UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11 Case No. 24-11217 (BLS)
VYAIRE MEDICAL, INC, *et al.*,	Jointly Administered
Debtors.	Courtroom No. 1 824 North Market Street Wilmington, Delaware 19801
	Thursday, November 14, 2024 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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For the U.S. Trustee:	Benjamin Hackman, Esquire OFFICE OF THE UNITED STATES TRUSTEE 844 King Street, Suite 2207 Lockbox 35 Wilmington, Delaware 19801
For the Committee:	Kristin Going, Esquire MCDERMOTT WILL & EMERY LLP One Vanderbilt Avenue New York, New York 10017

(Proceedings commenced at 10:03 a.m.)

THE COURT: Good morning, all. This is Judge Shannon. I understand from the court reporter that necessary parties have joined.

This is a hearing in the matter of Vyaire Medical which is Case No. 24-11217. Specifically, this I the time that the Court has set for consideration of the debtors joint plan and the request for confirmation.

Upon request of counsel, the Court has agreed to conduct today's hearing via Zoom. I understand that we have the affiants that are identified in the agenda and the materials are participating remotely.

I will hear first from counsel for the debtor.

MR. REILLEY: Good morning, Your Honor. Patrick Reilley from Cole Schotz on behalf of the debtors.

Your Honor, I am joined on the Zoom by my co-counsel, Spencer Winters, who is from Kirkland, and my colleagues from Cole Schotz, Warren Usatine and Matteo Percontino. Also on the Zoom, Your Honor, is Charles Braley, the debtors chief restructuring officer, and Paul Deutch from Omni, the debtors' claim and noticing agent. And as Your Honor noted, both Mr. Deutch and Mr. Braley are declarants for today's hearing.

Your Honor, the only matter going forward is confirmation. We have resolved all objections to confirmation and we believe we will be presenting uncontested confirmation of the debtors plan. Mr. Percontino, from Cole Schotz, will be presenting confirmation but before turning to the plan I would like to turn the podium over to Mr. Winters to first say a few words to the Court and then turn to Mr. Percontino.

Thank you, Your Honor.

THE COURT: Very good. Thank you, Mr. Reilley.

Mr. Winters, good morning. Good to see you.

MR. WINTERS: Good to see you as well, Your Honor. Spencer Winters of Kirkland & Ellis LLP on behalf of the debtors.

Your Honor, I will be very brief before turning the podium over to Mr. Percontino. Cole Schotz has led the disclosure statement and plan workstream and they are going to lead the winddown project and ultimately assist with wrapping up the cases. But I did want to briefly rise to note how far we have come in these Chapter 11 cases and to make a couple of acknowledgements.

As the Court will recall, we first filed these Chapter 11 cases about five months ago. Easy for me to remember because it was less then a week after my daughter was born. The debtors had under $1.7 million of cash at that time. We had no buyer for either the ventilator business or the respiratory diagnostics business. And we had a 22-day milestone to either find a buyer or pivot to a total liquidation of the business.

Things look a lot better today then they did five months ago. As I previously said, no one is celebrating the stark economic realities of the situation. I think when I last said that the Court mentioned a famous play that Ms. Lincoln attended but in all seriousness the outcome is excellent under the very challenging circumstances that we found ourselves in here.

We did find a buyer for the ventilator business and that sale closed on October 11th and it was truly a relief when that one closed because that was the business that housed those highly sensitive products that we talked about at the first day hearing and throughout the cases. We also found a buyer for the respiratory diagnostics division and that sale closed on Tuesday of this week.

We are now here presenting an uncontested confirmation order to the Court. The hard work and dedication of a lot of people made that possible, obviously the Court and its staff, the creditors committee, the secured lender group, the U.S. Trustee, other parties in interest, all their advisors. It also includes the purchasers, both the two that ultimately bought the divisions and the bidders that participated in the process, and it includes the management team who have fought every day to help bring about this result and the company's board of directors and special committee. It was a very challenging situation, Your Honor, but ultimately, we got to the right place.

That is all I have. Unless the Court has any questions, I will yield the podium to Mr. Percontino.

