

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
VYAIRE MEDICAL, INC., . Case No. 24-11217 (BLS)
Debtor. .
. July 24 2025
. 3:01 p.m.
.

TRANSCRIPT OF ZOOM DISCOVERY CONFERENCE
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Recorded proceedings commence at 3:01 p.m.)

2 THE COURT: Good afternoon, all. This is Judge
3 Shannon. I understand from the court reporter that all
4 necessary parties have joined. This is a telephonic or Zoom
5 hearing in the matter of Vyaire Medical, Inc., which is Case
6 No. 24-11217.

7 And this is a discovery conference. The Court is
8 in receipt of correspondence from Mr. Reilley laying out an
9 issue with Quad DBC Holdings relating to Quad's motion for
10 allowance of an admin claim. And I have the plan
11 administrator's omnibus objection which appears at Docket
12 1056.

13 I'll hear first from counsel for the debtor.

14 MR. REILLEY: Good afternoon, Your Honor. Patrick
15 Reilley from Cole Schotz on behalf of the Vyaire plan
16 administrator. I'm joined this afternoon by my colleague,
17 Matteo Percontino.

18 Your Honor, thank you for scheduling this
19 conference regarding discovery issues. We do appreciate it.
20 We held off for a long time before contacting the Court. And
21 we try to avoid bringing discovery issues to the Court if
22 possible. In fact, I spend a surprisingly amount of time
23 dealing with litigators trying to convince them to not bring
24 discovery matters to the Court.

25 THE COURT: That is God's work, Mr. Reilley.

1 MR. REILLEY: I try, I try. But we thought it
2 would be important here to ask for a call and really to ask
3 for the Court's assistance and guidance moving forward.

4 So if I may, and I'll be brief, if I could provide
5 a brief background. I'd like to let the Court know about
6 current developments as of this afternoon. And I have some
7 thoughts about maybe where the parties can go after this
8 call, subject, of course, to Your Honor's, you know, input
9 and guidance.

10 So, just to step back briefly, Quad DBC Holdings
11 filed an admin motion seeking approximately \$2.7 million in
12 December. It's a lot of money and we objected.

13 As an aside, Quad's motion I believe is one of two
14 that are still pending on the docket that are contested admin
15 motions. We've resolved approximately 12 or 15 in the last
16 few months, and when I say we, it's really been Mr.
17 Percontino. But we want to resolve this one too and take it
18 off Your Honor's docket.

19 As Your Honor noted, we also filed an objection
20 Quad's general unsecured claim which I believe is
21 approximately 24 million. That objection was filed in April.
22 We served document requests in April. Quad has not yet
23 responded to the discovery requests. And honestly, we've had
24 just an overall issue with the lack of engagement and
25 responsiveness.

1 We have tried to engage in both settlement
2 discussions and honestly to work through these discovery
3 issues. And specifically, we've tried to get them to respond
4 to our document requests. At one point, Quad promised search
5 terms which we didn't receive until today.

6 We've also tried to work on a scheduling order to
7 set various deadlines and maybe set an outside date for fact
8 discovery and other discovery deadlines. And as I said,
9 there's simply been no engagement or responsiveness from
10 Quad. But, you know, we're not here to complain, we just
11 need some assistance moving forward.

12 So we're asking for the following. We would like
13 Quad to respond to our document requests; we would like to
14 submit a scheduling order; and we would also like to mediate,
15 we want to resolve this. We will be prepared to litigate,
16 but we do want to explore resolution.

17 So that's kind of what our ask is. Recent
18 developments, we received a call, we spoke to counsel for
19 Quad this afternoon, Mr. Tancredi, we appreciate talking to
20 him. Quad did provide search terms before this call with the
21 Court which is great, a step in the right direction. And
22 Quad has agreed to work with us on the dates for a scheduling
23 order.

24 So there's been a development this afternoon.
25 Having this hearing on the Court's calendar I think has

1 helped.

2 So this is where I think we're at. I think we
3 will review Quad's search terms and hopefully Quad will
4 respond to our document request in short order.

5 In terms of the scheduling order, which I think
6 would set deadlines to respond to the claim objection either
7 fact or discovery deadlines, the parties can work on this.
8 And honestly I propose, if acceptable to Your Honor and Your
9 Honor agrees, that the parties have a deadline into next
10 Friday to submit a scheduling order.

