

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

In re:	) Chapter 11
	)
VYAIR MEDICAL, INC., <i>et al.</i> , ¹	) Case No. 24-11217 (BLS)
	)
	) (Jointly Administered)
Debtors.	)
	) Obj. Deadline: 10/22/24 at 4:00 p.m. (ET)
	) Hrg. Date: <i>Only if an objection is filed</i>

**SUMMARY OF SECOND MONTHLY FEE APPLICATION OF
MCDERMOTT WILL & EMERY LLP, COUNSEL TO THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE
PERIOD FROM AUGUST 1, 2024 THROUGH AUGUST 31, 2024**

Name of Applicant:	MCDERMOTT WILL & EMERY LLP
Authorized to provide professional services to:	Official Committee of Unsecured Creditors of Vyair Medical, Inc., <i>et al.</i>
Date of retention:	July 30, 2024, effective June 28, 2024
Period for which compensation and reimbursement are sought:	August 1, 2024 through August 31, 2024
Amount of compensation sought as actual, reasonable, and necessary:	\$429,504.32 (80% of \$536,880.40)
Amount of reimbursement sought as actual, reasonable, and necessary:	\$1,664.69
This is a:	Monthly Fee Application

The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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.

Prior Monthly Applications:

MONTHLY FEE APPLICATION			REQUESTED FEES AND EXPENSES		APPROVED FEES AND EXPENSES		HOLDBACK
Application Docket No. Date Filed	CNO Date Filed Docket No.	Period Covered	Requested Fees	Requested Expenses	Approved Fees (80%)	Approved Expenses (100%)	Fees Holdback (20%)
First Monthly D.I. 402 8/21/24	9/16/24 D.I. 525	6/28/24- 7/31/24	\$738,990.00	\$3,295.01	\$591,192.00	\$3,295.01	\$147,798.00
Total			\$738,990.00	\$3,295.01	\$591,192.00	\$3,295.01	\$147,798.00

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*
SUMMARY OF BILLING BY PROFESSIONAL
AUGUST 1, 2024 THROUGH AUGUST 31, 2024**

Name of Professional Person	Date of Bar Admission	Position with the Applicant and Practice Area	Hourly Billing Rate²	Total Billed Hours	Total Compensation
Kristin K. Going	2002	Partner; Corporate Advisory	\$1,750	15.3	\$26,775.00
David R. Hurst	1998	Partner; Corporate Advisory	\$1,750	56.8	\$99,400.00
Darren Azman	2011	Partner; Corporate Advisory	\$1,650	28.3	\$46,695.00
Maris J. Kandestin	2004	Partner; Corporate Advisory	\$1,650	75.3	\$124,245.00
William Hadler	2008	Partner; Corporate Advisory	\$1,575	4.9	\$7,717.50
Kelly D. Newsome	2015	Partner; White Collar & Securities	\$1,525	50.9	\$77,622.50
Riley Orloff	2015	Partner; Corporate Advisory	\$1,525	4.5	\$6,862.50
Kevin M. Regan	2018	Partner; Trial	\$1,350	21.5	\$29,025.00
Nick W. Greiner	2018	Associate; Corporate Advisory	\$1,245	4.9	\$6,100.50
Carole Wurzelbacher	2015	Associate; Corporate Advisory	\$1,245	55.4	\$68,973.00
Kristin E. Schwam	2020	Associate; White Collar & Securities	\$1,200	41.1	\$49,320.00

² Except as set forth below, the rate represents the current standard hourly rate of each McDermott attorney and paralegal who rendered legal services.

Name of Professional Person	Date of Bar Admission	Position with the Applicant and Practice Area	Hourly Billing Rate ²	Total Billed Hours	Total Compensation
Marissa L. Hill Daley	2017	Associate; Healthcare	\$1,155	1.6	\$1,848.00
Jesse E. Douglas	2020	Associate; Corporate Advisory	\$1,155	2.4	\$2,772.00
Benjamin Glass	2023	Associate; Corporate Advisory	\$925	7.3	\$6,752.50
Rebecca E. Trickey	2022	Associate; Corporate Advisory	\$925	43.0	\$39,775.00
Matthew G. Gibson	N/A	Law Clerk; Trial	\$805	29.3	\$23,586.50
Daniel D. Northrop	N/A	Paralegal; Corporate Advisory	\$745	5.0	\$3,725.00
Edward Y. Kwon	N/A	Technology Project Manager	\$570	5.7	\$3,249.00
Nolley M. Rainey	N/A	Paralegal; Corporate Advisory	\$500	11.0	\$5,500.00
Fिताlesh G. Belayneh	N/A	Litigation Technology Data Analyst	\$280	1.5	\$420.00
Andy Garcia	N/A	Litigation Technology Data Analyst	\$280	3.0	\$840.00
Daniel Valentino	N/A	Litigation Technology Data Analyst	\$280	1.5	\$420.00
Total				470.2	\$631,624.00
Less 15% Client Accommodation³					\$94,743.60
ADJUSTED TOTAL					\$536,880.40

