

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

In re:

CANO HEALTH, INC., et al,

Reorganized Debtors.

Chapter 11

Case No. 24-10164 (KBO)
(Jointly Administered)

Hearing Date: November 14, 2024 at 9:30 a.m. (ET)
Objection Deadline: November 6, 2024 at 4:00 p.m. (ET)

MOTION OF JENNIFER SHAW FOR RELIEF FROM PLAN INJUNCTIONS

COMES NOW Jennifer Shaw (“Movant”), by and through her undersigned counsel, and hereby files this Motion for Relief from Plan Injunctions (the “Motion”), and in support thereof states as follows:

BACKGROUND

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1409(a). The bases for the relief requested in this motion is 11 U.S.C. § 105 and the Court’s inherent power to interpret and enforce its own orders.

2. Beginning on February 4, 2024 (the “Petition Date”), Cano Health, Inc. and certain of its subsidiaries, as debtors and reorganized debtors (collectively, the “Debtors,” or as reorganized pursuant to the Plan (as defined below) the “Reorganized Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Reorganized Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Fed. R. Bankr. P. 1015(b) and Del. Bankr.LR 1015-1.

3. On June 28, 2024 (the “Confirmation Date”), the Court entered an order (Docket No. 1148) (the “Confirmation Order”) confirming the Modified Fourth Amended Joint Chapter



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11 Plan of Reorganization of Cano Health, Inc. and its Affiliated Debtors (Docket No. 1125) (including any exhibits, schedules, and supplements thereto and as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “Plan”). On the same day (the “Effective Date”), the Plan was substantially consummated and became effective. See Docket No. 1152.

4. On or about June 22, 2022, Jennifer Shaw (“Movant”) was operating a motor vehicle when an employee of debtor Cano Health, LLC (the “Debtor”) at the time, was acting within the course and scope of his employment when he negligently operated a motor vehicle, causing a collision with Ms. Shaw’s vehicle (the “Accident”). As a direct and proximate result of the employee’s negligence and the resulting vicarious liability of the Debtor, Movant sustained serious bodily injury.

5. On March 24, 2023, Movant filed a complaint (the “State Court Complaint”) in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, commencing the case styled as *Jennifer Shaw v. German Martinez Gomez and Cano Health, LLC* (the “State Court Case”).

6. Before the State Court could adjudicate Movant’s claims and rights under the Complaint, the Debtors filed their Chapter 11 petitions in this Court on the Petition Date, thus staying the State Court Case pursuant to 11 U.S.C. § 362(a).

7. Section 362(a) was replaced by certain injunctions under the Plan and the Confirmation Order, effective as of the Effective Date, when the Plan was confirmed.

ARGUMENT

8. As noted above, the Plan was confirmed on the Confirmation Date and became effective on the Effective Date. The automatic stay may have ceased to be effective on the

Effective Date under the § 10.4 of the Plan; however, the Plan and the Confirmation Order contain certain injunctions that act similarly to the automatic stay, specifically § 10.5 of the Plan and ¶ 32 of the Confirmation Order (the “Plan Injunctions”). Therefore, absent relief from this Court, Movant’s actions in the State Court Case are likely stayed.

9. The Plan and the Confirmation Order do not recite the standards for relief from the Plan Injunctions, but it is customary in this district for courts to look to the same grounds applicable to relief from the automatic stay pursuant to 11 U.S.C. § 362(d). The automatic stay is not meant to be indefinite or absolute, and the Court has authority to grant relief from the stay in appropriate circumstances. *In re Rexene Prods., Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992). Section 362(d)(1) provides that the automatic stay may be lifted where “cause” exists. After a prima facie showing by a Movant, the debtor has the burden of proving that a Movant is not entitled to relief from the stay. *Id.* at 577; 11 U.S.C. § 362(g).

10. “Cause” is not defined in the Bankruptcy Code and must be determined on a case-by-case basis. *IBM v. Fernstrom Storage & Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991). Most courts employ an equitable balancing test to determine “cause.” *Rexene Prods., Co.*, 141 B.R. at 576. According to the *Rexene Prods.* case, this balancing test requires the Court to determine whether:

- a. any great prejudice to either the bankruptcy estate or the debtor will result,
- b. the hardship to the Movant by maintenance of the stay considerably outweighs the hardship to the debtor, and
- c. the Movant has a probability of prevailing on the merits. *Id.* at 576.

11. Cause exists in this case to grant Movant relief from the Plan Injunctions. First, there will be no prejudice to the Reorganized Debtors. The Movant is seeking a recovery from applicable insurance, and is not attempting to execute directly on assets of the Debtors’ estates.

As such, the Debtors' assets will remain available for whatever disposition may ultimately be sought by the Debtors and/or ordered by the Court.

12. Further, the hardship that will be suffered by Movant far outweighs any potential hardship to the Reorganized Debtors if Movant is not granted relief from the automatic stay. Movant has suffered substantial injury and impairment as a result of the Debtors' prepetition conduct and negligence, as described above. Denying or delaying Movant access to available insurance proceeds and claims against other third parties would cause very severe hardship.

