

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 24-11217 (____)
)

) (Joint Administration Requested)
)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO (A) MAINTAIN INSURANCE AND SURETY COVERAGE
ENTERED INTO PREPETITION AND PAY RELATED PREPETITION
OBLIGATIONS, AND (B) RENEW, SUPPLEMENT, MODIFY OR PURCHASE
INSURANCE AND SURETY COVERAGE, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and, each, a “Debtor”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”) (a) authorizing, but not directing, the Debtors to (i) maintain coverage under the Insurance Policies and the Surety Bonds (each as defined herein) and pay any related obligations and (ii) renew, supplement, modify or purchase insurance and surety coverage in the ordinary course

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’ proposed 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.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyair Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

of business, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately 21 days from the Petition Date.

Jurisdiction and Venue

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the “Court”) under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their 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.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

5. Vyair Medical, Inc., together with its direct and indirect subsidiaries (collectively, “Vyair” or the “Company”), is a global company focused on developing products and providing related services for the diagnosis, treatment, and monitoring of various cardiology, pulmonology, and respiratory health conditions. With a 70-year history of pioneering breathing technology, the integrated solutions offered by the Company help enable, enhance, and extend

lives. Headquartered in Mettawa, Illinois, Vyair operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyair products are available in more than 100 countries. Its customers are the hospitals, health centers, and private practice facilities delivering life-enhancing products and services to patients every day.

6. On June 9, 2024 (the “Petition Date”), Vyair Medical, Inc. and certain of its subsidiaries filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Insurance Policies, the Surety Bonds, and Related Payment Obligations

7. In the ordinary course of business, the Debtors maintain approximately 40 insurance policies listed on **Exhibit C** attached hereto (collectively, the “Insurance Policies”)³ that are administered by various third-party insurance carriers (collectively, the “Insurance Carriers”), as well as four surety bonds listed on **Exhibit D** attached hereto (collectively, the “Surety Bonds”) issued by Hartford Fire Insurance Company and Hartford Insurance Company

³ The descriptions of the Insurance Policies set forth in this motion constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this motion. Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Insurance Policies from **Exhibit C**. The Debtors request authority, but not direction, to honor existing Insurance Policies and renew Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy on **Exhibit C**, and any such omitted Insurance Policy is hereby included in the defined term “Insurance Policies” as used herein and in the Interim Order and Final Order.

of the Midwest (collectively, the “Sureties”). The Insurance Policies provide the Debtors and non-Debtor entities⁴ coverage for, among other things, the Debtors’ product liability, marine cargo liability, property, general liability, employment benefits liability, employment practices liability, earthquake, flood, automobile liability, cyber liability, workers’ compensation,⁵ umbrella coverage, pollution legal liability, crime, kidnap & ransom, business travel accident, and directors’ and officers’ liability. The Surety Bonds are issued in favor of various federal, state, and industry regulatory agencies to guarantee certain obligations related to various state licenses, permits, and custom duties. The Debtors are required to maintain the Surety Bonds under certain state and federal law in order to lawfully conduct their business and operations in the applicable jurisdictions. As such, failing to provide, maintain or timely replace the Surety Bonds may prevent the Debtors from lawfully continuing to conduct their business in the applicable state.

8. The Insurance Policies and the Surety Bonds are essential to the ongoing operation of the Debtors’ business. The Insurance Policies generally are one year in length, with no affirmative obligation to renew upon expiration. The total annual premiums for the Insurance Policies were approximately \$5.1 million in the aggregate for the 2023-24 term, not including

⁴ In some instances, the Debtors are insured under an insurance policy that also provides coverage to a certain non-Debtor too. For example, certain Insurance Policies related to director and officer liability also provide coverage to non-Debtor subsidiaries. Intercompany transactions are described, and relief is requested, in the *Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief*, filed contemporaneously herewith.

⁵ For the avoidance of doubt, the Debtors’ workers’ compensation policies are reflected on Exhibit C and throughout this motion to the extent the relief requested in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “Wages Motion”), filed contemporaneously herewith, is not coextensive with the relief sought herein. This motion asks the Court to authorize, but not direct, the Debtors’ payment of any prepetition obligations on account of the related Insurance Policies.

applicable deductibles or self-insured retentions.⁶ The total annual premiums for the Surety Bonds are approximately \$7,000 in the aggregate. The premiums for the Insurance Policies are financed pursuant to certain payment arrangements with IPFS Corporation (the “Premium Financing Arrangements”). The Premium Financing Arrangements allow the Debtors to spread their insurance premium payment over the term of the policy rather than paying the entire payment up front. As of the Petition Date, approximately \$1.7 million remains outstanding under the Premium Financing Arrangements, with no amount in arrears. The Debtors will pay the remaining amounts due under the Premium Financing Arrangements in monthly installments of approximately \$440,000. The premiums associated with the Debtors’ workers’ compensation policy are subject to adjustments at the end of the term. The Debtors seek authority, but not direction, to pay any prepetition obligations owing on account of the Insurance Policies and the Surety Bonds in the ordinary course of business as they become due to ensure uninterrupted coverage thereunder.