Blended Rate: \$1,141.81⁴

³ As an accommodation to the Committee, McDermott has agreed to discount the amount of its monthly invoices by an amount equal to 15% of the aggregate fees requested in each such invoice.

⁴ The blended rate was calculated by dividing the adjusted total fees sought by the aggregate number of hours worked by McDermott Professionals.

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*
SUMMARY OF FEES BY PROJECT CATEGORY
AUGUST 1, 2024 THROUGH AUGUST 31, 2024**

Project Category	Total Hours	Total Fees
Case Administration	10.2	\$8,067.50
Asset Disposition	145.5	\$209,060.50
Meetings and Communications with Creditors	39.1	\$52,473.00
Court Hearings	60.6	\$87,421.50
Fee and Employment Applications	14.9	\$23,051.50
Contested and Litigation-Related Matters	183.5	\$226,169.00
Non-Working Travel	3.2	\$5,600.00
Financing/Cash Collateral	12.7	\$18,906.00
Plan/Disclosure Statement	0.5	\$875.00
Total	470.2	\$631,624.00
Less 15% Client Accommodation⁵		\$94,743.60
ADJUSTED TOTAL		\$536,880.40

⁵ As an accommodation to the Committee, McDermott has agreed to discount the amount of its monthly invoices by an amount equal to 15% of the aggregate fees requested in each such invoice.

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*
SUMMARY OF EXPENSES
AUGUST 1, 2024 THROUGH AUGUST 31, 2024**

Expense Category	Service Provider (if applicable)	Total Expenses
Outside Service	Reliable	\$910.65
Court Filing Fees		\$100.00
Transportation	Various	\$654.04
TOTAL		\$1,664.69

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

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., <i>et al.</i> , ¹	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)
	)	Obj. Deadline: 10/22/24 at 4:00 p.m. (ET)
	)	Hrg. Date: <i>Only if an objection is filed</i>

**SECOND MONTHLY FEE APPLICATION OF MCDERMOTT
WILL & EMERY LLP, COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, FOR ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
FROM AUGUST 1, 2024 THROUGH AUGUST 31, 2024**

McDermott Will & Emery LLP (the “Applicant” or “McDermott”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Vyair Medical, Inc., *et al.*, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby applies (the “Application”), pursuant to sections 330 and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for allowance of compensation for services rendered and expenses incurred for the period from August 1, 2024 through August 31, 2024 (the “Application Period”), and respectfully represents as follows:

¹ The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider the Application 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. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 330 and 331, Bankruptcy Rule 2016, and Local Rule 2016-2.

3. McDermott confirms its consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with the Application in the event 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.

BACKGROUND

A. The Chapter 11 Cases

4. On June 9, 2024 (the “Petition Date”), the Debtors commenced the Chapter 11 Cases by filing petitions for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

5. On June 26, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee under section 1102(a)(1) of the Bankruptcy Code. *See* Docket No. 121.

B. The Committee's Retention of McDermott

6. On July 9, 2024, the Committee applied [Docket Nos. 215] to the Court for an order authorizing the Committee to retain and employ McDermott as its counsel, effective as of June 28, 2024. On July 30, 2024, the Court entered an order [Docket No. 336] authorizing such retention.

C. The Interim Compensation Order

7. On July 9, 2024, the Court entered the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 218] (the “Interim Compensation Order”),² which sets forth the procedures for interim compensation and reimbursement of expenses in the Chapter 11 Cases. Specifically, the Interim Compensation Order provides that a retained professional may file and serve a Monthly Fee Statement on or after the twenty-first (21st) day of each month following the month for which compensation is sought. Provided that there are no objections to the Monthly Fee Statement filed within twenty-one (21) days after the service of a Monthly Fee Statement, the professional may file a certificate of no objection with the Court, after which the Debtors are authorized to pay such professional eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses requested in such Monthly Fee Statement.