13. Regarding the third *Rexene* factor, Movant need only prove this prong with a showing that is "very slight." *Rexene Prods.*, 141 B.R. at 578. The facts described above establish sufficient probability to support a damages award in favor of Movant. In addition, this Court has broad jurisdiction to supervise the administration of claims, but claims arising from personal injury are expressly excluded. 28 U.S.C. § 157(b)(5). Therefore, the usual purpose of providing a "central forum to adjudicate claims against the Debtors," see, e.g., *15375 Memorial Corp. v. Bepco, LP (In re 15375 Memorial Corp.)*, 589 F.3d 605, 622 (3rd Cir. 2009), does not apply to Movant's claims.

14. When weighing the above factors, the Court should grant Movant relief from the Plan Injunctions in this case to permit Movant to prosecute Movant's claims against the Debtors and any other responsible individual or entity to judgment in a non-bankruptcy forum on account of the above-described accident and satisfy any award or other resolution Movant may obtain against the Debtors' applicable insurance policies and any other individuals or entities that are responsible for the injuries sustained.

15. Movant believes that the relief granted in connection with this Motion will be consensual and will have no meaningful effect on the administration of these cases and the

Debtors' assets. Therefore, Movant respectfully submits that any order granting this Motion should be effective immediately upon its entry, notwithstanding the fourteen (14) day stay contemplated in Fed.R.Bankr.P. 4001(a)(3) to the extent otherwise applicable.

WHEREFORE, Movant requests that this Court enter an order, substantially in the form appended hereto, granting Movant relief from the Plan Injunctions; and grant Movant such further relief as this Court deems just and proper.

Dated: October 23, 2024

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Amy D. Brown

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EXHIBIT A

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

In re:

CANO HEALTH, INC., et al,

Reorganized Debtors.

Chapter 11

Case No. 24-10164 (KBO)
(Jointly Administered)

Re: Docket No. _____

**ORDER GRANTING MOTION OF JENNIFER SHAW FOR RELIEF
FROM PLAN INJUNCTIONS**

UPON CONSIDERATION of the Motion for Relief From Plan Injunctions (the “Motion”) filed by Jennifer Shaw (“Movant”), and any response thereto; the Court having determined that (A) the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157; (B) this is a core proceeding pursuant to 28 U.S.C. § 157; (C) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having further determined that cause exists to grant the relief requested in the Motion; it is hereby ORDERED as follows:

1. The Motion is GRANTED, as set forth herein. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Motion.

2. Movant is hereby granted relief from the injunctions and stays (collectively, the “Plan Injunctions”) in the Modified Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and its Affiliated Debtors (Docket No. 1125) (including any exhibits, schedules, and supplements thereto and as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “Plan”) and the order (Docket No. 1148) (the “Confirmation Order”) confirming the Plan on June 28, 2024 (the “Confirmation Date”), including but not limited to § 10.5 of the Plan and ¶ 32 of the Confirmation Order, to continue and prosecute, in a non-bankruptcy court of competent jurisdiction—including but not limited to the Circuit Court for the State of Florida in the case

styled *Jennifer Shaw v. German Martinez Gomez and Cano Health, LLC* (the “State Court Case”)—any claims and causes of action arising from a certain accident occurring or about June 22, 2022 (the “Accident”); provided that Movant shall enforce such claims only against third-party non-debtors, including but not limited to the Debtors’ applicable insurance carriers and third parties and their insurance carriers. Without limiting the foregoing, any insurance carrier is authorized to pay any judgment, award or settlement from the Debtors’ applicable insurance policies and any proceeds thereof. Except as otherwise set forth herein, the Plan Injunctions shall otherwise remain in full effect.

3. The automatic stay under 11 U.S.C. § 362(a) does not apply to Movant’s continuation and prosecution of claims and causes of action arising from the Accident, but to the extent that it were to apply, it is terminated for that purpose.

4. No stay of this Order shall be in effect, including but not limited to any stay contemplated under Fed.R.Bankr.P. 4001(a)(3).

5. The Court retains jurisdiction to interpret and enforce the terms of this order.

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Hearing Date: November 14, 2024 at 9:30 a.m. (ET)
Objection Deadline: November 6, 2024 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF
JENNIFER SHAW FOR RELIEF FROM PLAN INJUNCTIONS**

PLEASE TAKE NOTICE that Jennifer Shaw (the “Movant”), by and through her undersigned counsel has filed the Motion for Relief from Plan Injunctions (the “Motion”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion, must be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, filed with the Court, and served upon the undersigned counsel so as to be received on or before November 6, 2024, at 4:00 p.m. (ET) (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion, if necessary, shall be held before the Honorable Karen B. Owens, United States Bankruptcy Judge, on November 14, 2024, at 9:30 a.m. (ET) at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom #3, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES OR
OBJECTIONS ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE
ABOVE, AN ORDER MAY BE ENTERED GRANTING THE MOTION WITHOUT
FURTHER NOTICE OR A HEARING**

Dated: October 23, 2024
Wilmington, Delaware

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Amy D. Brown

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Counsel to Jennifer Shaw

CERTIFICATE OF SERVICE

I, Amy D. Brown, hereby certify that on October 23, 2024, I caused a true and correct copy of the *Motion Of Jennifer Shaw For Relief From Plan Injunctions* to be electronically filed and served through the Court's CM/ECF system which will send notification that such filing is available for viewing and downloading to all registered participants, and additionally served on the parties listed below via electronic mail.

October 23, 2024

/s/ Amy D. Brown

Amy D. Brown (DE 4077)

Via Electronic Mail

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