11 And if engagement after this call falls off and if
12 we can't get a response and we can't agree, I would
13 respectfully request that we just submit competing orders or
14 we just submit our own order next Friday. But with the idea
15 that the parties will work and agree on dates. And I
16 understand from our call this afternoon that there's
17 willingness to do that. We just don't want to leave here and
18 then, you know, bother Your Honor in another few weeks.

19 THE COURT: Sure. Okay, I understand.

20 MR. REILLEY: Mediation, mediation, this is not
21 really a discovery dispute, but we were talking about it.
22 And we propose an in person mediation in Wilmington with our
23 clients who have authority to settle. You know, I'm a big,
24 and I believe Your Honor is too, a big fan of mediation, it
25 brings parties together, and neutral third parties speaking

1 to clients directly, you know, it's effective.

2 I mediate. And are all my mediations effective?
3 But a lot of them are very effective. So I would propose,
4 Your Honor, direct if you're willing, in person mediation in
5 Wilmington. The parties can split the mediator fees and with
6 the clients here. These claims are large enough and
7 substantial enough that really I think it warrants an effort
8 by the parties to try to resolve.

9 And if we can't resolve it, we'll be prepared to
10 litigate. We don't want to, you know, take away Quad's right
11 to litigate. And I think we'll do track it, subject to Your
12 Honor's engage in discovery, but also, you know, work on
13 resolution like we normally do in an adversary proceeding.

14 So with that, Your Honor, I'll pause and see if
15 you have any questions. And I'm sure Mr. Tancredi would want
16 to be heard.

17 THE COURT: No, I don't have any questions.

18 Mr. Percontino, did you have anything to add
19 before I hear from Mr. Tancredi?

20 MR. PERCONTINO: No, Your Honor. Thank you.

21 THE COURT: Very good.

22 Mr. Tancredi, good afternoon. Good to see you.

23 MR. TANCREDI: Good afternoon, Judge Shannon.

24 What Mr. Reilley stated is not untrue. I've been
25 attempting to engage in this matter with my client. There

1 has been some turnover at the upper levels in my client's
2 in-house counsel that has caused some delays that are
3 typically not the way I try to practice in these matters.
4 This is, it's a fairly complex administrative expense claim,
5 a claim objection. There's also another element where there
6 is an alleged or hinted to \$4 million action that the plan
7 administrator may take against my client.

8 THE COURT: Regarding the letter of credit.

9 MR. TANCREDI: Regarding the letter of credit,
10 which hasn't been, isn't really before the Court yet, it's
11 just kind of threatened.

12 And all that being said is we had provided an
13 initial search terms list in June saying that it was subject
14 to our, my client's approval. The plan administrator
15 rightfully said, well why don't you wait until everything is
16 approved, and then we'll look at it and review it. It's
17 taken a while to get there. We had the initial conference to
18 talk about ESI protocol shortly after the filing and the
19 request for production were produced.

20 I sent over, after our call today about noon, I
21 sent over to my client a scheduling order that pushed some of
22 the dates that Mr. Percontino initially sent over to us, some
23 of which have gone stale by the passage of time. I am
24 imploring my client to get back to me with dates. I received
25 a response that just provided more questions and no answers.

1 So I'm pushing again to have that. And I am confident that
2 we can have the scheduling order in place within the next few
3 days. Mr. Reilley said by next Friday, and I greatly
4 appreciate his patience. I think we'll get it done hopefully
5 by the end of the day tomorrow. If not, unlikely to be
6 today, but hopefully by tomorrow, if not early next week.

7 Mediation is kind of a tricky issue right now. I
8 have not received approval from my client to attempt to
9 mediate it. And it's been my experience that if parties are
10 ordered to mediate and aren't committed to mediation, that it
11 really doesn't get you anywhere.

12 There are, I look at this kind of as an \$8 million
13 lawsuit, you know, 4 million one way -- 6.7, 4 million one
14 way, 2.7 the other way, so it's a \$6.7 million lawsuit. And
15 my clients right now believe that they're entitled to
16 everything. And I think before we agree to mediate, it may
17 be better if we maybe get a little closer, get the facts
18 spelled out a little bit more, and I understand that that's
19 my responsibility to do so.

