IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CANO HEALTH, INC., *et al*., Debtors.[1]	Chapter 11 Case No. 24-10164 (KBO) (Jointly Administered)

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS WITH RESPECT TO MOTION OF DEBTORS FOR ENTRY OF ORDER (I) APPROVING PROPOSED DISCLOSURE STATEMENT AND FORM AND MANNER OF NOTICE OF DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING CONFIRMATION HEARING, (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF PROPOSED PLAN, AND (V) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of Cano Health, Inc. ("Cano Health", and together with its subsidiaries, the "Company") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this limited objection and reservation of rights (this "Limited Objection") with respect to the *Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. 501]

[1] The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/CanoHealth. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

(the "Motion").[2] In support of this Limited Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. As the Committee will be prepared to demonstrate at the appropriate time, the Debtors' proposed Plan—which offers general unsecured creditors less than a penny on the dollar—is non-confirmable. However, the Committee recognizes that the issue presently before the Court is limited to the informational adequacy of the Disclosure Statement.

2. To that end, the Committee has been working with the Debtors' professionals on supplemental language to be added to the Disclosure Statement to address a number of the Committee's concerns. Although many of the Committee's comments have already been incorporated, the Committee believes that additional disclosure is still needed.

3. Importantly, a more detailed description of the investigations currently being conducted by Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Weil, Gotshal & Manges LLP ("Weil") into potential estate claims and causes of action, as well as the Debtors' justification for their commitment to provide certain non-debtor releases under the Plan, should be made available to the Committee and general unsecured creditors at large. To the extent the Debtors are in fact relying on the Quinn Emanuel and Weil investigations to support the Plan's releases, the Debtors should be required to deliver a written report from Quinn Emanuel and Weil, sufficiently in advance of the Plan voting deadline, with their final investigative conclusions so that creditors—and this Court—may be in a position to meaningfully assess the Plan.

[2] Each capitalized term that is not defined herein shall have the meanings ascribed to such term in the Plan or the Disclosure Statement (each as defined below), as the context may require.

4. In addition, in coordination with the Debtors' advisors, the Committee is preparing appropriate riders to the Disclosure Statement that would describe the Committee's investigative efforts and preliminary findings to date with respect to potential challenges, unencumbered assets and potential estate claims, as well as the Committee's recommendation to general unsecured creditors with respect to the Plan.

5. The Committee is hopeful that any informational adequacy concerns with respect to the Disclosure Statement and solicitation generally will be consensually resolved before the hearing to consider the Disclosure Statement. In the event that the Committee's concerns are not adequately addressed, the Committee reserves its rights to be heard at the Disclosure Statement hearing.

RELEVANT BACKGROUND

6. On February 4, 2024, the Debtors entered into a restructuring support agreement (the "RSA") with an ad hoc group (the "Ad Hoc Group") of holders of 86% of the Debtors' secured debt and 92% of the Debtors' unsecured notes, outlining the terms of a chapter 11 plan.

7. On April 22, 2024, the Debtors filed amended versions of the Debtors' proposed chapter 11 plan of reorganization [Docket No. 671] (the "Plan") and disclosure statement [Docket No. 672] (the "Disclosure Statement"). The Plan and Disclosure Statement are consistent with the RSA, and now clarify that the Debtors intend to pursue a reorganization path. *See* Disclosure Statement, Art. I.

8. The Plan sets forth two impaired classes entitled to vote on the Plan—Class 3, which is comprised of First Lien Claims, and Class 4, which is comprised of General Unsecured Claims. Class 4 groups all general unsecured claims together, including (a) the First Lien Deficiency Claims, (b) the Senior Notes Claims, and (c) all other allowable General Unsecured

Claims, estimated by the Debtors to be approximately $900 million in the aggregate (although such estimate excludes any amount for contingent or unliquidated claims).

9. Under the Plan, Class 3 secured lenders would receive substantially all of the new common shares in the Reorganized Debtors and take-back debt, and Class 4 general unsecured creditors would receive the following:

(a) approximately $5.6 million in cash, representing the proceeds from the sale of shares in MSP Recovery, Inc. ("MSP Shares");[3]

(b) five-year warrants to purchase up to 5% of the new common shares of the Reorganized Debtors, exercisable at a strike price equivalent to par plus accrued on the First Lien Claims ("GUC Warrants"); and

(c) proceeds from a litigation trust, to be established on the Effective Date, that will be assigned estate causes of action against certain of the Debtors' former officers and directors (but not any other claims or causes of action, all of which would presumably be retained by the Reorganized Debtors and controlled by the secured lenders in their capacities as controlling board members and equity holders). *See* Plan Art. I.A. 1.123.

