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

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| In re:<br><br>VYAIRE MEDICAL, INC.,<br><br>Liquidating Debtor. | Chapter 11<br><br>Case No. 24-11217 (BLS)<br><br>**Re: Docket Nos. 851, 1123**<br>**Hearing Date: TBD** |

**RESPONSE BY HARTFORD FIRE INSURANCE COMPANY TO THE PLAN ADMINISTRATOR'S OMNIBUS OBJECTION TO ALLOW AND REQUIRE PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM AND PROOFS OF CLAIM**

Hartford Fire Insurance Company ("Hartford") individually, and with its affiliated surety and/or sureties (the "Surety"), by and through its undersigned counsel, McElroy, Deutsch, Mulvaney & Carpenter, LLP, hereby files the instant Response to the Plan Administrator's Omnibus Objection (the "Objection") [Docket No. 1123] to allow and require payment of Hartford's administrative expense claim and proofs of claim [Docket No. 851].

1. On June 9, 2024, (the "Petition Date") Vyaire Medical, Inc. and its affiliated debtors (collectively, the "Debtors") each commenced a voluntary case under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") with the Court.

2. Prior to the Petition Date, Hartford, as a surety company, issued and/or executed surety bonds and/or related instruments (the "Bonds") to Debtors.

3. In connection with the Hartford's execution and/or issuance of the Bonds, the Debtors and/or their non-debtor affiliates agreed to indemnify, exonerate, and hold harmless the Surety by means of a December 15, 2020 general indemnity agreement (the "2020 Indemnity Agreement") and an April 9, 2018 indemnity agreement (the "2018 Indemnity Agreement") (collectively, the "Indemnity Agreements").

4. The Indemnity Agreements provide that each of the Debtors, and any of the non-debtor affiliates, are contractual indemnitors and are jointly and severally liable to the Surety for any and all losses, costs, and/or expenses incurred and/or to be incurred in relation to the Bonds and/or the surety program described herein.

5. Certain of the Debtors are contractually and/or under the common law, obligated to indemnify and hold the Surety harmless in connection with losses, costs and expenses, including attorneys' fees, in connection with the Surety's furnishing of any bond or related instrument, including the Bonds, as more fully set forth in either or both of the Indemnity Agreements and applicable law.

6. On September 27, 2024, Hartford filed Claim No. 25 in bankruptcy case no. 24-11234 (Vyaire Medical 211, Inc.) and Claim No. 184 in bankruptcy case no. 24-11217 (Vyaire Medical, Inc.) for contingent/unliquidated claims based on the Bonds and Indemnity Agreements, which contained reservations of rights to assert administrative claims for all post-petition claims arising after the petition date.

7. On November 14, 2024, the Court entered the Confirmation Order (the "Confirmation Order") [Docket No. 745], approving the Plan.

8. On November 27, 2024 (the "Effective Date"), the Plan became effective in accordance with its terms [Docket No. 810].

9. On December 23, 2024, Hartford filed a Motion seeking allowance and payment of an administrative expense claim in the amount of at least $28,206.83 (the "Administrative Claim") for unreimbursed fees and costs incurred between the Petition Date and Effective Date pursuant to the terms of the Indemnity Agreement.

10. The Plan Administrator now objects to Hartford's asserted claims on the basis that they are indemnity claims arising post-petition from prepetition contracts and are thus deemed to have arise prepetition and are not entitled to administrative expense priority under section 503(b)(1)(A). However, in every case cited by the Plan Administrator, the prepetition contract rights were not explicitly reserved in the confirmation order.

11. Here, in contrast, the Indemnity Agreements and their rights were explicitly preserved in the Confirmation Order, which states, in relevant part:

> Notwithstanding anything to the contrary in the Plan or the Confirmation Order and any related documents, on the Effective Date, any rights, claims and obligations, including without limitation, trust and/or subrogation rights arising under any surety bonds issued by Hartford Fire Insurance Company (the "Surety") shall continue in full force and effect including, to the extent applicable, the following: (a) any indemnity agreement or related instruments issued and/or executed on behalf of or at the request of any of the Debtors in favor of Surety . . . .

Confirmation Order, at ¶ 113.

12. The Confirmation Order also proscribes:

> In addition, notwithstanding anything in the Plan to the contrary, the rights, claims, and defenses of the Debtors and any subrogee on and/or beneficiary or current or future claimant under any bond ("Bond Subrogee(s)"), including, but not limited to, the Surety's and/or its Bond Subrogee(s)' rights under any properly perfected lien and/or claims and/or claim for equitable rights of subrogation, and rights of the Debtors, and of any successors in interest to any of the Debtors, and any creditors, to object to any such liens, claims, and/or equitable subrogation and other rights, are fully preserved.

Confirmation Order, at ¶ 114.

