

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

In re: THG HOLDINGS LLC, et al.,¹ Debtors.))))	Chapter 11 Case No. 19-11689 (JTD) Re: D.I. 187
--	------------------	--

**OBJECTION OF ANTHEM ENTITIES TO DEBTORS’ NOTICE OF PROPOSED
(I) ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNTS**

The Anthem Entities (collectively, “Anthem”), by counsel, for their *Objection to Debtors’ Notice of Proposed (I) Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (II) Cure Amounts* (the “Objection”), respectfully state as follows.²

I. PRELIMINARY STATEMENT

1. The Anthem Entities, creditors and contract counterparties with certain of the above-captioned debtors (collectively, the “Debtors”), object to the relief requested in the *Debtors’ Notice of Proposed (I) Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (II) Cure Amounts* (D.I. 187, the “Assignment Notice”). For the reasons stated herein, the Anthem Entities ask the Court to deny any request of the Debtors that seeks to modify any rights of any of the Anthem Entities without complying with all requirements of the Bankruptcy Code and applicable law.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors’ mailing address is 3803 Parkwood Blvd, Suite 400, Frisco, Texas 75034.

² The Anthem Entities are all entities affiliated with Anthem, Inc. that are counterparties to agreements with the Debtors, including, *inter alia*, the following: Blue Cross of California; Blue Cross and Blue Shield Healthcare Plan of Georgia, Inc.; Anthem Blue Cross Life and Health Insurance Company; Anthem Health Plans of Maine, Inc.; Anthem Health Plans of New Hampshire, Inc.; Anthem Health Plans of Virginia, Inc.; as well as Anthem Insurance Companies, Inc.; Anthem Health Plans of Kentucky, Inc.; RightCHOICE Managed Care, Inc.; Community Insurance Company; Blue Cross Blue Shield of Wisconsin; and Anthem Insurance Companies, Inc.

II. STATEMENT OF FACTS

2. Beginning in 2019, certain of the Debtors entered into multiple provider agreements with the Anthem Entities (collectively, the “Agreements”).

3. On July 30, 2019, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware, thereby commencing the above-captioned bankruptcy cases (collectively, the “Bankruptcy Case”). Also on July 30, 2019, the Debtors filed their *Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* [D.I. 16] (the “Sale Motion”). In the Sale Motion, the Debtors requested this Court to approve the sale of certain of the Debtors’ assets without identifying whether any such assets are subject to the rights of the Anthem Entities, much less satisfying the standards of 11 U.S.C. § 363 or 11 U.S.C. § 365 with respect to such assets, as applicable.³

³ On August 22, 2019, this Court entered its *Order (A) Approving Bidding Procedures for the Sale of Substantially all Assets of the Debtors; (B) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief* (D.I. 176, the “Bidding Procedures Order”). The Anthem Entities file this Objection in accordance with the Bidding Procedures Order.

4. On August 23, 2019, the Debtors filed their Assignment Notice, in which the Debtors indicated that they may attempt to assume and assign their rights under certain Agreements with the Anthem Entities, including the following:

No.	Contract/Lease Counterparty	Debtor Party	Counterparty Address	Contract/Lease Title	Date of Entry	Cure Amount
30	Anthem Health Plans of Virginia, Inc., dba Anthem Blue Cross and Blue Shield	True Health Diagnostics, LLC	Anthem Health Plans Of Virginia, Inc., DbA Anthem Blue Cross And Blue Shield Po Box 27401 Richmond Va 23279	Provider Agreement	5/1/2019	\$774.35
31	Anthem Health Plans, Inc dba Anthem Blue Cross and Blue Shield, Anthem Health Plans of Maine, Inc. dba Anthem Blue Cross and Blue Shield, Anthem Health Plans of New Hampshire, inc. dba Anthem Blue Cross and Blue Shield and MATthew Thornton Health Plan, Inc.	True Health Diagnostics, LLC	Anthem Health Plans, Inc DbA Anthem Blue Cross And Blue Shield, Anthem Health Plans Of Maine, Inc. DbA Anthem Blue Cross And Blue Shield, Anthem Health Plans Of New Hampshire, Inc. DbA Anthem Blue Cross And Blue Shield And Matthew Thornton Health Plan, Inc. 2221 Edward Holland Drive Mail Drop Va4004-Rr11 Richmond Va 23230	Provider Agreement	7/1/2019	\$115.32
32	Anthem Insurance Companies, Inc. and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. dba Anthem Blue Cross and Blue Shield	True Health Diagnostics, LLC	Anthem Insurance Companies, Inc. And Blue Cross Blue Shield Healthcare Plan Of Georgia, Inc. DbA Anthem Blue Cross And Blue Shield 2221 Edward Holland Drive Mail Drop Va4004-Rr11 Richmond Va 23230	Provider Agreement	4/1/2019	\$0.00
33	Anthem Insurance Companies, Inc. dba Anthem Blue Cross and Blue Shield, Anthem Health Plans of Kentucky, Inc., RightCHOICE Managed Care, Inc., Community Insurance Company, and Blue Cross Blue Shield of Wisconsin	True Health Diagnostics, LLC	Anthem Insurance Companies, Inc. DbA Anthem Blue Cross And Blue Shield, Anthem Health Plans Of Kentucky, Inc., Rightchoice Managed Care, Inc., Community Insurance Company, And Blue Cross Blue Shield Of Wisconsin	Ancillary Provider Agreement	6/25/2019	\$0.00
...						
85	Blue Cross of California dba Anthem Blue Cross	True Health Diagnostics, LLC	Blue Cross Of California DbA Anthem Blue Cross 2221 Edward Holland Drive Mail Drop Va4004-Rr11 Richmond, VA 23230	Provider Agreement	3/1/2019	\$377.46

See Assignment Notice, pp. 9, 14.