10. In total, the Disclosure Statement estimates that *general unsecured creditors will recover only approximately 1.5% on their claims under the Debtors' proposed Plan;* in reality, recoveries to general unsecured creditors are expected to be infinitesimal due to larger than expected claims that have been filed prior to the Bar Date (which has now passed). Moreover, unsecured creditors are likely to ascribe little value to the new GUC Warrants insofar as the warrants (a) represent the right to acquire a fractional equity position, with no minority protections, in a privately-held company, (b) are expected to be highly illiquid, (c) are unsuitable

[3] According to the Debtors' Schedules, the MSP Shares are held by the Debtors' parent company, Cano Health, Inc., which is not a loan party under any of the Debtors' funded debt, and the MSP Shares appear to be unencumbered. *See Schedules of Assets and Liabilities for Cano Health, Inc.* (Case No. 24-10164), Docket No. 275, Part 4 ("As of February 4, 2023, Debtor Cano Health, Inc. owned approximately 5,593,942 shares of the class A common stock of MSP Recovery, INC (LIFW), which are held in a brokerage account through Raymond James.").

for traditional unsecured creditors who are not in the business of assuming equity-style risk in private companies, and (d) have no Black-Scholes protection.

11. With regard to the Litigation Trust Proceeds, from the outset of the Chapter 11 Cases the Debtors have broadcasted allegations of misconduct by certain *former* officers or directors of the Company ("D&Os"), and have assigned those claims, but not other potential claims, to the Litigation Trust. Indeed, the Debtors focus on the Debtors' former CEO, but divert creditor attention away from *unconditional insider releases of all current* D&Os, including those that were on the scene at the time of the pre-petition misconduct alleged by the Debtors.

12. The Debtors indicate that they retained Quinn Emmanuel to investigate D&O conduct from and after April 10, 2022, and that Weil is investigating D&O conduct prior to that date. The Debtors further state that "[a]s of the date hereof, the investigation is ongoing, and the independent directors have not yet drawn or arrived at any final conclusions." Disclosure Statement, Art. IV. I. iv.

13. Yet, despite the pendency of these investigations, the RSA, as well as each iteration of the Plan filed by the Debtors, unconditionally obligates the Debtors to seek approval of such releases, without regard to the outcome of any such investigation. In fact, the Disclosure Statement strongly suggests that the insider releases are a forgone conclusion:

> *Although the Debtor Investigations have not yet concluded, the Debtors believe the releases and exculpations provided under the Plan to the Released Parties are reasonable and in the best interests of the Debtors and their stakeholders and will be prepared to demonstrate such in connection with confirmation of the Plan.* Among others, the cooperation and participation of the Debtors' current officers, directors, and employees has been, and continues to be, vital to the success of these Chapter 11 Cases. If the current management and the Board had not stayed in place, the consequences to the business cannot be overstated. The Transformation Plan would likely not have been implemented, which as set forth above, has already enabled the Debtors to

> implement approximately $213 million in savings. Given the Debtors' precarious financial position and other issues with respect to their operations, the Debtors very likely would be facing liquidation absent the cooperation of these parties. *The Debtors will be prepared to demonstrate at confirmation the contributions of the Released Parties were reasonable and necessary and that the releases and exculpations to be granted pursuant to the Plan are necessary to the restructuring and consistent with applicable Third Circuit law.*

Disclosure Statement, Art. VI. H. vii (emphasis added).

14. Elsewhere in the Disclosure Statement, the Debtors state:

> *The Debtors believe, and will be prepared to demonstrate at the Confirmation Hearing, that the Releases and exculpation provisions of the Plan are consistent with applicable law*. The substantial contributions made by the Debtors' directors and officers to the Debtors' restructuring include, but are not limited to, (i) negotiating the restructuring, as embodied in the Plan; (ii) obtaining *substantial* recoveries for unsecured creditors to which they may have not otherwise been entitled; and (iii) devoting significant time to navigating the Debtors through the Chapter 11 Cases in addition to their regular duties, including through participation in regular meetings of the Restructuring Committee, as well as meetings of the Debtors' boards of directors.

Disclosure Statement, Art. XII. C. ii (emphasis added).

