IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Re Docket No. 16, 255**

RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS WITH RESPECT TO THE SALE OF THE DEBTORS' ASSETS

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases of Vyaire Medical, Inc. and its debtor affiliates (collectively, the "Debtors") files this reservation of rights with respect to final approval of the sale of certain of the Debtors' assets and respectfully states as follows:

BACKGROUND

1. On July 11, 2024, the Court entered its *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts,*

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

(VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief [Docket No. 249] (the "Bid Procedures Order").[2]

2. Pursuant to the Bid Procedures Order, the Auction commenced on August 12, 2024. On August 15, 2024, the Debtors filed the *Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Ventilation Assets, (II) Proposed Purchase Agreement in Connection Therewith, and (III) Proposed Sale Order In Connection Therewith* [Docket No. 388] (the "Notice of Successful Vents Bidder"), naming Zoll Medical Corporation ("Zoll") as the Successful Bidder and Vent Portfolio, LLC (and React Health Holdings, LLC as guarantor) (collectively, "React") as the Back-Up Bidder in connection with the sale of the Debtors' Ventilation Assets.

3. On August 20, 2024, the Debtors filed the *Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Respiratory Diagnostics Assets, (II) Proposed Purchase Agreement in Connection Therewith, and (III) Proposed Sale Order in Connection Therewith* [Docket No. 400] (the "Notice of Successful Respiratory Diagnostics Bidder" and, together with the Notice of Successful Vents Bidder, the "Notices of Successful Bidders"), naming Trudell Medical Limited ("Trudell") as the Successful Bidder in connection with the sale of the Debtors' Respiratory Diagnostics Assets.

4. A hearing to approve the sales to Zoll and Trudell is scheduled for August 26, 2024 at 10:00 a.m. (prevailing Eastern Time) [Docket No. 394] (the "Sale Hearing").

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[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Bid Procedures Order or the Notices of Successful Bidders (as defined herein), respectively.

RESERVATION OF RIGHTS

5. The Committee acknowledges that a value-maximizing sale is the best path forward in these chapter 11 cases and, accordingly, the Committee supports the proposed sale of the Debtors' assets. However, the Debtors have not yet provided information about certain key terms of the sales that is essential for the Committee and the Debtors' other stake holders to evaluate the proposed transactions. Accordingly, the Committee hereby reserves its rights to object to the Debtors' proposed asset sales.

6. The Zoll Asset Purchase Agreement provides that Zoll will assume certain liabilities "relating to the non-[t]ax accounts payable outside of the United States" (the "Foreign Accounts Payable").[3] These liabilities include liabilities against certain non-Debtor entities. The Debtors provided some information about these liabilities earlier this week that the Committee is evaluating. To the extent that the Committee determines that the assumption of these liabilities does not benefit the estate, the Committee reserves its rights to object to the Zoll transaction.

7. In addition, the Debtors have not provided the final schedule of contracts that will be assigned to Zoll pursuant to Section 1.5(a) of the Zoll Asset Purchase Agreement. While the Debtors provided an initial draft, the Committee views this information as particularly important to its evaluation of the Zoll transaction in light of the fact that cure costs in excess of $5 million will be deemed Excluded Liabilities and, as a result, the Debtors will be liable for those costs.[4]

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[3] *See* Zoll Asset Purchase Agreement, Sec. 1.1(g). The Committee notes that the Foreign Accounts Payable will be set forth on a schedule to the Zoll Purchase Agreement, but the schedule has not yet been provided.

[4] See Zoll Purchase Agreement, Sec. 1.4(h).

8. Similarly, the Committee has not received certain information about the sale of the Respiratory Diagnostics Assets to Trudell that is essential to the Committee's evaluation. As noted above, the Debtors filed the Notice of Successful Respiratory Diagnostics Bidder on August 20, 2024.[5] The Debtors have not provided schedules to the Trudell Asset Purchase Agreement and, as a result, the Committee is unable to evaluate key terms of the sale. Specifically, the Debtors have not provided Schedule 1.3(b), which will set forth the cure costs that the Debtors must pay to assume and assign executory contracts pursuant to the Bankruptcy Code.

9. In addition, under the Bid Procedures Order and Final DIP Order, the Milestone for consummation of the sale transactions was August 19, 2024.[6] Given the sale closing has extended well beyond the original timeline, the Committee is concerned that the Debtors may not be able to fund the chapter 11 cases through consummation of the sale transactions without additional funding from the DIP Lenders.[7] Accordingly, the Committee requests assurance that the Debtors will have sufficient liquidity to bridge to the consummation of the sales.

10. The Committee appreciates the Debtors' continued transparency and cooperation throughout the sale process and looks forward to continuing to work with the Debtors to effectuate a value-maximizing asset sale. Rather than object to approval of the asset sales, the Committee files this Reservation of Rights to preserve its right to raise an objection to

[5] While the Notice of Successful Respiratory Diagnostics Bidder states that the Debtors and Trudell entered into the Trudell Asset Purchase Agreement, the Committee notes that there were no signature pages attached to the filed version of the Trudell Asset Purchase Agreement.

[6] *See* DIP Credit Agreement, Annex I; Bid Procedures Order, Exh. 1.

[7] Failure to meet any of the Milestones is an Event of Default under the DIP Credit Agreement, unless waived by the DIP Lenders. *See* Final DIP Order, ⁋ 14; DIP Credit Agreement, Sec. 8.01(b).

the Debtors' sales, pending its evaluation of and receipt of the information and assurances described above.

11. The Committee therefore expressly reserves all rights with respect to the sales of the Debtors' assets, including the right to object to final approval thereof.

Dated: August 22, 2024
Wilmington, Delaware

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