9. The Debtors’ ability to maintain the Insurance Policies and the Surety Bonds, to renew, supplement, and modify the same as needed, and to enter into new insurance policies and surety bonds as needed in the ordinary course of business, is essential to preserving the value of the Debtors’ estates. Moreover, in many instances, insurance or surety coverage is required by statutes, rules, regulations, and contracts that govern the Debtors’ commercial activities, including

⁶ Some of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, “Deductibles”). Generally, if a claim is made against such Insurance Policies, the applicable Insurance Carrier will administer the claim and make payments in connection therewith in accordance with the terms of such policy, and the Insurance Carrier will have a claim against the Debtors in the amount of the applicable Deductible. Alternatively, certain of the Insurance Policies use self-insured retentions on a per-claim basis (collectively, the “SIRs”) instead of Deductibles. If a claim is made under such Insurance Policies, the Debtors must make payments in the first instance (whether related to defense costs or on account of the underlying liability) up to the amount of the SIR and, once the Debtors have made payments to satisfy such amount, the carrier becomes obligated to cover remaining costs in accordance with the terms of such policy. Out of an abundance of caution, the Debtors seek authority, but not direction, to pay all prepetition amounts that may be due and owing on account of the Deductibles and to continue honoring all payment obligations under the Deductibles in the ordinary course of business to ensure uninterrupted coverage thereunder.

the requirements of the United States Trustee for the District of Delaware (the “U.S. Trustee”) that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, the Debtors seek authorization, but not direction, to maintain the Insurance Policies and the Surety Bonds, to pay related prepetition obligations, to renew, supplement or modify the Insurance Policies and the Surety Bonds as needed, and to enter into new insurance policies and surety bonds in the ordinary course of business.

The Debtors’ Insurance and Surety Brokers

10. The Debtors obtain most of their Insurance Policies and all of their Surety Bonds through Marsh USA Inc. (the “Broker”).⁷ The Broker, among other things: (a) assists the Debtors in obtaining comprehensive insurance and surety coverage for their operations in a cost effective manner; (b) manages renewal data; and (c) provides ongoing support throughout the applicable policy periods for the Insurance Policies and the Surety Bonds. In exchange for these services, the Debtors pay broker commissions and brokerage fees (collectively, the “Broker Fees”), usually at the same time the Debtors pay their premiums.

11. As of the Petition Date, the Debtors do not believe that they owe any amounts to the Broker on account of Broker Fees. Out of an abundance of caution, however, the Debtors seek authority, but not direction, to pay any prepetition obligations owed to the Broker and to continue to pay the Broker for services rendered in the ordinary course of business to ensure uninterrupted coverage under their Insurance Policies and Surety Bonds.

⁷ For the avoidance of doubt, Marsh USA LLC, is the broker for the Debtors’ workers’ compensation policy, for which relief is requested in the Wages Motion.

Basis for Relief

12. The relief requested herein is essential to the Debtors' continuation of ordinary-course operations and, as such, is warranted under sections 105(a) and 363(b) of the Bankruptcy Code. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

13. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

14. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See Just for Feet*, 242 B.R. at 825–26 ("The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11."). Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *See Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *See CoServ*, 273 B.R. at 497.

15. The relief requested herein is necessary to allow the Debtors to maintain appropriate insurance and surety coverage to maximize the value of their estates during these

chapter 11 cases. Section 1112(b) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, failure to maintain appropriate insurance coverage could, among other things, expose the Debtors to significant economic risk and also violate applicable legal requirements, including the U.S. Trustee’s Operating Guidelines for chapter 11 cases (the “U.S. Trustee Operating Guidelines”). Given this backdrop, the Debtors believe it is essential to their estates, and consistent with the Bankruptcy Code and the U.S. Trustee Operating Guidelines, that they maintain and continue to make all payments required under their Insurance Policies and Surety Bonds and have the authority to renew, supplement, modify, purchase or replace their Insurance Policies and Surety Bonds as needed without further order of the Court.