15. In any event, based on the preliminary findings of the Committee briefly described below (subject to discovery, the bulk of which has not yet been completed), the Debtors will be hard-pressed to justify insider releases under the Plan under a heightened scrutiny standard.

LIMITED OBJECTION

I. Additional Information Required For Solicitation

16. As the Court is well aware, section 1125 of the Bankruptcy Code requires that the solicitation of votes in respect of a chapter 11 plan must be accompanied by a disclosure statement containing "adequate information". 11 U.S.C. § 1125(b). The Bankruptcy Code

defines the term "adequate information" as "information of a kind, and in sufficient detail … that would enable [] a hypothetical investor … to make an informed judgment about the plan." *Id.* § 1125(a)(1). The primary purpose of a disclosure statement is to give creditors adequate information necessary to make an informed decision about whether to accept or reject the proposed chapter 11 plan. *See In re Indianapolis Downs, LLC*, 486 B.R. 286, 293 (Bankr. D. Del. 2013).

17. As noted above, the Disclosure Statement incorporates many of the Committee's comments, but the in the Committee's view, the Disclosure Statement should be supplemented to include the following:

A. Updated Estimate of Claims and Recoveries:

18. Now that the Bar Date has passed and several hundred million dollars in additional claims were filed (albeit subject to the Debtors' and the Committee's review and reconciliation), the Debtors should provide an updated estimate of claims and recovery ranges for general unsecured creditors, which are expected to be nominal.

B. Potential Estate Claims Being Released:

19. The Disclosure Statement fails to provide adequate information to creditors concerning the nature and value of the claims and causes of action that the Plan proposes to release as against insiders; how such releases could affect creditor recoveries; and upon what basis the Debtors reached their conclusion in the Disclosure Statement that, notwithstanding three ongoing investigations into alleged prepetition misconduct attributable to the Debtors' former D&Os that could also implicate current D&Os, the Debtors have determined that the releases should be approved.

20. Specifically, under the Plan, the Debtors and all other "Releasing Parties" propose to release all estate claims and causes of action against the broadly-defined "Released Parties." *See* Plan Art. I.A. 1.123. The term "Released Parties" includes, among others, (a) all D&Os employed at any time *from and after* the Petition Date through the Effective Date, (b) all *former* D&Os employed prior to the Petition Date who are identified by the Debtors in the Plan Supplement, and (c) all "Related Parties" of each of the foregoing. *See Id.* Art. I.A. 1.169.

21. The Plan also provides that the Debtors may, as part of the Plan Supplement, determine not to assign certain claims against the former D&Os, and, instead, vest those claims with the Reorganized Debtors. *See* Plan § 1.123 (Definition of "Litigation Trust Causes of Action"). Neither the Plan nor the Disclosure Statement indicates the manner in which any potential causes of action will be assigned by the Debtors to the Litigation Trust versus those retained by the Reorganized Debtors. Read together, the Plan empowers the Debtors to grant broad releases of potentially valuable estate claims; yet the Disclosure Statement fails to present sufficient information for a creditor to evaluate the propriety or value of any such proposed releases.

22. The Disclosure Statement offers only a perfunctory description of the investigations being conducted by Quinn Emmanuel and Weil. *See* Disclosure Statement, Art. IV. L. iv. The Debtors admit that, although "the Debtor Investigations have not yet concluded, the Debtors believe the releases and exculpations provided under the Plan to the Released Parties are reasonable and in the best interests of the Debtors and their stakeholders". *See* Disclosure Statement, Art. VI. H. vi.(b).vii. The Disclosure Statement then purports to justify the releases based on generic characterizations that fall well short of justifying releases under case law within

the Third Circuit, especially where, as here, insider releases are subject to heightened scrutiny and general unsecured creditors stand to recover close to nothing.

23. In fact, based on the Committee's investigation to date, there is reason to believe that credible—and potentially valuable—claims may exist. Upon its appointment, the Committee promptly conferred with the Debtors regarding their investigation into potential estate claims and causes of action, as well as the basis for any non-debtor releases being offered under the Plan. Between March 15 and April 19, the Committee served the Debtors with three sets of informal discovery requests concerning such matters, among others, and separately participated in initial interviews of current D&Os conducted by Quinn Emanuel and Weil concerning the scope of their respective investigations. As described in greater detail below, these initial interviews have provided valuable detail regarding potential estate claims.[4]

(a) Alleged Misconduct of Former CEO and Board Chairman:

24. At the outset, the Committee understood there to be a strong potential for estate claims and causes of action given the facts alleged in *Sternlicht v. Hernandez*, No. 2023-0477-PAF, 2023 WL 3991642, at *1 (Del. Ch. June 14, 2023) (the "Board Litigation")—an unsuccessful proxy dispute launched by certain former directors (the "Former Directors") concerning the alleged misconduct of Dr. Marlow Hernandez ("Hernandez"), the Debtors' former Chairman and Chief Executive Officer, and the extent to which the Board of Directors (the "Board") properly investigated and addressed Hernandez's conduct.

25. As alleged in the Board Litigation and further supported by witness interviews conducted to date, Hernandez is suspected of having engaged in numerous self-interested and

[4] The Committee's investigation remains pending. The Debtors have not yet completed their document production, which is not due until May 10th. Accordingly, the Committee reserves the right to further amend or supplement the Committee's findings.

related-party transactions, some of which may not have been properly disclosed to the Board. The Former Directors alleged in a publicly filed investor presentation[5] that Hernandez: (a) was able to push through ill-conceived business transactions and $1.5 billion in acquisitions by leveraging his personal influence and providing incomplete, inaccurate and unrealistic information and projections to the Board; (b) failed to inform the Board of a $30 million loan he received from Cano Health employee Robert Camerlinck, even as Mr. Camerlinck was considered for (and ultimately appointed to the role of) Chief Operating Officer of the Company; and (c) suffered from conflicts of interest insofar as certain of his immediate family members appeared to have materially benefited from their ongoing relationships with Cano Health, including Hernandez's father, whose companies purportedly received in excess of $23 million from Cano Health, and his wife.

(b) MSP Recovery Inc.:

26. As described by the Debtors, MSP Recovery Inc. ("MSP") provided healthcare claims reimbursement recovery services using data analytics to identify and recover payments improperly made by healthcare plans and charged back to the Company under risk sharing agreements. *See Declaration of Michael Sheehan In Support of Motion of Debtors Pursuant To 11 U.S.C. §§ 363 and 105(a) and Fed. R. Bankr. P. 2002 and 6004 (I) Authorizing Debtors To Sell Shares of MSP Recovery, Inc. and (II) Granting Related Relief* [Docket No. 201], at 3-4. According to the Debtors, MSP analyzes historical medical claims data to identify recoverable opportunities, which MSP would then aggregate and pursue. *Id*. The Debtors previously contracted with MSP to assist in managing the collection of payments for the cost of care for its

[5] *See* The Urgent Need for Changes in Leadership and Strategy at Cano Health, at 5 (May 2023), *available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0001800682/98c3d979-a582-41ee-acb7-260d981c2117.pdf*

members. *Id.* Hernandez then caused the Company to irrevocably assign certain past claims data to MSP, in exchange for consideration which was to be paid by MSP to the Company either in cash and/or shares of MSP's Class A common stock, at MSP's option. *Id.*

27. Hernandez allegedly caused Cano Health to sell certain potentially valuable pharmacy claim-related "receivables" to MSP for $60 million, which MSP ultimately paid in equity that was unregistered and restricted from resale. The Former Directors alleged that Hernandez did not notify Cano Health's CFO or bring the MSP transaction to the Board for approval, and suggested that Hernandez used the MSP transaction to obfuscate the Company's earnings picture. The Committee has sought documents and communications concerning these allegations from the Debtors, as well as from Hernandez and others suspected of having been involved in such matters.

(c) Unsupportable Roll-Up Acquisitions:

28. The pleadings filed by the Debtors, as well as initial witness interviews, suggest that actionable misconduct at the Board level more broadly may have also occurred. Within weeks of going public, the Company entered into three major acquisitions that drained the Company of nearly *$1 billion* in cash, representing much of the proceeds of Cano Health's de-SPAC transaction. Specifically, in June 2021, Cano Health went public through a de-SPAC transaction, and reportedly obtained more than $800 million in "private investment in public equity" financing from private equity investors.[6] Yet, on June 3, 2021, the Board approved Cano Health's acquisition of (a) University Health Care and its affiliates for approximately $607.9 million in total consideration, $583.3 million of which was cash (the "University Health Transaction"), and (b) Doctor's Medical Center, LLC and its affiliates for $300.7 million in cash.

[6] *Sternlicht v. Hernandez*, C. A. 2023-0477-PAF, at *5-6 (Del. Ch. June 14, 2023).

See Declaration of Mark Kent in Support of Debtors' Chapter 11 Petitions [Docket No. 14] ("Kent Declaration"), ¶ 38.

29. The timing of these approvals, and the staggering cost to the Company, raises serious questions. [redacted]

30. As the Debtors would later acknowledge, these (and other) transactions were part of an aggressive expansion strategy, and the failure to integrate the entities they acquired ultimately precipitated the filing of the Chapter 11 Cases. *See Kent Declaration,* ¶ 37 ("During the period prior to and following completion of the Business Combination discussed above, the Debtors sought to expand top-line revenue growth by *aggressively* expanding their operations.") (emphasis added); *id.*, ¶¶ 39, 40 ("The Debtors engaged in further acquisitions throughout 2022 . . . Unfortunately, few, if any, of the anticipated synergies and benefits of these acquisitions ever materialized and they ultimately resulted in unprofitable acquisitions, operational inefficiencies, and an inflated cost structure for the Debtors. The Debtors quickly depleted much of the proceeds delivered from the Business Combination to complete certain of the aforementioned acquisitions."); *see also Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and Its Affiliated Debtors* [Docket No. 672], Arts. III. A. and B. (internal pagination at 18-20) (same).

(d) Finder's Fees.

31. The Committee is also investigating whether the nature, number and cost of the roll-up acquisitions may have been influenced by the Board-sanctioned practice of awarding "finders fees" to certain Cano Health employees in connection with major acquisitions. These fees, which were awarded at Hernandez's discretion, purportedly were issued to individuals that played a role in identifying potential acquisition targets, and entitled recipients to up to 25% of an acquisition target's last twelve month EBITDA—80% of which would be paid at closing. The Committee only recently learned of this practice at Cano Health, which apparently was suspended following Hernandez's separation from the Company, and is investigating whether it incentivized Cano Health to pursue deals at inflated purchase prices without regard for their operational fit within the Company.

(e) Inappropriate Cash Retention Awards:

32. On February 2, 2024, a mere 48 hours before the bankruptcy filing, the Company paid $6.2 million in cash retention awards to Cano Health's senior executives, as follows:[7]

Mark Kent, Chief Executive Officer	$3,750,000
Robert Camerlinck, Chief Operating Officer	$1,065,000
Eladio Gil, Interim Chief Financial Officer	$950,000
David Armstrong, Chief Compliance Officer and General Counsel	$462,500
Total:	**$6,227,500**

33. To put matters into perspective, these executive cash awards *exceed the entirety of the cash distribution to be made to all general unsecured creditors* under the Plan.

[7] The payments were approved by the Board only a few days earlier, on January 31, 2024. Also on that same date, the Board approved amendments to the Company's employment contracts with each of the above-named executives, increasing their annual base salary and target annual cash incentive compensation for fiscal year 2024. Those contracts are expected to be assumed under the Plan. *See* Plan Art. V. 5.13.

34. The Debtors have not yet responded to the Committee's document requests in this regard, so key questions remain about the necessity, amount and timing of the executive cash awards. For instance: In the absence of any financial performance metrics tied to the awards, did the Company receive reasonably equivalent value in exchange for the payment of the awards? What evidence was presented to the Board suggesting that these executives—two days away from filing for bankruptcy in order to implement a chapter 11 plan that would provide them with releases—were a credible flight risk? Was the timing of the award designed to pre-empt the strictures of section 503(c) of the Bankruptcy Code? In any event, given that the Company was insolvent, and was left with only $2.3 million in cash on hand as of the bankruptcy filing based on the Debtors' DIP budget, how could the timing of the executive cash pay package be justified altogether?

(f) Humana ROFR:

35. The Committee is also investigating whether a right of first refusal ("ROFR") granted in favor of Humana with respect to a sale of 20% or more of Cano Health's assets may have had a materially negative impact upon Cano Health's recent sale efforts.[8] The ROFR not only granted Humana the right to match sale terms on any potential acquisition of Cano Health, but separately prohibited Cano Health from engaging in any sale transaction with UnitedHealth Group or its affiliates, a major player in the Debtors' industry. In 2022, Cano Health acknowledged in public filings that the ROFR may "limit or impede the Company's ability to conduct its business on the terms and in the manner it considers most favorable," and "deter

[8] The ROFR originally applied only to HP Enterprise II, LLC ("Heathy Partners"), the Camerlink-owned business acquired by Cano Health in June 2020. Supposedly, as a condition to the acquisition, Humana and Cano Health agreed to expand the ROFR to include Cano Health. The Committee is investigating the overall transaction, including whether the Company received reasonably equivalent value in exchange for obligating itself to the ROFR.

potential acquirors from seeking to acquire the Company."[9] And seemingly as predicted, the ROFR may have had a negative impact on Cano Health's prior sale efforts in late 2022, which failed,[10] as well as in August 2023, which produced no acceptable all-asset bids.[11]

36. In sum, the Disclosure Statement does not sufficiently inform creditors of these transactions, or the results of the Debtors' investigations of current and former D&Os. Consequently, the Committee believes that the Debtors should submit a written report—sufficiently in advance of the proposed voting deadline—describing (a) the nature and scope of the investigations conducted by Quinn Emanuel and Weil, (b) to whom Quinn Emanuel and Weil reported during the course of their investigations, and (c) Quinn Emanuel and Weil's conclusions as to the (i) existence of any credible estate claims, (ii) potential value, litigation risk and cost-benefit analysis associated with the pursuit of such claims, and (iii) basis and propriety of any non-debtor releases being offered under the Plan. Absent such information prior to the voting deadline, the Debtors will have effectively shifted the burden to the Committee with respect to Plan releases, and general unsecured creditors will not be in a meaningful position to

[9] *See* Cano Health, Inc. Form 10-K for the fiscal year ended December 31, 2022, at 37, available at https://www.sec.gov/Archives/edgar/data/1800682/000180068223000005/cano-20221231.htm.

[10] *See Cano Health shares plummet after reports CVS walked away from potential acquisition*, Landi, Heather, Fierce Healthcare, available at https://www.fiercehealthcare.com/providers/cano-health-shares-plummet-after-reports-cvs-walked-away-potential-acquisition

[11] Following these failed efforts to sell the entire Company, on September 25, 2023, the Company sold substantially all of the assets associated with the operation of their senior-focused primary care centers in Texas and Nevada to Primary Care Holdings II, LLC, a wholly-owned subsidiary of Humana Inc., for a total value of approximately $66.7 million. The Committee is separately investigating that transaction to determine whether the ROFR had any impact on the Company's sale efforts and whether the Company sold the assets at a fire sale price to achieve flexibility in connection with its funded debt loan documents.

assess a central component of the Plan, namely, the potential value associated with the Litigation Trust Proceeds.

C. Discrete Asset Sales:

37. Pursuant to the Plan, the Debtors reserve the right to seek confirmation of the Plan in conjunction with a "Discrete Asset Sale". *See* Plan § 5.4 ("The Restructuring shall be consummated pursuant to a Reorganization Transaction . . . or a Whole-Co Sale Transaction, either of which may be coupled with one or more Discrete Asset Sales, including as set forth in the Description of Transaction Steps."). The Committee accordingly reserves its rights in the event the Debtors seek to implement any asset sale after the commencement of solicitation. Specifically, depending on the nature and impact of any such "Discrete Sale" on the remaining operations, capital needs and pro forma capital structure of the Debtors, the Committee reserves the right to argue that the Disclosure Statement should be supplemented and resolicited to general unsecured creditors, particularly in light of the fact that the Plan proposes equity-style consideration to general unsecured creditors.

D. Committee Recommendation:

38. In addition, the Disclosure Statement should include appropriate riders to the Disclosure Statement (which the Committee is preparing in coordination with the Debtors' advisors) describing the status of the Committee's lien review, the presence of unencumbered assets, the Committee's preliminary findings with respect to its investigation of potential estate claims and causes of action, and the Committee's anticipated objections to the Plan and recommendation to general unsecured creditors with respect to the Plan.

II. Preview of Plan Objections[12]

39. As noted above, the Committee appreciates that the issue before the Court is limited to the informational adequacy of the Disclosure Statement. That said, the Committee feels it necessary to preview its anticipated Plan objections to the Court, in order to inform the Court of the challenges ahead, ensure that the Committee is afforded an appropriate discovery timetable to meaningfully prepare for trial, and otherwise ensure that the Committee's rights generally in connection with confirmation are adequately preserved.

40. Among other infirmities, the Plan does not appear to take into account the Committee's preliminary investigative findings, which uncovered unencumbered assets and identified potential challenges to certain of the secured lenders' purported liens and claims. Specifically, as part of its lien investigation, the Committee has determined (subject to the receipt of additional evidence, if any, from the Debtors), that the lenders either do not have a lien or failed to adequately perfect their liens in a number of assets, including: (a) the MSP Shares, (b) Cash, (c) the Debtors' residual interest in the cash collateral securing the CMS surety bond, (d) leasehold interests, (e) leasehold improvements (which, according to the Debtors' Schedules, have a collective net book value and "current" value" of $70,514,016.74 and $29,082,959.31, respectively), (f) motor vehicles, (g) proceeds of insurance policies, (h) commercial tort claims, (i) net operating losses, (j) assets held by certain subsidiaries that either are not loan parties or as to whom valid UCC-1 financing statements (or amendments thereto) were not properly filed, and (k) the proceeds of each of the foregoing. The Committee has not yet determined the collective value of these unencumbered assets, pending confirmation-related discovery from the Debtors.

[12] The Committee made a global settlement proposal to the Debtors on Friday April 19th and has yet to receive a response.

41. The Committee has also identified potential challenges with respect to the First Lien Claims, including: (a) the makewhole premium asserted under the Side Car Facility, which the Committee believes is disallowable under prevailing case law within the Third Circuit, (b) unmatured interest in the form of approximately $37 million in unamortized original issue discount arising from the issuance of penny warrants under the Side-Car Facility, which is disallowable under section 502(b)(2) of the Bankruptcy Code, and (c) payment of the "Premium Payment" under the 2023 amendment to the Side-Car Facility, which the Committee is investigating as a potential fraudulent conveyance.[13] In addition, the Debtors appear to understate their total enterprise value, despite the Company's budget out-performance during the Chapter 11 Cases, the recent uplift in the Company's business plan and the Company's continued upward trajectory in terms of its cost-savings initiative and corresponding financial results.

42. Importantly, as discussed in detail above, the Plan proposes to *unconditionally* release various non-debtors, including certain of the Debtors' *current* D&Os. The Debtors propose to do so even though many of the D&Os occupied their director or executive positions at the time of Mr. Hernandez's alleged prepetition misconduct, and despite the presence of other potential claims and causes of action, without adequate consideration flowing to the Debtors' estates.

43. Finally, the Debtors inappropriately gerrymander class voting by classifying the secured lenders' deficiency claims and unsecured notes—92% of which are held by the Ad Hoc Group—together with all other general unsecured claims, in the hope of suppressing creditor dissent.

[13] It bears noting that the Debtors calculate the makewhole amount under the Side Car Facility to be approximately $22 million, and now seek to foreclose potential challenges by "stipulating" to a $3.5 million reduction to the premium through a Bankruptcy Rule 9019 settlement.

44. Thus, the Committee believes that the Plan inappropriately diverts value that should otherwise be available to general unsecured creditors, and, pending discovery from the Debtors, the Committee will be prepared to address these concerns at the confirmation hearing.

DISCOVERY AND BRIEFING SCHEDULE

45. As suggested above, the Committee will require discovery across each of the contested Plan issues, including total enterprise valuation, the value of unencumbered assets, facts underlying potential lien and claim challenges, and, perhaps most importantly, the nature and scope of releases proposed under the Plan. The pace of discovery in connection with the Committee's investigation is of particular concern given the breadth of the releases, as well as the number and complexity of prepetition transactions being investigated. Though the deadline for the Debtors to produce documents has not yet expired, the Committee was hopeful that more documents would have been produced by the Debtors by now on a rolling basis; to date, other than 400 documents provided by Quinn Emanuel in advance of certain witness interviews, the Debtors have only made two rolling productions to the Committee in response to its informal discovery requests consisting of only 637 documents, including many duplicates. Suffice it to say that additional discovery will be required, in connection with the contested Plan issues generally, including with respect to the proposed Plan releases.

46. To that end, in order to ensure that the Committee has a meaningful opportunity to conduct appropriate discovery and prepare for trial, the Committee proposes the confirmation discovery and briefing schedule set forth in **Exhibit A** annexed to this Limited Objection (the "Committee Schedule"). The Committee Schedule would engender a modest two-week extension of the proposed confirmation hearing date, which should not meaningfully prejudice the Debtors, particularly in light of the Debtors' improved liquidity outlook.

47. The parties met and conferred regarding the Committee Schedule on May 1, 2024. The parties are continuing to discuss a mutually agreeable proposal, but did not reach a resolution prior to the Committee's deadline to file the Limited Objection. The Committee intends to continue working with the Debtors to develop a consensual schedule, but in the absence of consensual resolution, the Committee seeks this Court's approval of the Committee Schedule.

RESERVATION OF RIGHTS

48. The Committee reserves all rights to amend and/or supplement this Limited Objection, attend the hearing on the Motion, object to confirmation of the Plan (as may be amended or supplemented) or any other plan on any and all grounds, whether or not raised in this Limited Objection, and to make all arguments as may be applicable, including, but not limited to, as a result of information learned subsequent to the filing of this Limited Objection and in discovery.[14]

CONCLUSION

WHEREFORE, the Committee requests that the Court (a) grant the Committee relief consistent with the foregoing, and (b) grant the Committee such other and further relief as the Court may deem just and proper.

[14] The Committee also reserves its rights with respect to the Debtors' proposed form of solicitation procedures order, and will attempt to resolve any outstanding issues in advance of the hearing to consider the Disclosure Statement.

Dated: May 1, 2024

COLE SCHOTZ, P.C.

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Exhibit A

Committee's Proposed Confirmation Discovery Schedule

Date	Event
May 6, 2024	***Deadline to Serve Plan-Related Document Requests, Interrogatories and Preliminary Deposition Notices***. The deadline by which any party in interest ("Participating Party") that intends to participate in discovery related plan confirmation (the "Confirmation Proceedings") and intends to seek document discovery or interrogatory responses in connection with the Confirmation Proceedings (each, a "Requesting Party") must serve requests for the production of documents or information and interrogatories (the "Plan Requests").
May 17, 2024	***Deadline to Respond and Object to Plan-Related Discovery Requests***. The deadline by which any party subject to a Plan Request (each, a "Producing Party") must respond and/or object to such Plan Request.
May 20, 2024	***Deadline to Identify Experts.*** The deadline for all parties to identify experts and the topics on which they intend to submit expert reports ("Expert Disclosures").
June 5, 2024	***Deadline to Complete Document Production***. The deadline by which Producing Parties must complete the production of documents in response to the Plan Requests; provided that Producing Parties shall produce documents responsive to Plan Requests on a rolling basis.
June 7, 2024	***Deadline for Supplemental Deposition Notices***. The deadline by which supplemental deposition notices may be issued based on information supplied after the Preliminary Deposition Notice Deadline.
	Deadline to Produce Opening Expert Reports. The deadline for Participating Parties that support the Debtors' proposed Plan to produce (i) expert reports and (ii) all information that such experts considered in connection with forming their respective opinions (each in satisfaction with the requirements of Federal Rule of Civil Procedure 26(a)(2)(b)).
June 14, 2024	***Deadline to Identify Rebuttal Experts.*** The deadline for all parties to identify rebuttal experts.
June 18, 2024	***Investigation Report.*** The deadline for the Debtors to deliver a written report summarizing the Weil and Quinn Emanuel investigations and conclusions with respect to proposed plan releases.
June 18, 2024	***Deadline to Complete Fact Depositions***. The deadline by which all fact depositions must be completed (the period between December 18, 2023 and January 19, 2024, the "Fact Deposition Period").
June 21, 2024	***Deadline to Produce Rebuttal Expert Reports.*** The deadline for Participating Parties that object to the Debtors' proposed Plan to produce (i) responsive expert reports and (ii) all information that such

Date	Event
	experts considered in connection with forming their respective opinions (each in satisfaction with the requirements of Federal Rule of Civil Procedure 26(a)(2)(b)).
June 27, 2024	***Deadline to Complete Expert Discovery.***
July 2, 2024	***Plan Objection Deadline***
July 3, 2024	***Deadline for Parties to Exchange Exhibit and Witness Lists for Cases in Chief.*** The deadline by which Participating Parties must file and exchange a final list of witnesses and exhibits.
July 8, 2024	***Deadline for Parties to Object to Exhibits***. The deadline (4:00pm ET) by which Participating Parties must serve objections to exhibit lists exchanged above.
July 9, 2024	***Deadline for Parties to Meet and Confer Regarding Exhibit Objections.*** The deadline by which Participating Parties must meet and confer for the purposes of resolving objections to exhibit lists.
July 12, 2024	***Confirmation Hearing***