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. 496**

EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REQUESTING A STATUS CONFERENCE REGARDING THE ZOLL SALE ORDER AND ASSET PURCHASE AGREEMENT

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases of Vyaire Medical, Inc. and its debtor affiliates (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), setting a status conference with respect to the *Order (I) Approving the Zoll Asset Purchase Agreement and Authorizing the Sale of Certain Ventilation Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [Docket. No. 496] (the "Zoll Sale Order") to address proposed material amendments to the Zoll asset purchase agreement (the "Zoll APA") and to bring to the Court's attention concerns regarding the administrative solvency of the Debtors' estates as a result of the fact that transaction approved

[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.

through the Zoll Sale Order has not yet closed. In support of this Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. The United States District Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Committee confirms its consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection 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 basis for the relief requested herein is section 105(d)(1) of title 11 of the United States Code (the "Bankruptcy Code").

BACKGROUND

I. General Background

4. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 11, 2024, the Court entered an order authorizing the procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 1015-1. No request for the

appointment of a trustee or examiner has been made in these Chapter 11 Cases as of the date hereof.

5. On June 26, 2024, the Office of the United States Trustee for Region 3 (the "U.S. Trustee") appointed the Committee.[2] The members of the Committee are: (a) Sunmed Group Holdings, LLC (d/b/a AirLife); (b) Zensar Technologies Inc.; (c) Cognizant Worldwide Ltd.; (d) Presidio; (e) Vizient, Inc.; (f); David M. Lewis Company; and (g) Data Modul, Inc.

II. Relevant Background

6. On July 11, 2024, the Court entered the *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, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No, 249] (the "Bid Procedures Order").

7. On August 15, 2024, in accordance with the terms of the Bid Procedures Order, the Debtors filed a notice indicating that Zoll Medical Corporation ("Zoll") was the successful bidder for the Debtors' ventilation business and related assets.[3]

8. On August 22, 2024, the Committee filed the *Reservation of Rights of the Official Committee of Unsecured Creditors with Respect to the Sale of the Debtors' Assets* [Docket No. 437] (the "Reservation of Rights"). In the Reservation of Rights, the Committee noted that it had yet to receive certain key information related to the sale transactions, including

[2] *See* Docket No. 121.

[3] *See* Docket No. 388.

information related to, among other things, the proposed payment of claims against certain foreign non-Debtor affiliates (which the Debtors proposed to pay using DIP Facility[4] funds), the final list of executory contracts and unexpired leases to be assumed and assigned to Zoll under the Zoll APA, and certain of the schedules to the Zoll APA.[5]

9. On August 29, 2024, the Committee filed its *Supplemental Reservation of Rights and Limited Objection of the Official Committee of Unsecured Creditors With Respect to the Sale of the Debtors' Assets* [Docket No. 480] (the "Limited Objection," and together with the Reservation of Rights, the "Committee Objections"), in which the Committee raised concerns relating to, among other things, the ability of the Debtors to satisfy administrative expenses in full, including administrative expenses arising by virtue of prepetition creditors providing goods and services on a postpetition basis.

10. The sale hearing commenced in earnest on August 30, 2024 (the "Sale Hearing"), during which the Court heard testimony from the Debtors' Chief Restructuring Officer ("CRO") and arguments made by the Debtors and the Committee. At the conclusion of the Sale Hearing, the Court approved the Debtors' entry into the Zoll APA, and on September 4, 2024, the Court entered the Zoll Sale Order.[6]

11. As the Debtors' CRO testified at the Sale Hearing, the Zoll sale transaction was anticipated to close during the week of October 4, 2024 and the Trudell sale transaction was

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[4] The "DIP Facility" means the debtor in possession financing approved pursuant to the order entered at Docket No. 248.

[5] *See* Reservation of Rights, ¶¶ 5-8.

[6] A draft version of the APA was filed at Docket No. 388-1. An executed version of the Zoll APA was never filed with the Court.

scheduled to close on October 18, 2024.[7] Subsequently, the Committee was informed that the closing of the Trudell sale transaction would not occur until mid-November 2024 and, the Committee learned this past Monday that the Zoll sale transaction is now expected to close on October 11, 2024. Further, upon information and belief, the Debtors and Zoll are in the process of negotiating numerous material modifications to the Zoll APA and related schedules.

RELIEF REQUESTED

12. By this Motion, the Committee requests that this Court set a status conference, as soon as the Court's calendar permits, pursuant to section 105(d) of the Bankruptcy Code to discuss the modifications to the Zoll APA and the closing of the Zoll sale transaction.

BASIS FOR REQUESTED RELIEF

13. Section 105(d) of the Bankruptcy Code provides that "[t]he court, on its own motion or on the request of a party in interest – (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case." 11 U.S.C. § 105(d)(1) (emphasis added).

14. Based on the circumstances outlined above, the Committee requests that the Court schedule a status conference pursuant to section 105(d) of the Bankruptcy Code to discuss the matters outlined in the Motion, as soon as the Court's calendar permits.

NO PRIOR REQUEST

15. No previous request for the relief sought herein has been made by the Committee to this or any other Court.

[7] *See* Aug. 30, 2024 Hr'g Tr. 28:9-10, *In re Vyaire Medical, Inc., et al.* (Bankr. D. Del.) ("Witness: So the first sale is scheduled to close in week 7, October 4th."); *see also id.*, 51:6-7 ("Q: What is the significance of October 18th? A: That's the anticipated close date for the RDx transaction with Trudell.").

Dated: October 8, 2024
Wilmington, Delaware

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