

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 24-10164 (KBO)
CANO HEALTH, INC., et al.,
(Jointly Administered)
Courtroom No. 3
824 North Market Street
Wilmington, Delaware 19801
Debtors. Friday, September 13, 2024
9:30 a.m.

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commenced at 9:32 a.m.)

2 THE COURT: Good morning, counsel. This is Judge
3 Owens. We are gathered for a remote hearing in Cano Health
4 regarding the MedCloud disputes.

5 Thank you for contacting Chambers. What can I do
6 for you? What are the open issues.

7 MR. AARONSON: Good morning, Judge.

8 THE COURT: Good morning.

9 MR. AARONSON: Geoffrey Aaronson, Aaronson Schantz
10 Beiley in Miami, for MedCloud Depot LLC.

11 I don't know if Your Honor wants to take
12 appearances or whether --

13 THE COURT: No, that's not necessary. Everyone can
14 announce themselves when they decide to contribute.

15 MR. AARONSON: Thank you, Judge. So, I did not
16 request this hearing. The debtor did. Apparently, they
17 believe there are supplemental issues resulting from Your
18 Honor's ruling from the bench last week. They didn't file a
19 motion for protection, so I don't necessarily have a layout
20 here for exactly what their issues are but we have had an
21 opportunity to discuss it.

22 Their issues apparently appear to arise in the
23 context of, at least as narrowed, as to whether or not I may
24 conduct these depositions as subpoenaed, in person, or
25 whether they can insist on Zoom depositions. Then there is a

1 supplemental, I guess, issue that I just can't get an answer
2 on and that is with regards to I am trying to have them make
3 a representation for these witnesses that they remain under
4 subpoena. The subpoena's, Your Honor, I filed the proof of
5 service. Its Docket Entry 1461 through 1465.

6 So, I am not going to steal Mr. Friedman's thunder
7 here. I am happy to let him make his argument and I would
8 like an opportunity to respond.

9 THE COURT: Thank you very much for setting the
10 stage. I do think it makes sense that I hear from Mr.
11 Friedman. I see that he's with us.

12 So, Mr. Friedman, nice to see you. Why don't you
13 give me a summary of what the open issues are from your
14 perspective, from the debtor's perspective, and the positions
15 on them.

16 MR. FRIEDMAN: Thank you, Your Honor. Are you
17 able to hear me?

18 THE COURT: Yes, I can. Thank you.

19 MR. FRIEDMAN: Wonderful. Good morning and thank
20 you for making yourself available.

21 So, following the hearing we had earlier, this was
22 last week, you gave the debtors two choices, one of which was
23 just to make the five witnesses available for the hour and a
24 half deposition each or we would have a broader discovery
25 schedule. After speaking to our client, we decided to go

1 with option A and arrange the depositions.

2 Part of that, of course, involves starting to
3 reach out to the witnesses and find out their availability
4 for these 90-minute slots to be able to be examined by Mr.
5 Aaronson. We reached out to Mr. Aaronson and proposed that
6 we do these by Zoom given the fact that they are relatively
7 short 90-minute depositions, given the fact that counsel from
8 Delaware will be defending them.

9 So, it would avoid the time and cost of sending
10 counsel down to Florida especially if it turns out that if we
11 are not able to do them all on one day, we are going to try
12 our best to do them all in one day, but that may or may not
13 work out depending on people's schedules. There could be
14 multiple days and we really would prefer not to be sending
15 counsel down multiple times.

16 Look, the reality is that during the pandemic we
17 learned a lot of things and even before the pandemic
18 certainly we learned that we knew that video conference
19 depositions, in many instances, are a fine substitute for
20 doing things in person during the pandemic, you know,
21 certainly lead by the bankruptcy court who showed us that,
22 look, business can continue going on even if we are remote.
23 We found effective ways to do all this stuff and most
24 importantly, it was cost effective and efficient.

25 That is really -- we are going to make the

1 witnesses available. We heard Your Honor loud and clear.
2 We, obviously, had a different position but you ruled as you
3 did and we are going to arrange for the depositions. We are
4 just now trying to figure out how to do it in the most cost-
5 effective and efficient manner. Its not, frankly, just about
6 the cost of counsel, but also, as you can imagine, for an
7 individual to make themselves available from 9 to 10:30 for a
8 deposition online they can do that from their office, they
9 can do that from their home. Once they have got to start
10 going to Mr. Aaronson's office, you know, no matter how far
11 they be or close they may be to that office now you are
12 talking about driving there early and getting there, they
13 don't want to be late, so, you know, it turns into more like
14 a three-hour event rather than a 90-minute event.

