

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
) Case No. 18-10834 (KG)
VER Technologies Holdco LLC, *et al.*,) (Jointly Administered)
)
Debtors.) **Re: D.I. 400, 551**

**OBJECTION OF CIGNA ENTITIES
TO AMENDED JOINT PLAN OF REORGANIZATION**

Cigna Health and Life Insurance Company, Life Insurance Company of North America, and Cigna Behavioral Health, Inc. (collectively “Cigna”), by and through the undersigned counsel, hereby object to the *Amended Joint Chapter 11 Plan of Reorganization of VER Technologies Holdco LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 400] (“Plan”). In support of this Objection, Cigna states as follows:

BACKGROUND

1. On April 5, 2018, the above-captioned debtors (“Debtors”), filed voluntary petitions for relief with this Court under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. Cigna and Debtors are parties to the following contracts (collectively, the “Cigna Contracts”) pursuant to which Cigna provides services for Debtors’ employee benefits program (“Employee Benefits Plan”):

- Administrative Services Only Agreement By and Between VER Technologies LLC (“VER”) and Cigna Health and Life Insurance Company Effective January 1, 2016 (Account No. 3339193) (“ASO Agreement”).
- Stop Loss Policy By and Between VER and Cigna Health and Life Insurance Company Effective January 1, 2016 (Account No. 3339193).



- Agreement for Employee Assistance Program Services By and Between VER and Cigna Behavioral Health, Inc. Effective January 1, 2018) (“Employee Assistance Policy”).
- Group Long Term Disability Insurance Policy No. FLK-960974 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Short Term Disability Insurance Policy No. LK-752216 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Life Insurance Policy No. FLX-968005 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Accident Policy No. OK 969490 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Accident Indemnity Policy No. AI 960486 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Hospital Indemnity Policy No. HC 960121 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.
- Group Critical Illness Policy No. CI 960486 between Life Insurance Company of North America and Full Throttle Films, LLC dba VER Effective January 1, 2018.

3. Pursuant to the ASO Agreement identified above, Cigna processes medical, pharmaceutical, and dental claims of Debtors’ eligible employees and their eligible dependents (“Employee Healthcare Claims”) for the Debtors’ Employee Benefits Plan.

4. On or about June 3, 2018, Debtor filed the Plan. Under the Plan, Debtors propose to assume certain executory contracts designated by the Debtors (“Designated Contracts”) in their Plan Supplement All contracts not so designated are to be rejected by the Plan. *See*, Plan, Article, VII.B.

5. On or about July 9, 2016, Debtors filed the *Notice of Filing of Plan Supplement* 402 [D.I. 551] (“Plan Supplement”). Exhibit C-2 of the Plan Supplement lists executory contracts that will be assumed under the Plan. The Exhibit C-2 list includes the following Cigna entries:

- Cigna Health and Life Insurance Company
Policy re Open Access plus Medical Benefits
Cure Cost: \$3,039.72
- Cigna Health and Life Insurance Company
Policy re Health Savings Account
Cure Cost: \$3,039.72
- Life Insurance Company of North America
Insurance Policy re: Life Insurance (FLX-968005)
Cure Cost: \$0
- Life Insurance Company of North America
Insurance Policy re: Group Accident Policy (OK-969490)
Cure Cost: \$0
- Life Insurance Company of North America
Insurance Policy re: Disability Insurance (FLK-960974)
Cure Cost: \$0
- Life Insurance Company of North America
Insurance Policy re: Disability Insurance
Cure Cost: \$0

Although these listings (collectively, the “Cigna Listings”) appear to reference some of the Cigna Contracts, the Cigna Listings neither completely nor accurately identify all of the Cigna Contracts.¹

6. The Plan proposes that the assumption of Designated Contracts will be effective on the Effective Date of the Plan. The Plan further provides that “any monetary defaults” under

¹ Article, VII.C.1. of the Plan provides that all Compensation and Benefits Program shall be deemed assumed by the Plan.

an assumed contract will be satisfied through payment of the Cure Cost in cash on the Effective Date.

OBJECTION

7. Cigna files this objection because the Plan and the Plan Supplement fail to provide sufficient notice to Cigna of the proposed disposition of the Cigna Contracts. Further, the Plan Supplement proposes insufficient cure amounts for the Cigna Contracts.

A. Identification Of The Cigna Contracts.

8. There are currently ten (10) active Cigna Contracts between Cigna and the Debtors relating to the Debtors' Employee Benefits Plan. The Plan Supplement fails to fully or accurately identify those contracts, and thus the Plan does not provide for a clear disposition of all of the Cigna Contracts.

9. Any order confirming the Plan must accurately identify the Cigna Contracts and designate them as contracts to be assumed or contracts to be rejected. Because the disposition of the Cigna Contracts will have a significant impact on the Debtors' employees, the Debtors should provide unequivocal notice of the proposed disposition of each of those contracts well in advance of Plan confirmation. Additionally, no assumption of any Cigna Contract should be approved until the Debtors confirm that such assumption will include any and all applicable amendments, riders, schedules, exhibits, certificates, renewal caveats, renewal disclosures, addendums, benefit booklets, benefit certificates, letters of intent and banking agreements related thereto.

B. Cure.

10. As a condition precedent to the assumption of any of the Cigna Contracts, the Debtors must pay the full amount due and unpaid thereunder on the Effective Date of the Plan.

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”). 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 set with respect to the Cigna Contracts must include all accrued and unpaid amounts due under the Cigna Contracts as of the Effective Date. *See* 11 U.S.C. § 365(b)(1).

11. Cigna objects to the Debtor's proposed Cure Costs set forth in the Plan Supplement as inadequate with respect to the Cigna Contracts.

12. As of July 12, 2018, the Debtors were current under the Cigna Contracts, except the Employee Assistance Policy, under which \$4,260 was due and owing. However, additional amounts have and will continue to become due and owing under the Cigna Contracts on and after July 12, 2018, some of which accrued prior to July 1, 2018.² Therefore, no cure amounts can be fixed prior to the Effective Date. To satisfy their cure obligations under the Cigna Contracts, and as a condition precedent to any assumption and assignment thereof, the Debtors must pay all amounts due and owing thereunder as of the Effective Date.

13. Additionally, to satisfy their cure obligations under the ASO Agreement, and as a condition precedent to any assumption thereof, Debtors must: (i) maintain the required imprest deposit in the Plan Bank Account through which Employee Healthcare Claims are funded; and (ii) fund all amounts necessary to process and pay all eligible Employee Healthcare Claims incurred by eligible employees and their eligible dependents prior to the Effective Date, that

² Amounts due under the Cigna Contracts are subject to ongoing adjustment and reconciliation based upon, among other things, the continued billing and payment of premiums, eligibility adjustments submitted by the Debtors, and the Debtors’ funding of Employee Healthcare Claims.

have not been submitted, processed and paid (check issued and cleared) as of the Effective Date. These amounts accrue and are funded on a periodic basis, and a cure cannot be fixed in advance.

C. Other Objection.

14. The Stop Loss Policy and the ASO Agreement are interdependent. The Agreements were negotiated, executed and performed as an integrated arrangement. Cigna objects to any proposed assumption and assignment of the Stop Loss Policy without the assumption and assignment of the ASO Agreement.

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) confirms the Plan only to the extent consistent with the foregoing; and (ii) grants Cigna such additional relief as this Court deems just and equitable.

Dated: July 17, 2018

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 17th day of July, 2018, a copy of the **Objection of Cigna Entities to Amended Joint Plan of Reorganization** was served as indicated upon the following counsel.

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