THE COURT: No, Mr. Winters, I do not have questions. I was -- I am gratified to see the second sale that closed this week. I know that, basically, the sale transactions were moving in tandem with the plan and disclosure process so I appreciate that report and update.

With that I would be happy to hear from Mr. Percontino. Good morning, sir.

MR. WINTERS: Thank you, Your Honor.

MR. PERCONTINO: Good morning, Your Honor. Can you hear me okay?

THE COURT: I sure can.

MR. PERCONTINO: Great. Matteo Percontino from Cole Schotz, co-counsel to the debtors and debtors-in-possession.

Your Honor, on November 13th the debtors filed the second amended agenda which is at Docket 738. And as my colleagues mentioned, we are here on one item which is confirmation of a plan and final approval of the disclosure statement. Unless Your Honor has any initial questions, I would like to first move into evidence the two declarations the debtors submitted in support of the disclosure statement and plan.

The first being the declaration of Charles Braley, the debtors chief restructuring officer, which is filed at Docket No. 721. Mr. Braley is on the Zoom and available for cross. And unless any questions or -- unless anyone has any questions, the debtors would respectfully request that Mr. Braley's declaration be admitted into evidence as his testimony and support of the plan and disclosure statement.

THE COURT: Very good. I would ask if there are any objections to the admission of Mr. Braley's declaration as part of the debtors case in chief for confirmation of their plan as well as final approval of the disclosure statement.

(No verbal response)

THE COURT: Very well. Hearing no objection, Mr. Braley's declaration is admitted.

(Braley declaration received into evidence)

THE COURT: I would ask at this point is there any party that intends or expects to cross-examine Mr. Brady regarding the contents of his declaration?

(No verbal response)

THE COURT: Hearing no response, Mr. Braley's declaration is admitted without contradiction.

Mr. Percontino, you may proceed.

MR. PERCONTINO: Thank you, Your Honor. Next is the declaration of Paul Deutch of Omni, the debtors claims and administrative agent, setting forth the voting report which is filed at Docket No. 712. Your Honor, Mr. Deutch is on the Zoom as well and available for cross. Unless there are any questions, we would respectfully request that his declaration also be admitted into evidence.

THE COURT: Very good. Good morning, Mr. Deutch. Its good to see you again.

I would ask fi there are any objections to the admission of Mr. Deutch's declaration, which is the balloting declaration, again, as part of the debtors case in chief for purposes of confirmation of the plan.

(No verbal response)

THE COURT: Hearing no response, Mr. Deutch's declaration is admitted.

(Deutch declaration received into evidence)

THE COURT: Is there any party that intends or expects to cross-examine Mr. Deutch regarding the contents of his declaration?

(No verbal response)

THE COURT: Very well. Hearing no response Mr. Deutch's declaration is likewise admitted without contradiction. Thank you, sir.

MR. PERCONTINO: Thank you, Your Honor. Your

Honor, as was mentioned earlier, the debtors commenced these cases approximately five months ago in June and missed a liquidity crunch to effectuate both the sale of its ventilation and respiratory diagnostics business. The Chapter 11 filing was supported by a majority of the first lien lenders, second lien lenders, the sponsor, through the execution of a restructuring support agreement by which the parties agree to support the continuation of the debtors sale process for a limited period of time and to effectuate the orderly winddown of the debtors estates to a confirmation of a Chapter 11 winddown plan.

Following the marketing process, the debtors held a three-day auction in August which openly resulted in naming ZOLL Medical as the successful bidder for the ventilation business and Trudell Medical as the successful bidder for the debtors respiratory diagnostic business. As was mentioned earlier, again, the ZOLL sale closed on October 11th and the Trudell sale closed a couple days ago on November 12th.

As a result of these sales, approximately $90 million in cash consideration was received plus the assumption of certain liabilities as set forth in those asset purchase agreements. In addition, approximately 790 of the approximately 935 employees employed at the start of these cases had been transitioned to one of those buyers and many of the vendor relationships were salvaged in the process.

Last, the debtors were able to maintain business continuity for many (indiscernible) products.