III. ARGUMENT

5. 11 U.S.C. § 363(f) authorizes a debtor to sell its assets free and clear of any interest in such property of an entity other than the estate only upon satisfaction of the criteria listed therein. Further, 11 U.S.C. § 365 authorizes a debtor to assume an executory contract only if the debtor cures or provide adequate assurance that the debtor will cure all outstanding defaults. 11 U.S.C. § 365(b)(1). Section 365 of the Bankruptcy Code also provides that a debtor may assign an executory contract to a third party only if adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract. 11 U.S.C. § 365(f)(2)(B). These provisions are designed to afford the non-debtor party with the full protections of its contract rights. As the Court of Appeals explained:

Congress has suggested that the modification of a contracting party's rights is not to be taken lightly. Rather, a bankruptcy court in authorizing assumptions and assignment of unexpired leases must be sensitive to the rights of the non-debtor contracting party ... and the policy requiring that the non-debtor receive the full benefit of his or her bargain.

In re Joshua Slocum, Ltd., 922 F.2d 1081, 1091 (3d Cir. 1990) (citing *In re U.L. Radio Corp.*, 19 Bankr. 537 (Bankr. S.D.N.Y. 1982); *In re TSW Stores of Nanuet*, 34 Bankr. 299 (Bankr. S.D.N.Y. 1983).

6. In this case, the Debtors ask the Court to approve the sale of certain of the Debtors' assets without identifying whether any such assets are subject to the rights of Anthem, much less satisfying the standards of 11 U.S.C. § 363 or 11 U.S.C. § 365 with respect to such assets, as applicable. Further, the Debtors in their Notice state they may attempt to assume and assign their rights under certain of the Agreements with a total "cure amount" of \$1,267.13, which likely does not address all defaults thereunder.⁴

⁴ Anthem's review of its books and records regarding the amount(s) necessary to cure defaults remains ongoing.

7. Finally, the Debtors have failed to fulfill their preliminary burden of identifying the assignee and the proposed adequate assurance. See 3 COLLIER ON BANKRUPTCY 365-78 at ¶ 365.08[1] (“[T]he counterparty is entitled to notice of the identity of the assignee and of the proposed adequate assurance.”) (citing *In re Golden Books Family Entm’t, Inc.*, 269 B.R. 300 (Bankr. D. Del. 2001)). Thus, the Debtors have failed to full their burden to provide the Anthem Entities with “adequate assurance of future performance.”

8. Further, even if the Debtors eventually provide the identity of the proposed assignee and the proposed adequate assurance, the Debtors must demonstrate that the proposed assignee has the ability and willingness to comply with all material obligations under all applicable Agreements. *In re Fleming Cos.*, 499 F.3d 300, 306 (3d Cir. 2007) (affirming lower courts’ denial of motion to assume and assign agreement due to lack of “adequate assurance of future performance” regarding non-economic contractual provision because of “the importance of the term within the overall bargained-for exchange [where] the term is integral to the bargain struck between the parties (its materiality) and [where] performance of that term gives a party the full benefit of his bargain (its economic significance).”). Thus, Anthem requests the Court to deny the proposed assumption and assignment of the Agreements because the Debtors have not fulfilled their burden to demonstrate that the proposed assignee has the ability and willingness to comply with all material obligations under all applicable Agreements. See, e.g., *In re Gretter Autoland, Inc.*, 2015 Bankr. LEXIS 2734 (Bankr. S.D. Iowa 2015) (where debtor that had been operating a “dual facility” automobile dealership in violation of franchise agreements, debtor could not satisfy “adequate assurance of future performance” by attempting to assume and assign such agreements to a solvent purchaser who intended to continue the prohibited practice).⁵

⁵ Anthem’s review of its business records is ongoing, and it reserves the right to amend or supplement this Objection as additional information becomes available.

IV. CONCLUSION

WHEREFORE, the Anthem Entities requests that the Court deny the relief requested in the Assignment Notice, and grant Anthem such other and further relief as the Court deems appropriate.⁶

Dated: Wilmington, Delaware
September 17, 2019

By counsel

/s/ Scott J. Leonhardt
Scott J. Leonhardt (DE Bar No. 4885)
THE ROSNER LAW GROUP LLC
824 North Market Street, Suite 810
Wilmington, Delaware 19801
Telephone: (302) 777-1111
E-mail: leonhardt@teamrosner.com

-and-

Joseph S. Sheerin, Esq.
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Telephone: (804) 775-1000
E-mail: jsheerin@mcguirewoods.com
Counsel for the Anthem Entities

⁶ Anthem reserves the right to assert any and all other objections raised by other parties to the extent such objections are applicable to Anthem.