

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Tricida Inc.,

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Jointly Administered

Re: D.I. 11, 100, 113

**OBJECTION OF CIGNA TO NOTICE OF (I) POTENTIAL ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES AND (II) CURE AMOUNTS**

Cigna Health and Life Insurance Company (“Cigna”) hereby objects to the *Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts* [D.I. 113] (“Cure Notice”), and in support thereof, respectfully states as follows:

BACKGROUND

1. Cigna and Debtor are parties to an Administrative Services Contract (Level Funding) and a Stop Loss Policy (jointly, “ASO Agreement”)¹ that allow the Debtor to be self-insured² for their employee healthcare benefits, with Cigna performing administrative functions. In short, Cigna processes medical and pharmaceutical claims of Debtor’s employees (“Employee Healthcare Claims”), and the Debtor funds Employee Healthcare Claim payments to healthcare providers.

2. Cigna and the Debtor are also parties to (i) a Cigna Dental Choice Policy, as amended, (ii) a Cigna Dental Preferred Provider Policy, and (iii) a Cigna Vision Policy, as amended (collectively with the ASO Agreement, the “Employee Benefits Agreements”), pursuant to which Cigna provides group dental and vision insurance benefits for Debtor’s employee benefits plan.

¹ Including all amendments, riders, schedules, exhibits, certificates, renewal caveats and disclosures, addendums, letters of intent and banking agreements related thereto.

² Subject to the Stop Loss Policy.



3. On January 11, 2023, the Debtor filed the *Debtor's Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor's Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* [D.I. 11] seeking this Court's approval for the sale of substantially all of its assets to a to-be-determined buyer ("Purchaser"), including the assumption and assignment of certain of Debtor's executory contracts.

4. On January 26, 2023, this Court entered the *Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief* [D.I. 100] ("Sale Procedures Order").

5. On January 31, 2023, pursuant to the Sale Procedures Order, the Debtor filed the Cure Notice. The Cure Notice includes the following Cigna listings ("Cigna Listings"):

Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	Administrative Services Contract (Level Funding)	\$0.00
Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	Dental Choice Policy	\$0.00
Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	DPPO Policy	\$0.00
Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	Exclusive Provider Organization Plan and the Preferred Provider Organization Plan	\$0.00
Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	Stop Loss Policy	\$0.00
Cigna	1340 Treat Blvd. Suite 599 Walnut Creek, CA 94597	Vision Policy	\$0.00

6. There is no Contract, executory or otherwise, between Cigna and the Debtor entitled “Exclusive Provider Organization Plan and the Preferred Provider Organization Plan.” Cigna accepts the balance of Cigna Listings as designating the Employee Benefits Agreements for potential assumption and assignment.

OBJECTION

7. Cigna objects to the Cure Notice because, *inter alia*, (i) the Cure Notice does not propose to satisfy Debtor’s cure obligations consistent with section 365(b)(1) of the Bankruptcy Code, and (ii) Debtor has not provided sufficient information relating to adequate assurance of future performance by any proposed Purchaser. In addition, Cigna expressly objects to the assumption and assignment of an “Exclusive Provider Organization Plan and the Preferred Provider Organization Plan” because no such contract exists.

A. Cure.

8. 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.” *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (citations omitted). Accordingly, to the extent that the Debtor seeks to assume and assign any of the Employee Benefits Agreements, the Debtor must pay the full cure amounts based upon the actual amounts that are due on the date that any of the Employee Benefits Agreements are assumed and assigned (“Effective Date”). *See* 11 U.S.C. § 365(b)(1).

9. Amounts due under the Employee Benefits Agreements vary, and are subject to reconciliation based upon, among other things, eligibility reports submitted by the Debtor. Cure amounts must be based on the amount due on the effective date of any assignment, rendering the proposed cure amounts set forth in the Cure Notice stale and inaccurate.

10. Cigna expressly objects to the proposed cure amounts of \$0 set forth in the Cure Notice. Amounts have continued to accrue post-Petition under the Employee Benefits Agreements, and will continue to become due and owing to Cigna on and after the date of any deadline to object to a proposed cure amount. Thus, no cure amount can be fixed prior to the Effective Date.

11. Any order permitting the assumption and assignment of any Cigna Employee Benefits Agreements must direct that the Debtor fully pay all amounts due to Cigna under those agreements as of the Effective Date, as a condition precedent to such assumption and assignment. Further, as a condition to any assignment of the ASO Agreement, any proposed assignee must fund amounts necessary to process and pay eligible Employee Healthcare Claims incurred prior to the Effective Date, that have not been submitted, processed and paid as of the Effective Date, subject to the level funding limits set forth in the ASO Agreement.

B. Adequate Assurance.

12. Section 365(b)(1)(C) of the Bankruptcy Code requires the Debtor to provide adequate assurance of any proposed assignee's future performance prior to the assumption and assignment of executory contracts. Absent a fair, adequate and timely demonstration of adequate assurance, the Employee Benefits Agreements cannot be assumed and assigned.

13. Adequate Assurance Information must be carefully reviewed and evaluated by Cigna in the context of, and consistent with, the terms and functions of the Employee Benefits Agreements. Both Cigna and its counsel will need adequate time prior to any assumption/assignment hearing to complete this review and evaluation. To the extent that the Adequate Assurance Information provided by any bidder is incomplete or otherwise insufficient, Cigna will need an opportunity to request supplemental information.

14. Pending timely receipt and review of all necessary adequate assurance information for any proposed assignee, Cigna reserves the right to object to any proposed assumption and assignment.

C. Interdependence (Reservation).

15. The Administrative Services Contract and the Stop Loss Policy are interdependent and function as an integrated arrangement. Cigna objects to any assumption and assignment of one without the assumption and assignment of the other.

D. No Shared Coverage (Reservation).

16. Cigna objects to any proposed disposition of the Employee Benefits Agreements that would require Cigna to simultaneously provide benefits to eligible employees of both Debtor and any Purchaser under a single contract. Thus, to the extent that the Debtor or Purchaser propose to maintain employee benefits under any of the Employee Benefits Agreements for employees of both the Debtor and the Purchaser, Cigna objects.

E. Notice of Disposition.

17. Cigna reserves its right to object to the proposed disposition of any of the Employee Benefits Agreements to the extent that the Debtor does not comply with paragraph 28 of the Sale Procedures Order.

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) approves assumption and assignment of the Employee Benefits Agreements only to the extent consistent with the foregoing; and (ii) grants such further relief to Cigna as this Court deems just and equitable.

Dated: February 3, 2023

CONNOLLY GALLAGHER LLP

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 3rd day of February, 2023, a copy of the *Objection of Cigna to Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts* was served via CM/ECF and as indicated upon the counsel below.

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