13. The Plan Administrator cites to *In re Malinckrodt PLC*, 99 F.4th 617, 621 (3d Cir. 2024) and *In re Manville Forest Prods. Corp.*, 209 F.3d 125, 127 (2d Cir. 2000) to establish that courts have generally held that claims arising under a prepetition agreement which later accrue

post-petition are deemed to have arisen prepetition. Both cases are inapplicable here, where Hartford reserved the right for the indemnity agreement to survive the confirmation of the plan.

14. In *Manville* specifically, the court found that indemnification rights were discharged by the entry of the confirmation order: "Any indemnification rights owed to Olin under the 1967 and 1974 agreements were contingent claims discharged by the confirmation order." 209 F.3d at 127. The instant matter is distinguishable from *Manville*, where the Confirmation Order specifically notes that any indemnity agreement or related instruments shall continue in full force despite the entry of the Order.

15. Similarly, *In re Pinnacle Brands, Inc.*, 259 B.R. 46, 51 (Bankr. D. Del. 2001) and *In re ANC Rental Corp.*, 341 B.R. 178, (Bankr. D. Del. 2006) both involve indemnity claims deemed to have arisen pre-petition, even if post-petition actions triggered the indemnification obligation. However, neither the creditor in *Pinnacle* nor the creditor in *ANC Rental* reserved their indemnification rights under the confirmation order. Additionally, both cases are distinguishable because Surety's Indemnity Agreements and right to payment of attorney's fees are clearly established. In contrast, the right to payment under the indemnity agreement in *Pinnacle Brands* was contingent on the outcome of a lawsuit. 259 B.R. at 48. In *ANC Rental Corp.*, the indemnification obligation was considered an implied term of the contract. 341 B.R. 178.

16. Surety's attorney fees are directly related to the Bonds, which remained in full force and effect throughout this matter. Accordingly, Debtors directly benefitted from these Bonds.

17. Bankruptcy courts have held that reservation clauses in confirmation orders, such as the one preserving Surety's Indemnity Agreements, are valid and binding based on their plain language. *See, e.g., In Russo-Chestnut v. Wells Fargo Home Mortg. (In re Russo-Chestnut),* 522 B.R. 148, 151 (Bankr. D.S.C. 2014); *In re Harling*, 541 B.R. 330, 337 (Bankr. D.S.C. 2015).

18. Here, Surety issued Bonds to Debtors, executed the Indemnity Agreements, and filed Claim Nos. 25 and 184 to assert a claim and reserve its rights to assert an administrative claim under the Indemnity Agreements prior to the entry of the Confirmation Order.[1]

19. The Indemnity Agreements and their rights were then explicitly preserved in the Confirmation Order.

20. Hartford clarified in its December 23, 2024 Motion that it was seeking allowance and payment of an administrative expense claim in the amount of at least $28,206.83.

21. Fees and costs have continued to accrue because, among other things, the Plan Administrator has contested Hartford's position.[2] Hartford will make any redacted bills related to its claim available, as well as any further bills that have accrued at the hearing.

22. Since the Indemnity Agreements and their rights have been preserved through the Confirmation Order, Hartford does not need to show that Debtor obtained a benefit from the Bonds.

23. If, however, this Court does find that Hartford is obligated to demonstrate that Debtor benefitted from the Bonds, that burden is easily met. The relevant Bonds consisted of Pharmaceutical Bonds with the California State Board of Pharmacy, Nevada State Board of Pharmacy, and Maryland Board of Pharmacy as Obligees, and a Custom Duty Bond with the Bureau of Customs and Border Protection as Obligee, all of which were needed by the Debtors to operate. Moreover, in one of its first day motions, the Debtors acknowledged that the Bonds were essential to the Debtors' business [Docket No. 9].

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[1] The Plan Administrator has also asked that Hartford's claims be found not to be secured. While there was a basis to assert a secured claim at the time the claims were filed, Hartford does not object at this time to a finding that the claims are not secured.

[2] Hartford has already presented counsel for the Plan Administrator with copies of redacted bills demonstrating the nature of the fees sought from October 24, 2024 through April 10, 2025.

24. Debtors benefitted from the Bonds issued by Surety in this bankruptcy matter, and the Indemnity Agreements and their rights have been explicitly reconfirmed in the Confirmation Order.

25. Accordingly, Hartford respectfully requests that this Court overrule the Plan Administrator's Objection and grant Hartford's Motion to allow and require payment of an administrative expense claim in the amount of $28,206.83, plus additional fees and costs accrued after the Effective Date.

## RESERVATION OF RIGHTS

26. Hartford hereby reserves the right to amend, modify, and supplement this Response to Plan Administrator's Objection prior to the hearing on the Motion, if any, as permitted by bankruptcy and nonbankruptcy law, subject to any limitations set forth in the Local Rules or in the Order.

## CONCLUSION

27. WHEREFORE, Hartford respectfully requests that the Court enter an Order (i) granting the Motion, (ii) overruling the Plan Administrator's Objection; and (iii) granting such other relief as the Court may deem just and proper.

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

Date: 09/15/2025

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