

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

MODIVCARE, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-90309 (ARP)

(Jointly Administered)

Related to Docket No. 465

**HUMANA INC. AND ITS AFFILIATES OBJECTION TO THE FIRST AMENDED
JOINT CHAPTER 11 PLAN OF REORGANIZATION OF MODIVCARE INC. AND ITS
DEBTOR AFFILIATES**

Humana Inc., Humana Insurance Company, Humana Medical Plan, Inc., Humana Insurance Company of Florida, Inc. and their affiliates (“Humana”), by counsel, hereby object to the *First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* (the “Plan”) [Dkt. No. 465]². In support of its Objection, Humana respectfully states:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and § 157. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(L).
2. Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and § 1409.

Background

3. On August 20, 2025 (the “Petition Date”), the Debtors commenced these cases under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern

¹ A complete list of each of the Debtors in these Chapter 11 Cases (the “***Chapter 11 Cases***”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

² On November 14, 2025, the Debtors filed the *Notice of Filing of Plan Supplement for the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* (the “Plan Supplement”) [Dkt. No. 725]. Humana incorporates the Plan Supplement into this objection.



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District of Texas. The Debtors operate a technology-based healthcare services company that provides to individuals non-emergency medical transportation and other in-home care services.

4. On August 21, 2025, this Court entered an Order directing joint administration of the Debtors' Chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Bankruptcy Local Rule 1015-1 of the United States Bankruptcy Court for the Southern District of Texas.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Humana is one of the largest health and well-being companies in the United States, providing health coverage to millions of Americans through Medicare, Medicaid, and private insurance plans. Humana contracts with a large network of providers to offer services to its members.

7. On October 6, 2025, the Debtors filed the Plan. Included in the Plan is language that expressly seeks to alter Humana's setoff rights that are preserved under section 553 of the Bankruptcy Code and that Humana asserted in their Proofs of Claim [Proof of Claim 1610, Proof of Claim 1625, Proof of Claim 1627, Proof of Claim 1629, and Proof of Claim 1634].

8. On October 30, 2025, the Debtors filed the *Notice of Potential Assumption of Certain of Debtors' Executory Contracts and Unexpired Leases* [Dkt. 605] in which the Debtors included multiple contracts with Humana and its affiliates for potential assumption.

9. On November 14, 2025, the Debtors filed the *Notice of Filing of Plan Supplement for the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* (the "Plan Supplement") [Dkt. No. 725]. The Plan Supplement includes as Exhibit B a *Schedule of Rejected Executory Contracts and Unexpired Leases*. The Debtors do not identify any contracts with Humana to be rejected on the effective date of the Plan.

10. On November 25, 2025, Humana filed its *Limited Objection and Reservation of Rights in Response to Debtors' Notice of Potential Assumption of Certain of Debtors' Executory Contracts and Unexpired Leases* [Dkt. No. 817] to preserve its rights to setoff and recoupment under their contracts.

Objection

11. Section 6.19 of the Plan provides that Holder of Claims are not entitled to set off claims unless “(i) the Debtors or the Reorganized Debtors... have consented or (ii) such Holder has Filed a motion with the Bankruptcy Court requesting authority to perform such setoff on or before the Confirmation Date...” regardless of whether such Holder has preserved its rights to setoff in a Proof of Claim. Moreover, Section 10.5 of the Plan seeks to permanently enjoin all Persons from “asserting a right of setoff or subrogation of any kind”.

12. To the extent that the Plan is dependent on the assumption of contracts in which Humana and its affiliates are counterparties and the Plan impermissibly seeks to alter Humana’s rights to setoff and recoupment under those contracts, Humana objects to confirmation of the Plan.

13. A debtor who seeks to assume an executory contract assumes its benefits as well as its responsibilities. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (“Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere*...”); *In re Italian Cook Oil Corp.*, 190 F.2d 994, 996 (3rd Cir. 1951) (“If [the debtor] accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.”). Therefore, any assumption of the Humana Agreements would carry with them all the bargained for rights included in those agreements, including for setoff and recoupment.

14. Even if the Debtor sought to reject all of Humana’s contracts, the Plan seeks to eliminate Humana’s right to assert setoff *defensively*, despite the fact that Section 553 expressly reserves that right. *In re De Laurentiis Ent. Grp. Inc.*, 963 F.2d 1269, 1277 (9th Cir. 1992) (“If

section 1141 were to take precedence over section 553, setoffs would be allowed under Chapter 11 only where they were written into a plan of reorganization. Section 553 would then be largely superfluous, since a setoff could be written into the reorganization plan even without section 553.”); *In re Luongo*, 259 F.3d 323, 333 (5th Cir. 2001); *In re Davidovich*, 901 F.2d 1533, 1539 (10th Cir. 1990) (“the right to assert a setoff against a mutual, prepetition debt owed the bankrupt estate survives even the Bankruptcy Court's discharge of the bankrupt's debts.”). To hold otherwise would unfairly “deny a creditor the right to recover an established obligation while requiring the creditor to fully satisfy a debt to a debtor.” *In re G.S. Omni Corp.*, 835 F.2d 1317, 1318 (10th Cir. 1987); *Matter of Davis*, 889 F.2d 658, 661 (5th Cir. 1989).