We are now here before Your Honor on the final step in the restructuring process to confirm the debtors winddown plan which will allow the debtor to serve as the debtors transition services obligations to the buyers, and efficiently and effectively winddown the debtors and non-debtor affiliates.

Your Honor, the disclosure statement, second amended plan, and proposed confirmation order are the culmination of extensive negotiations and agreements among the major stakeholders which have resulted in our being here on a fully consensual basis. Although the negotiations with various constituencies were sometimes hard-fought, they were very productive and we would like to thank all parties involved for contributing to the success of these cases including the lenders, the sponsor, the committee, and the Office of the U.S. Trustee, among others.

We are now requesting the Court approve the disclosure statement on a final basis which appears at Docket 582 and to confirm the debtors second amended plan which appears at Docket 719. In support of approval of the disclosure statement and confirmation, in addition to the declarations already submitted into evidence, the debtors filed their confirmation brief at Docket No. 722 --

THE COURT: I have it.

MR. PERCONTINO: -- which sets out the basis -- great, Your Honor, appreciate that -- which sets out the basis as to why the debtors believe standards under the code have been met. The debtors also filed a plan supplement at Docket No. 689 which, among other things, identified the debtors independent director, David Barse, as the proposed plan administrator and attached the proposed administrator agreement.

The plan supplement was subsequently amended at Docket No. 720 to remove (indiscernible) causes of action as part of the committee settlement that I will discuss shortly. I also note that the plan solicitation packages were served in accordance with the solicitation procedures order and the relevant affidavit of service can be found at Docket No. 707.

On November 13th, 2024 the debtors filed the revised proposed confirmation order which appears at Docket No. 737. The edits there are generally minor cleanups and some edits from the U.S. Trustee which are consistent with the plan language and one edit from the DIP lender which simply preserves consent rights that are set forth in the plan itself.

Your Honor, the second amended plan and revised confirmation order also resolves the U.S. Trustees confirmation objection filed at Docket No. 705 and reflects the resolutions reached on informal comments from various parties in interest including, among others, the committee, the DIP lenders, the first lien agent and certain insurers. With respect to the committee, to achieve consensus the debtors engaged in good faith arm's length negotiations resulting in a comprehensive settlement which is embodied in the second amended plan.

In summary, it provides for four things. The first is a reserve or approximately $3 million for payment of allowed administrative claims. Second, a residual recovery pool that provides for potential recovery of the greater of $250,000 or the excess of funds in a professional fee escrow account following the satisfaction of the debtors winddown obligations all as more fully set forth in the plan and proposed order. Third, the debtors release of Section 547 preference claims. Fourth, certain treatment for the debtors vendors who are continuing to serve as the purchasers under transition services agreements.

Further, as shown in the Deutch declaration, all votes on the plan were solicited after the Court entered the procedures order on October 2nd, 2024 which is Docket No. 596. And as reflected therein, the votes in Class IV and V are overwhelmingly in support of the plan and there were, in fact, no votes rejecting the plan.

In summary, the debtors submit that the plan is the best outcome for the debtors, their estates and all constituencies effected by these Chapter 11 cases. It allows the debtors to continue supporting the distribution of life enhancing medical devises and equipment through the provision of transition services to the purchasers and further provides a mechanism to winddown the debtors and their non-debtor affiliates in an orderly cost-efficient manner through a plan administrator and subject to an agreed to winddown budget.

Your Honor, with regard to the requirements of 1125, the debtors now believe that there aren't any facts in dispute and there has been no objections with respect to those requirements. So, unless Your Honor has any specific questions or concerns, the debtors intend to rely on the declaration submitted into evidence in the brief in support.

THE COURT: I do not have questions at this point, Mr. Percontino.

MR. PERCONTINO: Great. Your Honor, to close, as wet forth in the confirmation brief, the debtors believe that the disclosure statement contains adequate information as required by Section 1125 of the Code and satisfied the applicable notice requirements. The plan satisfies each of the requirements of Section 1125 of the Code.

With this, Your Honor, the debtors would respectfully request entry of the proposed confirmation order approving the disclosure statement on a final basis and confirmation of the debtors second amended plan. Thank you for your time.