RELIEF REQUESTED

8. By this Application, McDermott requests the allowance of \$429,504.32, which is equal to eighty percent (80%) of the \$536,880.40 in fees for professional services rendered by

² Capitalized terms used but not defined herein shall have the meanings ascribed to such items in the Interim Compensation Order.

McDermott during the Application Period.³ McDermott also requests reimbursement of \$1,664.69 in expenses incurred during the Application Period in connection with its engagement by the Committee.

DESCRIPTION OF SERVICES RENDERED

9. During the Application Period, McDermott professionals, including attorneys and paraprofessionals (collectively, the “McDermott Professionals”), devoted 470.2 hours to, among other things, contested and litigation-related matters, sale matters, preparation for and attendance at Court hearings, communications with the Committee and other creditors, preparation of professional fee applications, financing and use of cash collateral, and case administration matters. McDermott Professionals’ most significant work in these matter categories is summarized below, and all work performed by McDermott Professionals is described in detail in **Exhibit A** hereto, which provides a detailed itemization, by project category, of all services performed by McDermott Professionals with respect to the Chapter 11 Cases during the Application Period. This detailed itemization complies with Local Rule 2016-2(d) in that each time entry contains a separate time allotment, a description of the type of activity, and the subject matter of the activity, all time is billed in increments of one-tenth of an hour, time entries are presented chronologically in categories, and all meetings or hearings are individually identified.

A. Contested and Litigation-Related Matters **Amount Sought: \$ 226,169.00**

10. During the Application Period, McDermott Professionals continued the Committee’s investigation into potential causes of action against the Debtors’ directors and officers and lender parties. Among other things, McDermott Professionals (i) provided multiple

³ These figures reflect a 15% voluntary fee reduction provided by McDermott to the Committee as a client accommodation.

discovery requests to the Debtors and lender parties, (ii) met and conferred with the discovery parties as appropriate to better coordinate production of discovery, (iii) reviewed materials produced in connection with the discovery requests, (iv) met with Cole Schotz, LLP (“Cole Schotz”) to discuss the results of Cole Schotz’s investigation, and (v) coordinated with the Committee’s other professionals regarding the ongoing investigation.

11. McDermott Professionals devoted a total of 183.5 hours to contested and litigation-related matters during the Application Period, for which compensation in the amount of 226,169.00 is sought.

B. Asset Disposition
Amount Sought: \$209,060.50

12. During the Application Period, McDermott Professionals devoted substantial time to the sale of the Debtors’ assets through the auction that took place during the week of August 12, 2024 (the “Auction”). McDermott Professionals reviewed and analyzed the proposed bids submitted by prospective buyers, and then attended and monitored the Auction. Following the Auction, McDermott Professionals met with the Debtors’ professionals to discuss the finalized asset purchase agreements and expressed concerns about certain terms of the proposed sale orders. As a result, McDermott Professionals ultimately prepared and filed both a reservation of rights [Docket No. 437] and a supplemental reservation of rights and limited objection [Docket No. 480] (the “Sale Order Objection”).

13. McDermott Professionals devoted a total of 145.5 hours to sale matters during the Application Period, for which compensation in the amount of \$209,060.50 is sought.

C. Court Hearings
Amount Sought: \$87,421.50

14. During the Application Period, McDermott Professionals prepared for and attended the August 26, 2024 and August 30, 2024 hearings. Significant preparation was needed

for these hearings in order for McDermott Professionals to prosecute the Committee's Sale Order Objection, with such preparation including meetings with parties in interest, review of the evidence, and preparation for cross examination of a witness at the August 30, 2024 hearing.

15. McDermott Professionals devoted a total of 60.6 hours to preparation for and attendance at Court hearings during the Application Period, for which compensation in the amount of \$87,421.50 is sought.

D. Meetings and Communications with Creditors
Amount Sought: \$52,473.00

16. During the Application Period, McDermott Professionals prepared for and conducted regular Committee meetings and communicated with the Committee members and their counsel both as a group and on an individual basis. Among other things, McDermott Professionals provided recommendations to the Committee regarding various requests of the Debtors and other parties in interest, counseled the Committee in connection with the Committee's responses to the Debtors' pleadings, and delivered email updates regarding case updates and various outstanding matters. McDermott Professionals also coordinated with the Committee's financial advisor to prepare for weekly Committee calls by preparing, discussing, and reviewing Committee presentations on topics such as the Debtors' operations and finances and case strategy.