20 But ordering a mediation in six week, if we're \$6
21 million apart or even \$2 million apart, I don't know how
22 successful that is going to be, and I think it could just end
23 up being an expensive endeavor that really accomplishes
24 little.

25 We are committed to, if we can get this case

1 resolved, my clients are sophisticated in a business that
2 understands the cost of litigations and the risks involved,
3 and settles almost everything I've ever had in front of them,
4 so, with them, they are not trying to dig in their heels, but
5 they want to make sure that they don't get pushed into a
6 mediation that doesn't have, really developed enough to be
7 fruitful.

8 THE COURT: Okay. A couple of points. First,
9 what we have now is a contested matter and discovery has been
10 propounded, and discovery will be taken in connection with
11 this. The facts need to get developed. I've only had an
12 opportunity to quickly read through the parties' materials.
13 But, you know, I certainly understand the admin claim and I
14 have at least an understanding of the contours of the
15 debtors' objection, both to the admin claim as well as to the
16 unsecured claim.

17 So we have a contested matter. And I certainly
18 appreciate your candor, Mr. Tancredi, that, you know, lawyers
19 can't really answer discovery and we need boots on the ground
20 to answer those questions. And so I start with the
21 proposition that we have a contested matter and discovery is
22 going to get taken and I expect that there will be both
23 engagement and responsiveness on that.

24 To that end, I think that the parties entering
25 into a scheduling order makes abundant sense. And I would

1 direct that it either be filed by next Friday or competing
2 forms of order be submitted.

3 If there's not consensus on it or if the parties
4 have other issues they would like to address with the Court,
5 I would be available for a further status conference on the
6 6th of August at 11:00 a.m. where we could talk about a
7 scheduling order.

8 But I want to make sure that this is now up and
9 running, and you know, I certainly appreciate Mr. Reilley's
10 observations that as a practice he tries to avoid these kind
11 of hearings, but you know it's, I've observed over the years
12 that counsel at least in my Court is placed in this, you
13 know, Hobson's choice, you either impose upon the Court or
14 you sit and wait, and then when you come in, I will ask, well
15 where have you been, you know, that you haven't gotten the
16 documents. And so I realize sometimes that's actually an
17 instinct that's counterproductive from my point of view.

18 But I think the easiest way to say this is that I
19 see this matter as moving to the front burner, it's not
20 expedited and it's not urgent. But this is material
21 litigation in the context of the bankruptcy case and I'm
22 going to give it the attention that it deserves.

23 Placing the potential status conference I think is
24 helpful, frankly to all sides to focus the mind. And, Mr.
25 Tancredi, it may also assist in getting substantive

1 engagement from, again, people on the ground where you know
2 you're advising them, look, I need to provide something, I
3 need to give an answer by the 6th of August if we're having
4 that hearing.

5 I'm not requiring that hearing, but you have that
6 time available to you if it would be productive. And we will
7 absolutely have that hearing if the parties aren't in
8 agreement with respect to a scheduling order.

9 So that's where we are near term. I'm gratified
10 to hear that the parties are moving forward with search terms
11 and I'll give you that opportunity to scrub that process, but
12 the scheduling order should get entered and that should
13 happen promptly.

14 The final observation I would make is with respect
15 to mediation. And I have a firm rule that I never order
16 parties to mediation except when I do. And I am not ordering
17 the parties to mediation at this point. That would be a
18 discussion that we would have.

19 And I'm being a little bit flip, but I have
20 ordered parties to mediation, but generally I have a better
21 sense of the dynamic between and among the parties when I do
22 that. And I don't really have any feel for this. This is,
23 as a practical matter, the first substantive engagement that
24 we've had on this at least that I recall.

25 You know, I don't think anybody is disputing

1 mediation is valuable, and it certainly, you know, can help
2 get parties to reach resolution or at least to winnow away
3 areas that are not productive.

4 But I think Mr. Tancredi's comment is accurate,
5 that mediation makes sense when it makes sense. And
6 sometimes there needs to be at least a little bit of an
7 understanding of what kind of meat there is on the bone, each
8 sides' arguments and what the facts might be surrounding
9 them, rather than just pulling people into a conference room
10 with, you know, nothing more than a handful of emails and
11 some pleadings back and forth that say you owe me money, no,
12 you owe me money.

