UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re	Chapter 11
	Case No. 13-17273 (JKO)
Comprehensive Clinical Development, Inc.	*(Jointly Administered)*
Debtor.	

_____/

MOTION OF CIGNA HEALTH AND LIFE INSURANCE COMPANY FOR RELIEF FROM THE AUTOMATIC STAY AS NECESSARY TO TERMINATE CERTAIN AGREEMENTS, EFFECTIVE AS OF SEPTEMBER 5, 2013

ANY INTERESTED PARTY WHO FAILS TO FILE AND SERVE A WRITTEN RESPONSE TO THIS MOTION WITHIN 14 DAYS AFTER THE DATE OF SERVICE STATED IN THIS MOTION SHALL, PURSUANT TO LOCAL RULE 4001-(C), BE DEEMED TO HAVE CONSENTED TO THE ENTRY OF AN ORDER GRANTING THE RELIEF REQUESTED IN THE MOTION

Cigna Health and Life Insurance Company ("CHLIC"), by and through its undersigned counsel, hereby moves this Court for the entry of an order granting relief from the automatic stay, as necessary to permit CHLIC to terminate certain Agreements (defined below) with the above-captioned debtor ("Debtor") as of September 5, 2013. In support of this Motion, CHLIC states as follows:

Background

1. On March 29, 2013 ("Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code").

2. As of the Petition Date, CHLIC and Debtor were parties to an Administrative Services Contract ("ASO Agreement") and an accompanying Stop Loss Policy ("Stop Loss Policy," and jointly with the ASO Agreement, the "Agreements"). Pursuant to the ASO Agreement, CHLIC provided administrative services for the Debtor's self-insured employee healthcare benefits plan ("Benefits Plan"). Specifically, CHLIC processed medical [and

pharmaceutical] claims of Debtor's eligible employees ("Employee Healthcare Claims"). After they are processed, those Employee Healthcare Claims that are eligible for payment are funded by the Debtor.

3. The ASO Agreement provides that, upon Debtor's failure to, *inter alia*, fund the payment of Employee Healthcare Claims, CHLIC may, "in lieu of" treating the ASO Agreement as being immediately terminated, "immediately suspend" claims processing and payment. In the event of such a suspension, CHLIC "will notify" Debtor and provide a ten day opportunity to cure. If Debtor does not "completely cure" its failure within the applicable cure period, the ASO Agreement "shall terminate immediately and without notice."

4. Debtor has failed to meet its post-petition funding and payment obligations under the Agreements. Pursuant to the ASO Agreement, upon Debtor's failure to make such payment, CHLIC suspended all claims processing and payment and provided Debtor with written notice of its opportunity to cure. The "applicable cure period" expires on September 5, 2013. As of the filing of this Motion, no cure payment ("Cure Payment") has been received.

5. CHLIC seeks relief as necessary to terminate the Agreements, effective as of September 5, 2013, if the Cure Payment is not made on or before September 5, 2013.

Jurisdiction

6. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief sought herein is section 362(d) of the Bankruptcy Code.

Relief Requested and Basis Therefor

7. If the Cure Payment is not made on or before September 5, 2013, the Agreements will terminate automatically with no action by CHLIC. This post-petition, contractually-

triggered result does not require relief from the automatic stay under section 362 of the Bankruptcy Code. It is well established that the cancellation of such a contract according to its terms does not violate the stay. *See In re New England Marine Services, Inc.*, 174 B.R. 391 (Bankr. E.D.N.Y. 1994) ("nothing in the Bankruptcy Code . . . enlarges the rights of the debtor . . . or . . . prevents the termination of the insurance under the policy's own cancellation provisions. . . . To require an insurance carrier to abandon its contractual rights as the Debtor's request, is tantamount to sending notice to all insurance companies that when dealing with a debtor-in-possession, contractual provisions are of no import"); *accord*, *Heaven Sent Ltd. v. Commercial Union Ins. Co. (In re Heaven Sent Ltd.)*, 37 B.R. 597, 597-98 (Bankr. E.D. Pa. 1984); *Valley Forge Plaza Assocs. v. Schwartz*, 114 B.R. 60, 62-63 (E.D. Pa. 1990) (holding that the automatic stay does not nullify the non-debtor's right to cancel a contract pursuant to its terms). In short, a debtor in bankruptcy has no greater rights or powers under a contract than the debtor would have outside of bankruptcy. *See Valley Forge*, 114 B.R. at 62. Thus, a termination provision in a pre-petition agreement may be invoked, without violating the automatic stay, if the notice provision has been satisfied. Bankruptcy "is not intended to expand the Debtor's rights against others more than they exist at the commencement of the case." *In re Tudor Motor Lodge Assoc. Ltd. P'ship*, 102 B.R. 936, 942 (Bankr. D.N.J. 1989).

8. However, out of an abundance of caution, CHLIC respectfully requests that the Court grant relief from the automatic stay to the extent that it is necessary to allow CHLIC to suspend processing and payment and allow the Agreements to terminate pursuant to their terms.

9. The automatic stay set forth in section 362(a) of the Bankruptcy Code is not meant to be indefinite or absolute and this Court has the power to grant relief from the automatic

stay in appropriate circumstances. *See In re Rexene Products. Co.,* 141 B.R. 574, 576 (Bankr. D. Del. 1992); *see also In re Wedgewood* 878 F.2d 693, 697 (3d Cir. 1998).

10. Section 362(d)(1) of the Bankruptcy Code provides for the lifting of the automatic stay where "cause" exists:

> On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause ....

See 11 U.S.C. § 362(d)(1). The Bankruptcy Code, however, does not define "cause." Therefore, what constitutes cause must be determined on a case-by-case basis. *See Rexene Products.,* 141 B.R. at 576 (citing *Matter of Fernstrom Storage & Van Co.,* 938 F.2d 731, 735 (7th Cir. 1991)). Courts have held that a single factor, such as a lack of any connection or interference with the pending bankruptcy case, may establish sufficient cause. *See Rexene Products,* 141 B.R. at 576. Appropriate circumstances (that is, sufficient "cause" under section 362(d)(1) of the Bankruptcy Code) are certainly present in this case.

11. The Benefits Plan is self-insured. CHLIC has no obligation to fund the payment of Employee Healthcare Claims. Debtor has ceased funding those claims, and has failed to pay CHLIC for processing those claims on a post-petition basis. Permitting the ASO Agreement to continue without payment from the Debtor would effectively obligate CHLIC to pay Employee Healthcare Claims where it has no obligation to do so. Further, the termination of the Agreements is automatic by their own terms. This constitutes "cause" to grant CHLIC the relief requested.

WHEREFORE, CHLIC respectfully requests that this Court enter an order granting (i) CHLIC relief from the automatic stay to the extent necessary to allow the Agreements to

terminate effective as of September 5, 2013, and (ii) such other and further relief as is just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on this 29th day of August, 2013 upon all interested parties registered to receive notice via this Court's CM/ECF notification system and via First Class U.S. Mail upon all interested parties listed on the attached service list.

Date: August 29, 2013

Respectfully submitted,
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