

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

In re:

Chapter 11

TEHUM CARE SERVICES, INC.,

Case No. 23-90086 (CML)

Debtor.

**YESCARE’S REPLY TO THE OBJECTION OF
TIFFANY SMITH TO THE OMNIBUS MOTION TO ENJOIN
PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES**

The Omnibus Motion to Enjoin, ECF No. 2160, argued that plaintiffs who have active lawsuits against the Released Parties should be enjoined from further prosecuting those claims unless the Plan’s Injunctions and Consensual Claimant Release terminate or become void (i.e., staying, but not yet dismissing those actions). YesCare notes that enjoining plaintiffs from prosecuting claims against Released Parties absent an uncured Default is consistent with Art. IV. 10., which provides in parallel that the Trusts “shall forbear from asserting or prosecuting any Released Estate Causes of Action between the Effective Dates and the Final payment Date unless a Settlement Payment Default occurs and is not cured”

Tiffany Smith (herein, “Plaintiff”), the plaintiff in *Smith v. Corizon, LLC et al.*, 61C01-2106-CT-000220 (Parke Cnty. Indiana) (the “Plaintiff’s Action”) argues that she should not be enjoined from prosecuting her claims against defendants Dr. Krista Sexton-Cox and Dr. Richard Hinchman (together, the “Doctors”) on the basis that the Doctors are not “employees of Corizon n/k/a YesCare” and are separately insured. ECF No. 2292 at 1. As discussed below, the Court

should reject Plaintiff's arguments because: (1) the Doctors fall within the Plan's express definition of "Released Parties" because they are former employees of the Debtor, per the allegations in Plaintiff's complaint, and (2) Plaintiff's claims are subject to the Channeling Injunction.

I. The Doctors are "Released Parties" Because They are Former Employees of the Debtor in Indiana

On June 22, 2021, Plaintiff filed her complaint in the Plaintiff's Action against the Debtor, the Doctors, and other since-dismissed defendants. **Exhibit A** (Complaint). Plaintiff does not oppose the entry of a stay of proceedings in the Plaintiff's Action as against the Debtor. However, she argues that she should be permitted to prosecute her case against the Doctors because they "are not employees of Corizon *n/k/a YesCare*" and because the Doctors are separately insured. ECF No. 2292 at 1. Plaintiff is wrong.

It is irrelevant for purposes of the Plan and YesCare's requested relief whether the Doctors are *now* employed by *YesCare*—what matters for the purposes of the Plan is whether they *were* employed by the *Debtor*. In contrast to Plaintiff's opposition, the Complaint in the Plaintiff's Action expressly alleges that the Doctors were employed by Corizon "at all times relevant," that Corizon was the provider of medical services to inmates where Plaintiff was incarcerated, and that "[a]ll acts and omissions of Corizon, LLC alleged were performed or omitted by employees of Corizon, LLC while acting within the scope of their employment." **Exhibit A** at ¶¶ 5–9. Thus, Plaintiff's complaint expressly asserts that the Doctors were former employees of the Debtor.

The Plan's definition of "Released Parties" provides, in relevant part:

"Released Parties" means collectively the following, in each case in its capacity as such with each being a "Released Party": (a) the Debtor; . . . each of their respective current and former officers, directors, managers, employees, contractors, agents, attorneys, and other professional advisors, Insiders, and Affiliates; provided, however, that a Non-Released Party shall not be a "Released Party."

ECF No. 2014 at 76. The Plan also defines “Debtor” to mean “Tehum Care Services, Inc. *f/k/a Corizon Health, Inc.*, a Texas corporation” ECF No. 2014 at 67 (emphasis added). By the plain language of the Plan, the Doctors easily fall within the Plan’s definition of a “Released Party” because they are former “employees” and “agents” of the Debtor and, per Plaintiff’s allegations, were employed with the Debtor at all times relevant to Plaintiff’s claims.