16. Courts in this district have granted relief similar to the relief requested herein under sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Appgate, Inc.*, No. 24-10956 (CTG) (Bankr. D. Del. May 28, 2024) (authorizing debtors on an interim basis to continue their current insurance policies, pay related prepetition obligations, renew, supplement, modify or purchase insurance and surety coverage); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re MVK FarmCo LLC, et al.*, No. 23-11721 (LSS) (Bankr. D. Del. Oct. 17, 2023); *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) (same); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Jul. 21, 2023) (same); *In re Lannett Co., Inc.*, No. 23-10559 (KJS) (Bankr. D. Del. May 5, 2023) (same).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

17. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of access to cash on hand and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors’ existing cash

management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the Debtors request authority, but not direction, to authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

18. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one days after the petition date only “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases could impact the Debtors’ operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is “necessary to avoid immediate and irreparable harm,” as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

19. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law;

(b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

20. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

Notice

21. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto;

(i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; (l) the Insurance Carriers; (m) the Sureties; (n) the Brokers; (o) IPFS Corporation; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking “first day” relief, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

COLE SCHOTZ P.C.

Patrick J. Reilley, Esq. (DE Bar No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: preilley@coleschotz.com

- and -

Michael D. Sirota, Esq. (*pro hac vice admission pending*)
Warren A. Usatine, Esq. (*pro hac vice admission pending*)
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Facsimile: (201) 489-1536
Email: msirota@coleschotz.com
wusatine@coleschotz.com

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (*pro hac vice admission pending*)
601 Lexington Ave
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com

- and -

Spencer A. Winters, P.C. (*pro hac vice admission pending*)
Yusuf U. Salloum (*pro hac vice admission pending*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: spencer.winters@kirkland.com
yusuf.salloum@kirkland.com

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

In re: VYAIRES MEDICAL, INC., <i>et al.</i> , ¹ Debtors.	)))))))	Chapter 11 Case No. 24-11217 (____) (Joint Administration Requested) Re: Docket No. ____
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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS
TO (A) MAINTAIN INSURANCE AND SURETY COVERAGE
ENTERED INTO PREPETITION AND PAY RELATED PREPETITION
OBLIGATIONS, AND (B) RENEW, SUPPLEMENT, MODIFY OR PURCHASE
INSURANCE AND SURETY COVERAGE, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing, but not directing, the Debtors to (i) maintain coverage under the Insurance Policies and the Surety Bonds and pay related obligations and (ii) renew, supplement, modify or purchase insurance and surety coverage in the ordinary course, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found

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’ proposed 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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024, at __: __.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2024 and shall be served on: (a) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045, Attn.: Charles Braley (cbraley@alixpartners.com); (b) proposed co-counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Chris Ceresa (chris.ceresa@kirkland.com), and Tiffani Chanroo (tiffani.chanroo@kirkland.com) (ii) Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Spencer A. Winters (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com), (iii) Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801,

Attn.: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and (iv) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com) and Warren A. Usatine, Esq. (wusatine@coleschotz.com); (c) counsel to the 1L Ad Hoc Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody (JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (d) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (e) any statutory committee appointed in these chapter 11 cases.

3. The Debtors shall serve a copy of the Motion and this Interim Order on each Insurance Carrier and the Surety listed in Exhibit C and Exhibit D to the Motion within two business days after entry of this Interim Order.

4. The Debtors are authorized, but not directed, to: (a) continue and maintain the Insurance Policies³ and the Surety Bonds and pay any related prepetition or postpetition amounts or obligations in the ordinary course of business, including any amounts or obligations that may be owed to the Broker; and (b) renew, amend, supplement, extend or purchase insurance policies

³ For the avoidance of doubt, the term Insurance Policies shall include all insurance policies issued or providing coverage at any time to the Debtors or their predecessors and any agreements related thereto, whether or not listed on Exhibit C attached to the Motion.

and surety bonds, in each case, to the extent that the Debtors determine that such action is in the best interest of their estates, *provided*, that such payments shall not exceed \$900,000 in the aggregate pending entry of a final order.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

6. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt or reject any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

7. The Debtors are authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Nothing in the Motion or this Interim Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

9. Notwithstanding anything to the contrary contained in the Motion or this Interim Order herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

11. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

15. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

16. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

)
)
)
)
)
)
)

Chapter 11

Case No. 24-11217 (___)

(Joint Administration Requested)

