

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS,)	Case No. 19-10702 (MFW)
L.P., <i>et al.</i> ,)	
)	(Jointly Administered)
Debtors.)	
)	Hearing: September 18, 2019 at 10:30 a.m.
)	Objection Deadline: July 11, 2019
)	Re: Docket No. 225, 238, 324, 327

OBJECTION OF CIGNA ENTITIES TO NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT

Cigna Health and Life Insurance Company (“CHLIC”) and Life Insurance Company of North America (“LINA,” and jointly with CHLIC, “Cigna”), by and through their undersigned counsel, hereby object to the *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount* [D.I. 327] (“Cure Notice”). In support of this Objection, Cigna states as follows:

BACKGROUND

1. CHLIC and the above-captioned Debtors (“Debtors”) are parties to Group Insurance Policy, including all amendments, riders and letter agreements thereto, effective as of January 1, 2017, Policy No. 8340257 (“Cigna Policy”). Under the Cigna Policy, CHLIC provides medical and dental insurance coverage to Debtors’ employees under the Debtors’ employee benefits plan (“Plan”), and Debtors fund employee healthcare claim payments through a segregated Plan bank account (“Plan Bank Account”).

2. CHLIC and the Debtors are also parties to a MotivateMe Service Agreement, effective as of January 1, 2017 (“Service Agreement”) pursuant to which CHLIC administers Debtors’ “Healthy Pregnancy, Healthy Babies” program under the Plan.



3. LINA and the Debtors are parties to the following four group insurance policies, as amended (collectively, “LINA Policies” and collectively with the Cigna Policy and the Service Agreement, the “Employee Benefits Agreements”), pursuant to which LINA provides life, disability and accident insurance to Debtors’ employees under the Plan:

- Accidental Death and Dismemberment Policy, effective 1/1/12, Policy No. SOK 601728
- Life Insurance Policy, effective 1/1/12. Policy No. SGM-602789
- Short Term Disability Policy, effective 1/1/12. Policy No. SGD-602695
- Long Term Disability Policy, effective 1/1/12. Policy No. SGD-602696

4. On May 22, 2019, Debtors filed the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors Assets, (B) Authorizing the Selection of a Stalking Horse Bidder, (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing to Approve, Sale of Debtors Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (F) Approving Assumption and Assignment Procedures, and (G) Granting Related Relief and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [D.I. 225] (“Sale Motion”) seeking this Court’s approval of the sale of the Bid Assets¹ (“Sale”) to a purchaser (“Purchaser”). As part of the proposed Sale, the Debtors seek authority to assume and assign certain executory contracts to the Buyer as of the effective date of the Sale.

5. On May 30, 2019, Cigna filed the *Objection of Cigna Entities To Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors Assets, (B) Authorizing the Selection of a Stalking Horse Bidder, (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing to Approve, Sale of Debtors Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (F) Approving Assumption and*

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Sale Motion.

Assignment Procedures, and (G) Granting Related Relief and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [D.I. 238] (“Cigna Objection”).

6. On June 13, 2019, this Court entered the *Order (I) Approving Bidding Procedures for Sale of Debtors’ Assets, (II) Authorizing the Selection of a Stalking Horse Bidder, (III) Approving Bid Protections, (IV) Scheduling Auction for, and Hearing to Approve, Sale of Debtors’ Assets, (V) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (VI) Approving Assumption and Assignment Procedures, and (VII) Granting Related Relief* [D.I. 324] (“Procedures Order”). Paragraph 19 of the Procedures Order resolved the Cigna Objection as follows:

Notwithstanding anything in this Order to the contrary, unless Cigna . . . and the Debtors agree otherwise, in the event that any of the Employee Benefit Agreements (as defined in the Cigna Objection) are listed in the Proposed Assumption and Assignment Notice, or in a Supplemental Assumption and Assignment Notice, filed and served in accordance with the Bidding Procedures, the Debtors shall provide to Cigna, through its counsel of record, (a) as soon as reasonably practicable after the filing of such notice, (i) a copy of the evidence in the Debtors’ possession material to the Successful Bidder’s ability to comply with section 365 of the Bankruptcy Code, including such information demonstrating the Successful Bidder’s ability to perform under the applicable Employee Benefit Agreement(s) and (ii) a good faith estimate as to the number of the Debtors’ employees who will become employees of the Successful Bidder and (b) within three business days of filing such notice, written notice of the Debtors’ and the Successful Bidder’s irrevocable decision as to whether or not the Debtors shall assume and assign to the Successful Bidder the applicable Employee Benefit Agreements as part of the Sale Transaction (to the extent such Sale Transaction closes); provided, however, that Cigna shall not assert any Cure Costs other than the outstanding amounts, if any, accrued on and after May 31, 2019, under the applicable Employee Benefit Agreements.