17. McDermott Professionals devoted a total of 39.1 hours to communications with the Committee and other creditors (and related tasks) during the Application Period, for which compensation in the amount of \$52,473.00 is sought.

E. Fee and Employment Applications
Amount Sought: \$23,051.50

18. During the Application Period, McDermott Professionals began to draft and revise McDermott's first monthly fee application.

19. McDermott Professionals devoted a total of 14.9 hours to the preparation of professional fee and retention applications during the Application Period, for which compensation in the amount of \$23,051.50 is sought.

**F. Financing/Cash Collateral
Amount Sought: \$18,906.00**

20. During the Application Period, McDermott Professionals continued their lien perfection analysis and the preparation of a related memorandum. McDermott Professionals also reviewed and analyzed the Debtors' financial reporting and liquidity updates provided by the Committee's other professionals.

21. McDermott Professionals devoted a total of 12.7 hours to cash collateral and financing matters during the Application Period, for which compensation in the amount of \$18,906.00 is sought.

**G. Case Administration
Amount Sought: \$8,067.50**

22. During the Application Period, McDermott Professionals devoted time to, among other things: (i) monitoring the Court's docket for case updates and deadlines; (ii) preparing for and participating in conferences with case professionals; and (iii) corresponding with the Debtors, the Committee, and other parties in interest regarding case status, pending motions, and case administration issues.

23. McDermott Professionals devoted a total of 10.2 hours to case administration matters during the Application Period, for which compensation in the amount of \$8,067.50 is sought.

**DESCRIPTION OF ACTUAL, REASONABLE,
AND NECESSARY EXPENSES INCURRED**

24. During the Application Period, McDermott incurred actual, reasonable, and necessary expenses in connection with its engagement by the Committee in the aggregate amount of \$1,664.69, for which McDermott seeks reimbursement. Attached hereto as **Exhibit B** are descriptions of the expenses actually incurred by McDermott in the performance of services rendered as counsel to the Committee. The expenses are broken down into categories of charges, including, among other things, the following charges: travel expenses, business meals, service and hearing binder expenses, and certain other non-ordinary expenses.⁴

VALUATION OF SERVICES

25. McDermott Professionals have expended a total of 470.2 hours in connection with this matter during the Application Period. The amount of time spent by each of the McDermott Professionals providing services to the Committee during the Application Period is set forth in **Exhibit A**. The rates reflected in this Application are McDermott's normal hourly rates of compensation for work of this character. The reasonable value of the services rendered by McDermott during the Application Period as counsel for the Committee in the Chapter 11 Cases is \$536,880.40.⁵

26. In accordance with the factors enumerated in Bankruptcy Code section 330, McDermott submits that the amount requested is fair and reasonable given (a) the complexity of the Chapter 11 Cases, (b) the time expended, (c) the nature and extent of the services rendered,

⁴ In accordance with Del. Bankr. L.R. 2016-2(e)(iii), McDermott does not charge more than \$0.10 per page for photocopies, does not charge for incoming facsimile transmissions, and does not charge more than \$0.25 per page for outgoing facsimiles.

⁵ This figure reflects a 15% voluntary fee reduction provided by McDermott to the Committee as a client accommodation.

(d) the value of such services, and (e) the costs of comparable services other than in a case under the Bankruptcy Code.

NO PRIOR REQUEST

27. No prior request for the relief requested in this Application has been made to this Court or any other court.

CERTIFICATE OF COMPLIANCE AND REQUEST FOR WAIVER

28. The undersigned representative of McDermott certifies that he has reviewed the requirements of Local Rule 2016-2 and that the Application substantially complies with that Local Rule. To the extent that the Application does not comply in all respects with the requirements of Local Rule 2016-2, McDermott believes that such deviations are not material and respectfully requests that any such requirement be waived.

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WHEREFORE, McDermott respectfully requests that it (a) be allowed (i) compensation in the amount of \$429,504.32 (80% of the \$536,880.40) for necessary professional services rendered to the Committee during the Application Period, and (ii) reimbursement of actual and necessary expenses in the amount of \$1,664.69 incurred during that period, and (b) be granted such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
October 1, 2024

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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