGNA HEALTHCARE OF
NEW JERSEY, INC. AND UNITEDHEALTHCARE INSURANCE COMPANY,
RESPECTIVELY, TO HANOVER HILLS SURGERY CENTER, LLC, AND
FIXING CURE AMOUNTS UNDER ALL SUCH CONTRACTS AT \$0**

Cigna HealthCare of New Jersey, Inc. (“Cigna”), by and through its undersigned counsel, hereby objects to the proposed assumption and assignment of a certain designated Cigna Provider Agreement (defined below) pursuant to the *Motion for Entry of Order Pursuant to 11 U.S.C. § 365 Authorizing Debtor to Assume and Assign Medical Provider Agreement/Number and Provider Contracts With Horizon Blue Cross/Blue Shield of New Jersey, Horizon Casualty Services, Inc., Cigna Healthcare of New Jersey, Inc. and UnitedHealthcare Insurance Company, Respectively, to Hanover Hills Surgery Center, LLC, and Fixing Cure Amounts Under All Such Contracts at \$0* (“Motion”) [D.I. 215-1]. In support of this Objection, Cigna states as follows:

BACKGROUND

1. On April 11, 2016 (“Petition Date”), the above-captioned debtor (“Debtor”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

2. Prior to the Petition Date, Cigna and Debtor were parties to an Ancillary Services Agreement effective as of April 15, 2012 (“Cigna Provider Agreement”) pursuant to which Debtor, through the healthcare facility that it operated (“Facility”), provided covered healthcare services to eligible participants within Cigna’s Provider Network.

3. By Order dated July 17, 2017, this Court authorized the Debtor to sell substantively all of its assets, including the Facility (“Sale”), to Hanover Hills Surgery Center, LLC (“Buyer”).

4. On September 12, 2017, the Debtor filed the Motion. The Motion seeks authority to assume and assign the Cigna Provider Agreement to the Buyer. The Motion proposes a cure amount of zero dollars (\$0).

5. Cigna received a copy of the Motion on September 28, 2017. Cigna promptly contacted Debtor’s counsel, sent a written request for adequate assurance information on October 2, 2017, and sent a written statement as to the correct cure amount on October 6, 2017.

6. Upon information and belief, the Sale closed as of October 13, 2017. As of October 13, 2017, \$22,832.21 was due and owing from Debtor to Cigna under the Cigna Provider Agreement.

7. On December 5, 2017, Cigna received adequate assurance information about the Buyer. On December 7, 2017, for the first time, Cigna was advised that its asserted cure amount was disputed. Accordingly, Cigna files this Objection.

OBJECTION

8. Cigna objects to any proposed assumption and assignment of the Cigna Provider Agreement because the cure amount proposed by the Debtor for the Cigna Provider Agreement is incorrect and inadequate.

9. Section 365(b)(1)(A) of the Bankruptcy Code requires the Debtor to pay all amounts that are due and unpaid under the Cigna Provider Agreement as of the effective date of any proposed assumption (“Effective Date”). Accordingly, any cure amount with respect to the Cigna Provider Agreement must include all accrued and unpaid amounts due thereunder as of the Effective Date.

10. Cigna objects to the Debtor's proposed cure amount of \$0 as inadequate with respect to the Cigna Provider Agreement. As of October 13, 2017, the amount due and unpaid under the Cigna Provider Agreement was \$22,832.21. Additional amounts due and owing from the Debtor under the Cigna Provider Agreement continue to accrue and are subject to ongoing reconciliation and adjustment.

11. Any order permitting the assumption and assignment of the Cigna Provider Agreement must direct that the Debtor fully pay all amounts that are due as of the Effective Date as a condition precedent to such assumption and assignment. *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”).

WHEREFORE, Cigna respectfully requests that this Court enter an order: (i) denying any proposed assumption and assignment of the Cigna Provider Agreement until all amounts due

through the Effective Date are paid in full; and (ii) granting Cigna such additional relief as this Court deems just and equitable.

December 8, 2017

CONNOLLY GALLAGHER LLP

/s/ Jeffrey C. Wisler

Jeffrey C. Wisler (#2795)

1000 West Street, Suite 1400

Wilmington, DE 19081

Telephone: (302) 757-7300

Facsimile: (302) 658-0380

Email: jwisler@connollygallagher.com

#05357940

Counsel for Cigna HealthCare of New Jersey, Inc.