II. Plaintiff’s Claims in the Plaintiff’s Action are Subject to the Channeling Injunction Under the Plan

Plaintiff has unambiguously asserted, and seeks to continue asserting, claims against Released Parties. As such, Plaintiff’s claims are subject to the Channeling Injunction under the Plan and must be stayed.

Plaintiff is the Holder of a Claim against the Debtor because, as Plaintiff’s own papers state, her claims are asserted against the Doctors, *who are former employees and/or agents of the Debtor*. ECF No. 2292 at 1; **Exhibit A**. Under the Bankruptcy Plan, “Claim” means any claim against the Debtor, as defined in section 101(5) of the Bankruptcy Code. ECF No. 2014 at 65 (Art. I, ¶ 28). For purposes of the Code, “claim” is to be given “the broadest possible definition” to include any possible or potential claim regardless of whether it was asserted. 11 U.S.C. § 101(5)(A); *In re Jobs.com, Inc.*, 283 B.R. 209, 212 (Bankr. N.D. Tex. 2002). Pursuant to the Plan, a “Holder” of a Claim means “any Person or Entity holding a Claim” ECF No. 2014 at 71 (Art. I, ¶ 105). Plaintiffs who could or did assert injuries arising from conduct that could be attributable to the Debtor are Holders of a “PI/WD Claim,” which is defined as:

any unsecured Claim against the Debtor that is attributable to, arises from, is based upon, relates to, or results from an alleged personal injury tort or wrongful death claim within the meaning of 28 U.S.C. § 157(b)(2)(B), including any PI/WD Claim against the Debtor.

Id. at 74 (Art. I, ¶ 142). Holders of PI/WD Claims who did not opt out became a “Consenting PI/WD Claimant.” *Id.* at 67 (Art. I, ¶ 45). Consenting PI/WD Claimants have their claims

“channeled” into a PI/WD Trust and are subject to the Channeling Injunction. *Id.* (Art.I, ¶ 45); *Id.* at 95, (Art. IV.D) (“All Channeled PI/WD Trust Claims shall be subject to the Channeling Injunction.”). Pursuant to Art. III.F.6(a)(i), “[e]xcept as provided in the Plan, Holders of Channeled PI/WD Claims shall be enjoined from prosecuting any outstanding . . . Claims against the Released Parties in any forum whatsoever, including any state, federal, or non-U.S. court.” *Id.* at 87.

In the Plaintiff’s Action, Plaintiff asserts claims for injuries arising from allegedly deficient medical care Plaintiff received from the Doctors between August 10–17, 2016. **Exhibit A** at 2–4. But the Doctors only had the ability to act because they were employees and/or agents of the Debtor. Plaintiff, therefore, is the Holder of a PI/WD “Claim” against the Doctors for purposes of the Bankruptcy Code and Plaintiff did not opt out of the Plan. Consequently, Plaintiff cannot avoid the Channeling Injunction.

CONCLUSION

For all the reasons stated herein and in YesCare’s Omnibus Motion to Enjoin Plaintiffs From Prosecuting Cases Against Released Parties, ECF No. 2160, the Court should grant the Omnibus Motion to Enjoin, including as to Plaintiff Tiffany Smith.

Respectfully submitted,

By: /s/ Trevor W. Carolan

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CERTIFICATE OF SERVICE

I do hereby certify that on the 1st day of July, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served using the CM/ECF system. In addition, a true and correct copy has been electronically mailed or mailed via first class US mail to the following:

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/s/ Trevor W. Carolan

Exhibit A

STATE OF INDIANA) IN THE PARKE CIRCUIT COURT
) SS:
 COUNTY OF PARKE) CAUSE NO.

TIFFANY SMITH,)
)
 Plaintiff,)
)
 v.)
)
 CORIZON, LLC,)
 KRISTA L. SEXTON-COX, D.O,)
 RICHARD HINCHMAN, M.D.,)
 PAMELA F. JOHNSON, F.N.P.,)
 LOU LAMB, R.N., and)
 DEBORAH L. JONES, L.P.N.,)
)
 Defendants.)

COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL

Plaintiff, Tiffany Smith, by counsel, for this Complaint for Damages, states as follows:

1. Plaintiff filed her Proposed Complaint with the Department of Insurance on March 3, 2018.
2. The Medical Review Panel was formed and convened and rendered their opinion on February 25, 2021 before the Indiana Department of Insurance.
3. Plaintiff also filed a Complaint with the United States District Court, Southern District of Indiana on March 1, 2018 alleging federal claims and state law claims against the Defendants.
4. On June 15, 2021, the US District Court dismissed the Plaintiff's Federal Claims and relinquished its supplemental jurisdiction over Plaintiff's state law claims to be pursued in state court.
5. At all times relevant, Plaintiff, Tiffany Smith, was an inmate at Rockville Correctional Facility in Parke County, Indiana.

6. At all times relevant, Defendant Corizon, LLC was in the business of providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana.

7. All acts and omissions of Corizon, LLC alleged were performed or omitted by employees of Corizon, LLC while acting within the scope of their employment.

8. At all times relevant, Defendant Krista L. Sexton-Cox, DO was a qualified health care provider under the terms of Indiana Code § 34-18-2-14. Krista L. Sexton-Cox, D.O. was providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana and an employee of Corizon, LLC.

9. At all times relevant, Defendant Richard Hinchman, MD was a qualified health care provider under the terms of Indiana Code § 34-18-2-14. Richard Hinchman, M.D. was providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana and an employee of Corizon, LLC.

10. At all times relevant, Defendant Pamela F. Johnson, FNP was a qualified health care provider under the terms of Indiana Code § 34-18-2-14. Pamela F. Johnson, F.N.P. was providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana and an employee of Corizon, LLC.

11. At all times relevant, Lou Lamb, RN was a licensed health care provider in the State of Indiana. Lou Lamb, R.N. was providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana and an employee of Corizon, LLC.

12. At all times relevant, Deborah L. Jones, LPN was a licensed health care provider in the State of Indiana. Deborah L. Jones, L.P.N. was providing medical services to inmates at the Rockville Correctional Facility in Parke County, Indiana and an employee of Corizon, LLC.

13. On August 10, 2016 at approximately 10:57 pm, Plaintiff Tiffany Smith reported to the Rockville Correctional Facility Infirmary (hereinafter “Infirmary”) with complaints of “stomach pain lower all the way to back.” Plaintiff Tiffany Smith reported she was experiencing constant stabbing, shooting pain around her right side into the back right side of her abdomen. Additionally, her abdomen was swollen. She also reported decreased appetite, nausea, and vomiting. Lou Lamb, RN saw Plaintiff Tiffany Smith. Nurse Lamb noted that Plaintiff Tiffany Smith’s abdomen was very tender to touch and visible swelling below and to the right side of her umbilical area.

14. Plaintiff Tiffany Smith was sent back to her housing unit on August 10, 2016.

15. On August 11, 2016, Plaintiff Tiffany Smith returned to the Infirmary. Plaintiff Tiffany Smith was seen by Defendant Pamela F. Johnson, FNP. Plaintiff Tiffany Smith reported right lower quadrant pain that “won’t quit.” Plaintiff Tiffany Smith had slight abdominal swelling and abdominal guarding with palpitation. Defendant Pamela F. Johnson, FNP noted Plaintiff Tiffany Smith’s pain was in her left lower belly.

16. Defendant Pamela F. Johnson, FNP ordered a CBC with differential and chemical profile 29. Plaintiff Tiffany Smith’s lab results returned that day for WBCs up to 12.4 and Hgb 11.4.

17. Defendant Pamela F. Johnson, FNP reported the results to Defendant Richard Hinchman, MD and Defendant Krista L. Sexton-Cox, DO.

18. Defendant Richard Hinchman, MD ordered a urinalysis and if negative, to see if the next CBC showed an increase in WBCs.