THE COURT: Thank you, Mr. Percontino.

I would like to hear from the committee, please. Ms. Going, good to see you again.

MS. GOING: Good to see you too, Your Honor. Kristin Going on behalf of the committee.

I know Your Honor hasn't seen much of us in this case but that certainly doesn’t mean that there wasn't anything going on. In fact, as you have heard, this was an extremely difficult case for all stakeholders. I am not going to sugarcoat it, this debtor really teetered on administrative insolvency literally every day.

I want Your Honor to know that there was also a very active and invested committee in this case made up of vendors who often felt that they were financing this debtor through their continued support by providing goods and services post-petition. Now that is why I am so very pleased to be here supporting a fully consensual plan.

I also really want to acknowledge the efforts of Mr. Salloum from Kirkland & Ellis because without him I do believe that we would be in a very different place. He gave significant time and attention to this case and to structuring the settlement and negotiations. I personally am very grateful for his work and his efforts. And it's because of that that we are before you with a true win, win result.

Mr. Percontino provided the highlights of what the settlement provides for unsecured creditors and I just want to make one further point. On the key terms of the settlement there is a process whereby vendors will either be identified as necessary for transition services agreements or have their contracts rejected.

With that, unless Your Honor has any questions for me, I will conclude by saying the committee supports confirmation of the current second amended plan.

THE COURT: Thank you very much, Ms. Going. I have no further questions for the committee.

I would like to hear from the United States Trustee just to confirm that all their concerns are resolved. Mr. Hackman, as always, good morning. Good to see you.

MR. HACKMAN: Good morning, Your Honor. May I please the Court, its Ben Hackman for the U.S. Trustee.

Can Your Honor hear me okay?

THE COURT: I sure can.

MR. HACKMAN: Thank you, Your Honor. I confirm that our limited objection, filed at Docket Item 705, is fully resolved. We do not oppose entry of the confirmation order and like Ms. Going, I thank debtors counsel for working with us to resolve our concerns.

Thank you, Your Honor.

THE COURT: Very good. I would ask if anyone else wishes to be heard with respect to the debtors request for an order confirming the plan as well as providing for final approval of the disclosure statement.

(No verbal response)

THE COURT: Very good. I will grant the relief requested by the debtor. Given the resolution of any pending objections or open issues I am not going to burden the record with extensive findings. I note, as Mr. Percontino walked through the record that the debtor developed that we have admitted today two separate declarations.

Mr. Deutch's declaration, which is the balloting certification, which shows overwhelming support from those classes entitled to vote which were Classes IV and V. Clearly from Mr. Deutch's declaration, again which has been admitted without contradiction, the debtors have carried their burden under Section 1126 to demonstrate sufficient creditor support through the suffrage process to permit and win information.

Likewise, the Court admitted the Braley declaration which lays out with particularity both the factual predicate for the debtors plan and the circumstances of this case as well as the relevant 1129 and 1123 standards and identifies how those standards have been met or how they do not apply to this particular case.

I note that the Court has previously approved, on an interim basis, the disclosure statement by order dated October 2nd, appearing at Docket No. 596, which laid out preliminary approval of the disclosure statement as well as laying out the solicitation process to get us to today. I note that a review of the docket reflects scrupulous compliance with the requirements and timeline set forth in that disclosure statement.

Based upon the record before me, considering in particular the lack of any objection to the disclosure statement, and the unalloyed support of the creditors committee for approval of the plan I am satisfied that the debtors have carried their burden under Bankruptcy Code Section 1125 for entry of a final order finding that the disclosure statement contains information adequate to permit a hypothetical stakeholder to make an informed decision to vote for or against the plan. I note, again, with Mr. Deutch's declaration that the Court's confidence in the disclosure statement is supported, frankly, by, again, the overwhelming results of the balloting process that was obtained here.

That brings, again, to the debtors request for confirmation. I appreciate getting in advance of today's hearing the confirmation order that was filed a couple of days ago that, again, identifies the resolution of some open issues and I assume some informal discussions between stakeholders that were resolved by language added to that form of confirmation order.