15. Not only does a defensive setoff right survive a discharge, Section 553 does not even require the filing of a proof of claim to preserve the right. *In re G.S. Omni Corp.*, 835 F.2d 1317, 1318 (10th Cir. 1987) (“a creditor's failure to file a proof of claim cannot affect the creditor's right to assert the [setoff] defense.”). The Plan’s requirement to file a motion to assert a defensive setoff right prior to confirmation should similarly be rejected as impermissible under Section 553. *See In re SVB Fin. Grp.*, 662 B.R. 53, 74 (Bankr. S.D.N.Y. 2024), *motion to certify appeal granted*, No. 24-CV-6484 (JGLC), 2024 WL 4345730 (S.D.N.Y. Sept. 30, 2024).

Reservation of Rights

16. Humana timely asserted its rights of setoff and to recoupment in its Proofs of Claim. Such setoff rights and ensuing collection should be included as part of the Debtors’ assumption of their contracts with Humana. Further, Humana asserts that its setoff and recoupment rights are burdens of the Humana Agreements that are assumed along with their benefits.

17. Even if the Humana Agreements are not assumed, Section 553 expressly reserves Humana’s right to assert a defensive setoff right, notwithstanding the Debtor’s discharge.

18. Therefore, Humana files this Objection and reservation of rights to preserve its rights to recoup overpayments and setoff debts owed by the Debtors to Humana.

CONCLUSION

For the foregoing reasons, Humana requests that confirmation of the Plan be denied.

Dated: November 25, 2025

Respectfully submitted,

**HUMANA INC., HUMANA INSURANCE
COMPANY, AND ITS AFFILIATES**

By: /s/ Kenneth M. Thomas
One of their attorneys

Kenneth M. Thomas (admitted *pro hac vice*)
Anthony J. Kudron (admitted *pro hac vice*)
FOX SWIBEL LEVIN & CARROLL LLP
200 W. Madison Street, Suite 3000
Chicago, IL 60606
T: 312-224-1200
kthomas@foxswibel.com
akudron@foxswibel.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 25, 2025, he caused a true and correct copy of Humana Inc. and Its Affiliates Objection to the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates, via electronic mail and the Court's CM/ECF electronic filing system upon the following:

<p><i>The Debtors</i> ModivCare Inc. 6900 E. Layton Avenue Suite 1100 & 1200 Denver, CO 80237 Attn: Faisal Khan, and Chad Shandler Email: faisal.khan@modivcare.com, and chad.shandler@fticonsulting.com</p>	<p><i>Co-Counsel to the Debtors</i> Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attn: Ray C. Schrock, Keith A. Simon, George Klidonas, and Jonathan Weichselbaum Email: ray.schrock@lw.com, keith.simon@lw.com, george.klidonas@lw.com, and jon.weichselbaum@lw.com</p>
<p><i>Co-Counsel to the Debtors</i> Hunton Andrews Kurth LLP 600 Travis Street, Suite 4200 Houston, TX 77002 Attn: Tad Davidson, Catherine Rankin, Brandon Bell Email: taddavidson@hunton.com crankin@hunton.com, and bbell@hunton.com</p>	<p><i>Proposed Counsel to the Creditors Committee</i> White & Case LLP, 609 Main Street, Suite 2900, Houston, TX 77002, Attn: Charles Koster Email: charles.koster@whitecase.com -and- White & Case LLP, 111 South Wacker Drive, Suite 5100, Chicago, IL 60606, Attn: Gregory Pesce Email: gregory.pesce@whitecase.com -and- White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 Attn: Scott Greissman, and Andrew Zatz Email: sgreissman@whitecase.com, and azatz@whitecase.com</p>
<p><i>Counsel to the First Lien Agent, the Consenting Creditors, and the DIP Lenders</i> Paul Hastings LLP 200 Park Avenue New York, NY 10166</p>	<p><i>Office of the United States Trustee for Region</i> 7 515 Rusk Street, Suite 3516 Houston, TX 77002 Attn: Jana Whitworth</p>

<p>Attn: Kris Hansen, Email: krishansen@paulhastings.com</p> <p>-and-</p> <p>Paul Hastings LLP 71 South Wacker Drive Suite 4500 Chicago, IL 60606 Attn: Matt Warren, and Lindsey Henrikson Email: mattwarren@paulhastings.com, and lindsey.henrikson@paulhastings.com</p>	<p>Email: jana.whitworth@usdoj.gov</p>
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By: /s/ Kenneth M. Thomas
One of their attorneys