13 But, again, I'm not pushing back on the idea of
14 mediation. It may be that it's appropriate, but I would need
15 to have a better sense of where the parties are and where the
16 rubber meets the road under competing positions. Again,
17 which I've had the opportunity simply to skim before I
18 started really talking about that or encouraging the parties
19 to move in that direction.

20 So my hope is that in the course of the next
21 couple of weeks, the parties will have substantive engagement
22 to get to both the scheduling order as well as search terms
23 that will get this, this process up and running. And the
24 scheduling order then would focus attention on collection
25 deadlines. It will tell you when you need to get this kind

1 of discovery done, when we're going to start with
2 depositions.

3 It doesn't seem like it would be an expert kind of
4 case, but whatever the scheduling order provides if the
5 parties are in agreement. I'm sure your experience in my
6 Court has been that I would essentially allow counsel to run
7 the mechanics and scheduling of their litigation. And if
8 there's a dispute, then I will be here.

9 I do, I would make one final comment, and again, I
10 think everybody has heard this from me before. I very much
11 appreciate you reaching out. I apologize it took us a little
12 long to get on, I think this arrived right around the July 4th
13 holiday, so this is a little bit slower in terms of getting
14 together with the parties. But getting on the phone is at
15 least my preferred way of dealing with these issues in terms
16 of discovery, scheduling, briefing, mechanics, all of that
17 kind of stuff. I just think it's more productive than you
18 know salvos of letters and motion practice on these kind of
19 issues.

20 So with that, I guess I would ask if there are any
21 questions. I would ask that the parties advise the Court by
22 end of day Friday, next Friday, whether you'll want the
23 hearing on the 6th.

24 MR. TANCREDI: Your Honor, if I can ask one
25 question.

1 THE COURT: Yeah, sure.

2 MR. TANCREDI: I am scheduled to have oral
3 argument in Superior Court of Delaware at 10:30 on August 6th.
4 Is there another time?

5 THE COURT: Of course. Yeah, sure. Hang on.
6 1:30? 1:30 on the 6th?

7 MR. TANCREDI: 10:30 is my argument, Your Honor.

8 THE COURT: What's that?

9 MR. TANCREDI: 10:30 on August 6th, the hearing
10 before Judge Butler.

11 THE COURT: Did you say 1:30 or 10:30?

12 MR. TANCREDI: 10:30.

13 THE COURT: Right. Can we do 1:30 for argument on
14 the 6th?

15 MR. TANCREDI: Certainly.

16 THE COURT: Okay. Yeah, and, again, that hearing
17 may come off. If you guys are you know still figuring out
18 the discovery and moving forward and if you've come to terms
19 on a scheduling order, then we don't need a hearing. If
20 it's, if we're not getting any traction, then I would rather
21 know that sooner rather than later, and then we can have a,
22 we can have that discussion. I'm happy to accommodate your
23 schedule for purposes of the argument over in the Superior
24 Court.

25 MR. TANCREDI: Thank you, Your Honor.

1 THE COURT: All right. And again, so this is sort
2 of a toggle for relief for either side, but I assume
3 particularly for the debtor. If you need the hearing, then
4 you'll let Ms. Bello know on or before next Friday. And,
5 again, that would be via Zoom and it will be a status
6 conference, so it would be no matters that are actually
7 scheduled, it would just be kind of figure out how to get the
8 litigation itself up and running.

9 Does that make sense?

10 MR. REILLEY: That makes sense, Your Honor. Thank
11 you. And I'll reach out to Ms. Bello on or before next
12 Friday.

13 THE COURT: Very good. Anything else this
14 afternoon?

15 MR. REILLEY: Nothing further. But thank you very
16 much, Your Honor. This has been very helpful and we greatly
17 appreciate it.

18 THE COURT: Sure thing, guys.

19 All right. And with that, then we are adjourned.
20 Be well.

21 (Proceedings concluded at 3:20 p.m.)

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CERTIFICATION

We 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 our knowledge and ability.

/s/ Theresa Pullan

July 30, 2025

Theresa Pullan, CET-782

Certified Court Transcriptionist

For Reliable