When the Court reviews both the Braley declaration as well as the Deutch declaration and, again, given the absence of objection, the record is certainly sufficient. I am simply prepared to find that the debtors have carried their burden under Bankruptcy Code Section 1129 and 1123 to the extent applicable for entry of an order approving plan confirmation.

I would also note, as Mr. Percontino observed, that the debtors have filed a comprehensive memorandum in support of plan confirmation. That is, obviously, not evidence but it is, nevertheless, still a part of the record before the Court and, again, demonstrates with particularity the plan and the disclosure statement's compliance with applicable rules as well as provisions of the bankruptcy code for purposes of approval of the disclosure statement and confirmation of the plan.

Mr. Percontino, I just want to confirm, I believe that the debtors are also requesting a waiver of the 14-day stay, otherwise applicable, in order to allow them to go effective with the plan promptly. Am I correct?

MR. PERCONTINO: That is correct, Your Honor.

THE COURT: Very well. I am satisfied, based upon the record before me and considering both the lack of any objections as well as the support of the official committee of unsecured creditors, that cause here exists for a waiver of the rule -- of the Rule 6004 stay for purposes of allowing the debtor to confirm and then go effective with their plan in less then 14 days. As is typical I would encourage the debtor to go forth and go effective at its earliest opportunity. The request for a waiver is approved.

I would ask -- I will just want to confirm that the final form of the confirmation order is uploaded and if so, I would be happy to make sure that that gets entered today. Mr. Percontino, is the document up.

MR. PERCONTINO: I am just going to confer with my colleague, Patrick Reilley, who is on the line.

MR. REILLEY: Your Honor, we will upload it immediately after the hearing.

THE COURT: Very good. I will look for that order. It will be uploaded upon arrival.

I would ask, Mr. Percontino or Mr. Reilley, going forward, obviously, I just generally check, the -- I am confident that we will have necessary steps to close out the case. Does the debtor or the reorganized debtor or the post-confirmation entity anticipate significant or major litigation or, essentially, just claims administration, Chapter V stuff and -- I just want to know what kind of category I ought to keep this in for scheduling purposes on my docket.

MR. PERCONTINO: There wouldn’t be major litigation, Your Honor. There is one retained cause of action set forth in the plan supplement related to one landlord potential claim issue. Otherwise, most of what is going to take place is going to be taking place through the plan administrator on winding down the debtor entities and non-debtor affiliates across internationally and going to the claims reconciliation.

THE COURT: Very good. That all sounds fine to me and that is pretty much what I would have expected. I just like to, if I think of it, just ask because sometimes we then -- if we don’t know that significant litigation is coming sometimes, we are not necessarily anticipating for scheduling purposes what you might need. Obviously, you will need some time for claims administration as well as, I assume, final fee apps and the like. So, in that you can expect that Chambers will be a willing partner in terms of scheduling necessary hearings in order to keep the process moving forward.

Mr. Percontino, do we have anything else this morning? I believe the second agenda item has been resolved. I believe that order has been entered and if it hasn't been entered and if it hasn't been entered today.

Any other issues this morning?

MR. PERCONTINO: No, Your Honor. Thank you. That order has been entered. We very much again appreciate Your Honor's time.

THE COURT: Very good. I would make -- I would be remiss if I didn't make one other observation and its consistent with Mr. Winter's comments from the outset of this case. You know, it was no secret that this debtor was facing, frankly, you know, really challenging and dire circumstances. It was hardly, by any stretch, a given that the debtor would have been able to hold things together in order to get to a sale process and then for, frankly, both of the divisions given both the economic circumstances and the structural issues that the debtor was facing.

So, I am sympathetic to the challenges that the debtor faced and I certainly would commend all of the parties on preserving both value as well as a terribly important product to the end users. I appreciate everyone's effort in that respect. With that, I will look for the confirmation order to be uploaded. We will enter it promptly.

Mr. Winters, do we have anything else before we conclude?

MR. WINTERS: Nothing further. Thank you, Your Honor.

THE COURT: Very well. With that we are adjourned. Thank you, counsel.

(Proceedings concluded at 10:28 a.m.)

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/ William J. Garling November 15, 2024

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable