

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)

Hearing Date: May 9, 2024 at 9:30 a.m. (ET)

Objection Deadline: At the hearing

Re: Docket No. 716

**MOTION TO FILE UNDER SEAL PORTIONS OF
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
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”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned proposed counsel, hereby submits this motion (the “Motion to Seal”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Committee to file under seal certain portions of its *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)*

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.



Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief [Docket No. 716] (the “Limited Objection”).² Pursuant to Rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Committee has filed concurrently herewith a proposed redacted form of the Limited Objection (the “Proposed Redacted Limited Objection”). In support of this Motion to Seal, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), the Committee consents to entry of a final order by the Court in connection with this Motion to Seal to the extent it is later determined that, absent the consent of the parties, the Court cannot enter final orders or judgments herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, §§ 101–1532, as amended (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9018-1(d).

² Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Limited Objection.

RELEVANT BACKGROUND

4. On February 4, 2024 (the “Petition Date”), and continuing on February 5, 2024, the Debtors commenced these Chapter 11 Cases by filing voluntary petitions with this Court under chapter 11 of the Bankruptcy Code.

5. On February 21, 2024, the United States Trustee (the “U.S. Trustee”) for Region 3 and 9 appointed the Committee. *See* Docket No. 82.

6. On April 22, 2024, the Debtors filed amended versions of the Plan [Docket No. 671] and the Disclosure Statement [Docket No. 672].

7. The Committee’s by-laws and the common interest agreement executed between the Committee and the Debtors each contain a provision requiring the Committee and its professionals to maintain the confidentiality of information provided by the Debtors on a confidential basis. Pursuant to these provisions, the Debtors provided the Committee with certain information and documents in connection with the Committee’s investigation that the Debtors assert is sensitive and confidential and must be maintained in a manner that protects its confidentiality (the “Confidential Information”). Because the Committee relies on the Confidential Information in support of the Limited Objection, and without waiving any arguments regarding the propriety of the confidentiality designations, it will redact references to the Confidential Information in the Proposed Redacted Limited Objection and is seeking to file the Confidential Information under seal.

RELIEF REQUESTED

8. By this Motion to Seal, the Committee requests entry of the Proposed Order authorizing the Committee to file certain portions of the Limited Objection under seal, as reflected in the Proposed Redacted Limited Objection. In addition, the Committee requests that the unredacted version of the Limited Objection not be made available to anyone other than the Court,

the U.S. Trustee, the Debtors, and counsel to the Ad Hoc Group, except as otherwise ordered by the Court.

BASIS FOR RELIEF REQUESTED

9. Pursuant to section 107(b) of the Bankruptcy Code, a bankruptcy court must protect entities from potential harm that may result from the disclosure of certain confidential information.

11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

Id. Section 105(a) of the Bankruptcy Code, in turn, codifies the inherent equitable powers of bankruptcy courts and empowers them to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

10. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information[.]” Fed. R. Bankr. P. 9018. Further, Local Rule 9018-1(d)(i) states, in relevant part, that “[a]ny entity seeking to file a document under seal must file a motion requesting such relief” Del. Bankr. L.R. 9018-1(d)(i).

11. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); *accord In re Alterra*

Healthcare Corp., 353 B.R. 66, 75–76 (Bankr. D. Del. 2006) (citing *Orion Pictures*). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *In re Global Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

12. “Commercial information”—“information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor’”—is one category of information within the scope of section 107(b) of the Bankruptcy Code. *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Orion Pictures*, 21 F.3d at 27–28); see *Global Crossing*, 295 B.R. at 725 (holding that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. See *Orion Pictures*, 21 F.3d at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential” and “commercial” in nature).

13. Further, Local Rule 9018-1(d)(iii) provides:

If the Proposed Sealed Document is known by the filer thereof to contain information that has been designated by another entity as

confidential pursuant to a protective order, contract or applicable law or as otherwise requiring protection for the benefit of another entity pursuant to section 107 of the Bankruptcy Code . . . the filer thereof, prior to the filing of the Sealing Motion, shall attempt to confer in good faith with the Holder of Confidentiality Rights in an effort to reach agreement concerning what information in the Proposed Sealed Document must remain sealed from public view.

Del. Bankr. L.R. 9018-1(d)(iii).

14. Here, without waiving any arguments regarding the confidentiality of the Confidential Information as designated by the Debtors, the Limited Objection includes summaries of initial interviews of current directors and officers the Committee participated in as part of its investigation into, among other things, potential estate cause of action, which the Debtors designated as confidential. Because the Debtors claim such references in the Limited Objection may qualify for protection as confidential information, the Committee filed the Limited Objection under seal and this Motion to Seal.

15. For the reasons set forth herein, and upon the request of Debtors, the Committee respectfully requests consideration of this Motion to Seal portions of the Limited Objection identified as confidential by the Debtors, as reflected in the Proposed Redacted Limited Objection.

COMPLIANCE WITH LOCAL RULE 9018-1(d)

16. Pursuant to Local Rule 9018-1(d)(iii), the Committee and the Debtors (which produced all of the Confidential Information to the Committee) have conferred regarding the confidential nature of the Confidential Information included in the Limited Objection. In connection therewith, the Committee has redacted in the Proposed Redacted Limited Objection all of the Confidential Information that the Debtors have requested be redacted, and seeks authority to file under seal such Confidential Information to the extent it must remain sealed from public view. The Committee has provided an unredacted copy of the Limited Objection to counsel to the Debtors, the U.S. Trustee, and counsel to the Ad Hoc Group.

17. The Committee to undersigned counsel also contacted the U.S. Trustee and was informed that the U.S. Trustee reserves all its rights with respect to the Motion to Seal and the redactions.

18. Contemporaneously herewith, the Committee is filing its proposed redacted version of the Limited Objection.

NOTICE

19. Notice of this Motion to Seal will be given to: (i) counsel to the Debtors; (ii) the U.S. Trustee; (iii) counsel to the Ad Hoc First Lien Group; and (iv) any other party entitled to notice pursuant to Local/Bankruptcy Rules 2002-1(b) and 9013-1(m). The Committee submits that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Committee respectfully requests that the Court (i) enter the Proposed Order authorizing the Committee to file the Limited Objection under seal, (ii) approve the redactions reflected in the Proposed Redacted Limited Objection, and (iii) grant any such other and further relief as is just and proper.

Dated: May 2, 2024

COLE SCHOTZ, P.C.

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*Co-Counsel to the Official Committee of
Unsecured Creditors*

Exhibit A

Proposed Order

**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)

Re: Docket No. ____

**ORDER AUTHORIZING FILING UNDER SEAL PORTIONS OF
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
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
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CONFIRMATION OF PROPOSED PLAN, AND (V) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion to Seal”)² filed by the Official Committee of Unsecured Creditors (the “Committee”) for entry of an order, pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, authorizing the Committee to file certain portions of the Limited Objection under seal; and a publicly viewable Proposed Redacted Limited Objection having been filed in these cases at Docket No. [__]; and it appearing that there is good and sufficient cause for the relief set forth in this Order; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of these cases and the Motion

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² Capitalized terms not otherwise defined herein shall have the meanings afforded to them in the Motion to Seal.

in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that notice of the Motion to Seal has been given as set forth in the Motion to Seal and that such notice is adequate and no other or further notice need be given; and that the legal and factual bases set forth in the Motion to Seal support the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**:

1. The Motion to Seal is **GRANTED** as provided herein.
2. The Committee is authorized to file those portions of the Limited Objection that were redacted in the Proposed Redacted Limited Objection (the “Sealed Material”) under seal.
3. The Sealed Material shall not be made available to anyone, except to the Court, the U.S. Trustee, the Debtors, counsel to the Ad Hoc Group, and other parties in interest as may be ordered or otherwise required by the Court, and all parties receiving the Sealed Material shall maintain its confidentiality and the confidentiality of its subject matter, including in connection with any pleadings filed with this Court.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.