19. Defendant Krista L. Sexton-Cox, DO ordered Plaintiff Tiffany Smith be admitted to the infirmary and ordered another CBC.

20. Plaintiff Tiffany Smith was admitted to the Infirmary overnight.

21. On August 12, 2016 at approximately 2:31 pm, Plaintiff was seen by Defendant Pamela F. Johnson, FNP. Plaintiff Tiffany Smith had been sleeping all day and taking Tylenol and Ibuprofen for pain. Plaintiff Tiffany Smith was experiencing right lower quadrant pain with abdominal swelling.

22. On August 12, 2016, Defendant Pamela F. Johnson, FNP consulted with Defendant Krista L. Sexton-Cox, DO. Defendant Krista L. Sexton-Cox, DO ordered to not allow pain medication, repeat her CBC on Monday (August 18, 2016), monitor vital signs, administer IV fluids, and keep Plaintiff Tiffany Smith in the Infirmary.

23. On August 12, 2016 at approximately 4:48 pm, Defendant Krista L. Sexton-Cox, DO documented Plaintiff Tiffany Smith had abdominal pain, decreased appetite, change in bowel habits, nausea, bowel sounds x4, hypoactive on the right upper and lower quadrants with tenderness on the right lower quadrant.

24. On August 12, 2016 at approximately 8:14 pm, Plaintiff Tiffany Smith’s temperature was 102.0 degrees and she rated her pain as ten out of ten. Corizon employee Deborah L. Jones, LPN examined Plaintiff Tiffany Smith and noted diffuse tenderness with localized tenderness and guarding in the right lower quadrant. Additionally, Plaintiff Tiffany

Smith was experiencing decreased appetite chills, fever, fatigue, and malaise. Plaintiff Tiffany Smith described her pain as stabbing. Corizon employee Vada Yates, ASN reported Plaintiff Tiffany Smith's condition to the physician who ordered Tylenol.

25. Plaintiff Tiffany Smith reported her symptoms to Defendants Lou Lamb and Defendant Deborah Jones on August 11 and August 12, 2016.

26. On August 12, 2016 at approximately 8:50 pm, Defendant Krista L. Sexton-Cox, DO ordered Plaintiff Tiffany Smith to be sent to the emergency room.

27. Plaintiff Tiffany Smith was transported to Terre Haute Regional Hospital.

28. Plaintiff Tiffany Smith underwent an abdominal CT which confirmed a perforated appendicitis and appendicolith.

29. Plaintiff Tiffany Smith was diagnosed with acute appendicitis with generalized peritonitis, anemia, and hypokalemia.

30. On August 13, 2016, Plaintiff Tiffany Smith underwent a laparoscopic appendectomy. The surgeon, Dr. Timothy Darnauer, noted that Plaintiff Tiffany Smith's abdomen was gangrenous and friable with surrounding inflammatory tissue and pus.

31. Plaintiff Tiffany Smith remained in the care of Terre Haute Regional Hospital until August 17, 2016.

32. Defendants, each of them, failed to diagnose Plaintiff Tiffany Smith's appendicitis and treat her in a timely manner.

33. As a proximate result of the Defendants' negligence, Plaintiff Tiffany Smith has been injured and damaged as follows:

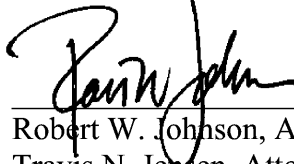
- a. She sustained an extremely painful abscesses and infections;
- b. The abscesses in her abdomen and required surgical repair;
- c. Significant scarring from surgical wounds; and
- d. Pain, suffering and mental anguish.

WHEREFORE, Plaintiff Tiffany Smith prays for damages against the Defendants in an amount which will fully and fairly compensate her for her damages sustained, for costs of this action, for prejudgment interest, and for all other just and proper relief in the premises.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Johnson", is written over a horizontal line.

Robert W. Johnson, Attorney No. 17391-49

Travis N. Jensen, Attorney No. 22409-49

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