15 So, again, we are happy to work with Mr. Aaronson
16 to find dates and times that are most effective, and
17 efficient, and work for everybody, but we don't see any
18 reason why this can't all be accomplished on Zoom. As I
19 said, they are short depositions, the subject matter is
20 fairly narrow. I have a feeling a lot of these depositions
21 will end up being a lot less than 90 minutes because, you
22 know, they are either going to learn that there is not a lot
23 to what they think they might be finding out, but, again,
24 they are right to talk to them and learn from them but,
25 again, we would like to do that in an efficient manner and

1 that is really all that this is.

2 THE COURT: And I must admit, I am not clear on
3 the second issue about the witnesses under subpoena. So,
4 could you explain what that issue is.

5 MR. FRIEDMAN: I think the issue is Mr. Aaronson
6 served subpoenas on the company, this is several months ago
7 now when they first served their subpoenas. They weren't
8 served on individuals; they were served on the company.

9 What we have told Mr. Aaronson is that he
10 identified five individuals, we are going to coordinate so we
11 can depose those five individuals. One of them is no longer
12 at the company. We are going to reach out to them. We are
13 going to do everything we can to have them be available. If
14 it requires us compensating them for their time, because they
15 don't work for us anymore, we are happy to do that. There is
16 another individual who, I believe, actually today is their
17 last day at Cano health. Again, we are going to coordinate
18 and find a time that works for them to be able to sit for the
19 deposition as well.

20 As far as we are aware right now, there shouldn't
21 be any issues with having all five of them appear. If there
22 are issues with any of them, we will speak to Mr. Aaronson,
23 we will try to work it out with them. If for some reason we
24 can't we will come back to the Court, but at this point I
25 think its probably a non-issue because, as we told Mr.

1 Aaronson, we are coordinating with the witnesses and we
2 anticipate being able to have all of them appear for
3 depositions on dates and times that work for everybody.

4 THE COURT: All right. Thank you very much.

5 Why don't I kick the podium back to Mr. Aaronson
6 and you can reply.

7 MR. AARONSON: Thank you, Judge. So, I would
8 respectfully disagree with Mr. Friedman that proceeding with
9 Zoom depositions is a fine substitute. I don't know who is
10 going to -- these are IT people. These are people who are
11 supervised by, as it turns out, DataRink (phonetic), the
12 company that I believe, or at least our information leads us
13 to believe, infringe on this software and reverse engineered
14 the software. I have no idea who, in a Zoom deposition, will
15 be in the room with these witnesses. I have no idea how many
16 screens are in front of them. I have no idea whether their
17 immediate supervisor is sitting next to me and, let's just
18 say, assisting them in responding to a deposition.

19 Let me also address the subpoena issue because now
20 for the first time I am hearing, oh, they weren't properly
21 served, or at least that is the suggestion. If you look at
22 the subpoenas each individual was properly served when the
23 process server went to the premises. The person at the desk
24 said they were completely authorized to accept service for
25 the individuals. He waited there while the secretary or

1 whoever it was checked that out and in its affidavit of
2 service he states that these individuals were served with
3 subpoenas.

4 So, you know, maybe I am old school, but I would
5 like to have the witness at my office. The Cano officers are
6 way out northwest by the Everglades. In all probability my
7 office is closer to where these people reside than the Cano
8 officers. Let me also advise the Court that in accordance
9 with the rules and the statute, we wrote a check to each
10 witness for each witnesses travel fee to come to my office.

11 So, the fact that a low-level IT person may miss
12 work for a couple of hours I think is irrelevant to the fact
13 that they were properly served with subpoenas and I want to
14 conduct a clean deposition without others in the room,
15 without their supervisors in the room, without them being
16 distracted by who knows what in the room. That is number
17 one.

18 Number two, I find it honestly, Judge, a little
19 rich when I hear that they want to save money on counsel
20 having to travel down to Miami. This is a Miami business,
21 it's a South Florida business. All of the employees are in
22 South Florida within about a half an hour of my office. The
23 debtor chose to hire a New York firm and to file in Delaware.
24 I never objected to venue in this case, perfectly fine, that
25 was their decision and they retained New York and Delaware

1 counsel. Now they are arguing that they could save some
2 money by having their New York and Delaware counsel avoid
3 coming down for the deposition. That argument is a bit rich
4 for me.

5 I would also note that I offered to counsel, and I
6 will offer again on the record, that counsel can appear by
7 Zoom. I have done many depositions where counsel appears by
8 Zoom. If they don't want to travel down, they don't have to
9 travel down, but I would like my witness to appear as
10 subpoenaed in my office clean with counsel either present
11 physically or by Zoom without assistant or the possibility of
12 assistance from the people who I believe are the people I am
13 trying to prove reverse engineered this software.