7. On June 13, 2019, the Debtors filed the Cure Notice. The Cure Notice includes the following entries:

271	Cigna	Southcross Energy Partners GP, LLC	900 Cottage Grove Rd	Employee Benefit Plans	Letter Agreement to Lindsey Roberts re: Cigna Health and Life Insurance Company Policy No. 3340257	\$0.00
272	Cigna Health And Life Insurance Company	Southcross Energy Partners GP, LLC	25500 N Norterra Drive, Building B Phoenix, AZ 85085	Employee Benefit Plans	Motivateme® Service Agreement for the Healthy Pregnancy, Healthy Babies Package	\$0.00
1661	The Life Insurance Company of North America	Southcross Energy Partners GP, LLC	1601 Chestnut Street 2 Liberty Place Philadelphia, PA 19192-2235	Insurance Policies	Life Insurance Company of North America Contract for Policy No. SGM-602789 (Amendment No. 3)	\$0.00

These listings are ambiguous and incomplete.

OBJECTION

8. Cigna objects to the Cure Notice because, *inter alia*, (i) it fails to properly and definitively identify the Cigna Employee Benefits Agreements; (ii) Debtors have not provided sufficient information relating to adequate assurance of future performance by any proposed Purchaser; and (iii) the Cure Notice does not propose to satisfy Debtors' cure obligations consistent with section 365(b)(1) of the Bankruptcy Code.

A. Accurate Identification Of Cigna Employee Benefits Agreements.

9. The Cure Notice clearly lists the Service Agreement and appears to list the LINA life insurance policy. However, the Cure Notice also includes an ambiguous listing of a "Letter Agreement," fails to list the Cigna Policy, and fails to list three of the LINA Policies.

10. Under the Employee Benefits Agreements, Cigna provides benefits under the Debtors' employee benefits plan. The disposition of the Employee Benefits Agreements in the context of the Sale, and the timing of that disposition, could significantly impact benefits coverage for employees. Thus, the Notice of Disposition must specifically and individually identify each of the Cigna Employee Benefits Agreements, and the proposed disposition of each. Further, any order authorizing assumption and assignment of the Cigna Employee Benefits

Agreements must fully and accurately identify the precise Agreements to be assumed and assigned.

11. Pending receipt and review of the Notice of Disposition, Cigna reserves the right to further respond/object to any proposed disposition of the Cigna Employee Benefits Agreements.

B. Adequate Assurance.

12. Section 365(b)(1)(C) of the Bankruptcy Code requires the Debtors 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 and revise 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. Cure.

15. 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).

Accordingly, to the extent that the Debtors seek to assume and assign any of the Employee Benefits Agreements, the Debtors 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 by the Debtors (“Effective Date”). *See* 11 U.S.C. § 365(b)(1).

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

17. Amounts will continue to become due and owing to Cigna under the Cigna Employee Benefits 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. Any order permitting the assumption and assignment of any Cigna Employee Benefits Agreements must direct that the Debtors fully pay all amounts due to Cigna under those agreements as of the Effective Date, as a condition precedent to such assumption and assignment.

18. Additionally, to satisfy their cure obligations, and as a condition precedent to any assignment of the Cigna Policy, any proposed assignee must: (i) provide for the proper use, cross-account linkage, and disposition of the Plan Bank Account; (ii) maintain the required imprest balance in the Plan Bank Account; and (iii) 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 have not been submitted, processed and paid (check issued and cleared) as of the Effective Date.

D. No Shared Coverage.

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

E. Reservation of Rights.

20. Cigna reserves its right to object to the proposed disposition of any of the Cigna Employee Benefits Agreements to the extent that the Debtors do not comply with paragraph 19 of the Procedures Order.

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) approves assumption and assignment of the Cigna 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: July 11, 2019

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 11th day of July, 2019, a copy of the **Objection of Cigna Entities to Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount** was served as indicated upon the following parties.

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