14 With regard to the last issue, Judge, again, the
15 individuals were subpoenaed. I still don't hear, even on the
16 record, from Mr. Friedman, a representation from counsel that
17 they will advise these people that they remain under
18 subpoena. Yes, they were subpoenaed a few months ago, there
19 was a motion to quash. The only reason why they didn't
20 appear was because there was a motion to quash. We responded
21 to that motion, the Court heard that motion. The Court ruled
22 on that motion.

23 I have heard ad nauseum how they will use their
24 best efforts. I appreciate that they are going to use their
25 best efforts, but all I am looking for, and I believe there

1 is a difference between using your best efforts to control
2 witnesses to appear and advising, specifically advising,
3 these people who were previously advised that they don't have
4 to appear at the deposition because of the motion to quash,
5 advising them that they remain under subpoena. I cannot get
6 that representation from debtors counsel. That is the fact
7 and the law in this case. So, it's a secondary issue.

8 Thank you, Judge.

9 THE COURT: Is the concern that if they don't
10 advise them that they remain under subpoena -- I guess I am
11 not really understanding the effect of that. Sorry for my
12 lack of understanding but walk me through the practical
13 implication to this secondary issue.

14 MR. AARONSON: Well, I don't know whether it will
15 happen or not, but I don't want to be told that a witness
16 can't appear because its inconvenient, or they no longer are
17 working for Cano and they can't get a hold of them, or the
18 witness doesn't want to attend. I don't want to hear those
19 kinds of things. These people were subpoenaed and if they
20 don't intend to appear they need to do what is appropriate in
21 response to a subpoena. The subpoena lays it out on the
22 second page, as the Court is aware, is exactly what they
23 might do if they are unable to appear, or refuse to appear,
24 or don't want to appear.

25 You know, I appreciate Mr. Friedman's suggestion

1 that they will proceed in good faith. I have no problem with
2 that. I do have a problem with them not advising them that
3 they remain under subpoena. I want the witnesses. They have
4 been subpoenaed. They have been paid and it doesn't hurt to
5 tell them that the subpoena is still valid. I can't get that
6 representation from debtors counsel.

7 THE COURT: Thank you very much.

8 MR. FRIEDMAN: Your Honor, just to confirm a few
9 things because this should be clear on the record. We will
10 absolutely on any Zoom deposition instruct the witness and
11 put on the record that they are in the room by themselves.
12 If Mr. Aaronson would like to make sure they are working off
13 of a single screen that is fine also; however, he would like
14 the room to be set up we are happy to do that.

15 Again, you know, we have ethical obligations to
16 this Court in instructing our witnesses about appropriate
17 procedure during depositions and who can and cannot be in the
18 room and what they can and cannot have in front of them. We
19 take those ethical obligations quite seriously as do our
20 colleagues at RLF who will be defending the depositions. So,
21 I don't think that those are really concerns. Again, I am
22 happy for Mr. Aaronson to confirm all those things with us if
23 he was worried about them, but those are all non-issues.

24 The issue with the subpoenas also is a side show
25 also. We don't agree that they are necessarily, you know,

1 under subpoena right now based on the way they were served or
2 who was served, but we are also not all saying that we are
3 not going to make these witnesses available. Your Honor gave
4 us a choice, one of them was to make the five witnesses
5 available based on Your Honor instructing us that that is
6 what we had to do. We are making the five witnesses
7 available for deposition as I represented already.

8 To the extent there are any issues that arise, I
9 don't anticipate there being any, we will inform Mr. Aaronson
10 immediately and if we can't work it out we will come back to
11 the Court. It seems like we are creating a lot of issues
12 where none really exist. We are just trying to take a
13 pragmatic approach here to do what Your Honor ordered us to
14 do which is to make these five witnesses available for 90-
15 minute depositions each and we would like to do that as soon
16 as possible so that we can have this done and move on.

17 Thank you, Your Honor.

18 THE COURT: All right. Thank you very much.

19 MR. AARONSON: May I have one more reply, Judge?

20 THE COURT: I don't think its necessary. I
21 appreciate everyone's time and effort to try to resolve this
22 issue amicably and then present the issues promptly to me so
23 that I can resolve them. I will start with the fact that I
24 even permitted the depositions in the first place is an
25 unusual circumstance given that we don't actually have a

1 contested matter at this point and I don't know what the
2 scope of the issues are. So, I start with that proposition
3 that I think that the fact that I granted them is highly
4 unusual.

5 So, to balance that I think it is appropriate that
6 the debtors are able to conduct these, I would call them
7 initial depositions, by Zoom. I agree that, of course, there
8 are concerns that -- you know, there's always concerns with
9 respect to who is in the room and monitors and things of that
10 nature. I acknowledge them and that is why my witnesses come
11 in person to Court; however, for depositions Mr. Friedman is
12 right that there are ways to set the room up to confirm that
13 people are not coming into the room and influencing the
14 witnesses. So, if that is truly your concern then you can
15 address those issues with Mr. Friedman and he can make
16 appropriate arrangements to set the room up in a manner that
17 you can confirm that they are not being influenced.

18 My decision with respect to Zoom really does not
19 relate to counsel admittedly. I agree with you that this is
20 the nature of having counsel that are located outside of your
21 territory and that that is just something that is necessary
22 to the representation. But I am concerned about the time and
23 attention taken away from the witnesses of their daily
24 activities. I am cognizant that this is an unusual
25 circumstance and so I do think that its appropriate to try to

1 streamline and decrease the effect on these witnesses at this
2 point in time.

3 If this litigation advances where we are under a
4 briefing schedule and you are conducting fulsome fact
5 discovery then, you know, know I am not too inclined to agree
6 to Zoom depositions absent agreement by all parties but at
7 this initial stage I will allow it.

8 With respect to the secondary issue, I don't
9 really think its an issue at this moment based on Mr.
10 Friedman's representations. If issues arise in the future,
11 although I am not inviting piecemeal conferences with me with
12 respect to this, but I generally don't have them because
13 parties are able to resolve these things on their own and I
14 am confident that you can. So, let's wait and see on that
15 open issue. It sounds as if Mr. Friedman is making every
16 effort to round these witnesses up and get their attendance
17 locked in, in an appropriate time and convenient time. So, I
18 will refrain from making any comments with respect to the
19 second issue. I just don't think its necessary at this
20 point.

21 So, I will leave the parties to meet and confer on
22 the deposition schedule and how the Zoom depositions will
23 take place, but hopefully given that they can be conducted by
24 Zoom it will speed this process up and we can put this matter
25 behind us and get them scheduled fairly prompt and

1 efficiently depending on what the witnesses schedules are.

2 MR. AARONSON: Your Honor, if I may just seek a
3 clarification here. So, this discovery arises in the context
4 of a motion for payment of administrative debt based upon the
5 allegation that the debtors is violating a Court approved
6 stipulation prohibiting the debtor from working with a
7 company like DataRink, who they are now working with, in
8 reverse engineering the software. Its teed up --

9 THE COURT: Its actually not teed up because they
10 have not filed an objection yet and so I don't know what the
11 scope of the disputed issues are which would factor into the
12 relevancy of discovery. So, that is why it goes in a
13 particular order as mandated by the code and the rules. So,
14 based on that observation what is the point of clarification
15 that you need right now.

16 MR. AARONSON: Well, I am trying to determine what
17 I need to do to proceed the hearing. So, what I understand
18 Your Honor is saying that once they file a response we then
19 are going to have, if necessary, a separate discovery
20 schedule and hearing schedule if we're still at issue, is
21 that the correct approach?

22 THE COURT: Well, you have local counsel who can
23 advise you on this and should be advising you on this, but,
24 yes, you would agree on a briefing schedule, so an objection,
25 then the reply deadline and you would need to proceed to

1 whatever the scope of discovery the parties believe they are
2 entitled to and then you would ask for a trial date because
3 this is -- you are, essentially, alleging infringement and as
4 a result of infringement there is a remedy. So, I need to
5 determine if there is infringement. So, to me that is highly
6 complex and I don't do that on a summary schedule. So, you
7 need to meet and confer with counsel.

8 Now, I was given the impression at the last
9 hearing that you had said we are not sure if there actually
10 is infringement, the purpose of these depositions is really
11 to determine whether we need to go forward or not with our
12 motion. So, I was persuaded and I am giving you this
13 opportunity, but that is what these are in my opinion based
14 on your representations at the last hearing.

15 So, the debtors have the right to conduct or I
16 don't know what discovery the debtors would do, but you have
17 to agree on whatever the appropriate scope of discovery would
18 be following the objection.

19 MR. AARONSON: Thank you, Judge. I appreciate it.

20 THE COURT: No problem. So, thank you all very
21 much. I will let you get back to your days. I have another
22 hearing in a few moments. So, we will consider this hearing
23 adjourned. If you need anything further from me, please let
24 me know.

25 MR. FRIEDMAN: Thank you, Your Honor.

1 MR. AARONSON: Thank you, Judge.

2 THE COURT: Take care everyone.

3 (Proceedings concluded at 9:55 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Mary Zajackowski

September 16, 2024

Mary Zajackowski, CET-531

Certified Court Transcriptionist

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