Re: Docket No. ___

**FINAL ORDER (I) AUTHORIZING THE DEBTORS
TO (A) MAINTAIN INSURANCE AND SURETY COVERAGE
ENTERED INTO PREPETITION AND PAY RELATED PREPETITION
OBLIGATIONS, AND (B) RENEW, SUPPLEMENT, MODIFY OR PURCHASE
INSURANCE AND SURETY COVERAGE, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing, but not directing, the Debtors to (i) maintain coverage under the Insurance Policies and the Surety Bonds and pay related obligations and (ii) renew, supplement, modify or purchase insurance and surety coverage in the ordinary course and (b) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found

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’ proposed 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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors shall serve a copy of the Motion and this Final Order on each Insurance Carrier and Surety listed in Exhibit C and Exhibit D attached to the Motion within two (2) business days after entry of this Final Order.
3. The Debtors are authorized, but not directed, to: (a) continue and maintain the Insurance Policies³ and the Surety Bonds and pay any related prepetition or postpetition amounts or obligations in the ordinary course of business, including any amounts or obligations that may be owed to the Broker; and (b) renew, amend, supplement, extend or purchase Insurance Policies and Surety Bonds, in each case, to the extent that the Debtors determine that such action is in the best interest of their estates.

³ For the avoidance of doubt, the term Insurance Policies shall include all insurance policies issued or providing coverage at any time to the Debtors or their predecessors and any agreements related thereto, whether or not listed on Exhibit C attached to the Motion.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

5. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt or reject any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

6. The Debtors are authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Nothing in the Motion or this Interim Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

8. Notwithstanding anything to the contrary contained in the Motion or this Interim Order herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Exhibit C**Insurance Policies**

Legal Entity	Insurance Carrier	Policy Type	Policy Number	Policy Term	Approximate Annual Premium
Vyaire Holding Company	Federal Insurance Company	General Liability	3606-61-89	Annual	\$10,155
Vyaire Holding Company	Federal Insurance Company	US Auto Liability	(24) 7363-96-04	Annual	\$119,974
Vyaire Holding Company	Chubb National Insurance Company	Workers' Compensation	(25) 7183-97-95	Annual	\$84,850
Vyaire Holding Company	Federal Insurance Company	Commercial Umbrella	5672-07-51	Annual	\$53,785
Vyaire Holding Company	ACE American Insurance Company	Foreign Auto	PHFD38688571 001	Annual	\$975
Vyaire Holding Company	ACE American Insurance Company	Foreign General Liability	PHFD38688571 001	Annual	\$25,050
Vyaire Holding Company	ACE American Insurance Company	Foreign Voluntary Workers' Compensation	PHFD38688571 001	Annual	\$11,848
Vyaire Holding Company	LifeScience Risk	Products Liability	LSR-PCO-00539-24	Annual	\$400,000
Vyaire Holding Company	Illinois Union Insurance Company	Products Liability	XSP G47393942 002	Annual	\$190,000
Vyaire Holding Company	Euclid Life Science Specialty, LLC	Products Liability	LSS2000275	Annual	\$100,000
Vyaire Holding Company	ProAssurance Specialty Insurance Company	Products Liability	EX24IL380003	Annual	\$72,500
Vyaire Holding Company	Ironshore Specialty Insurance Company	Products Liability	HC7TAB7TUL004	Annual	\$70,000
Vyaire Medical Products Ltd	HDI Global SE – UK	Foreign Products Liability	110-01164144-14072	Annual	\$418,526
Vyaire Holding Company	Beazley Group	Cyber Liability	W1EFF2220701	Annual	\$285,126

Legal Entity	Insurance Carrier	Policy Type	Policy Number	Policy Term	Approximate Annual Premium
Vyaire Holding Company	Indian Harbor Insurance Company	Cyber Liability	MTE904194703	Annual	\$114,050
Vyaire Holding Company	National Union Fire Insurance Company of Pittsburgh, PA	Crime	1-544-18-54	Annual	\$22,516
Vyaire Holding Company	Great American Insurance Company	Crime Excess	XSC E776448 02 00	Annual	\$15,000
Vyaire Holding Company	Berkshire Hathaway Specialty Insurance	Director & Officer Side A Liability	47-EMC-312437-04	Annual	\$200,000
Vyaire Holding Company	Illinois National Insurance Co.	Director & Officer Side A Liability	01-545-03-57	Annual	\$126,000
Vyaire Holding Company	Twin City Fire Insurance Co.	Director & Officer Side A Liability	83 PE 0401876-23	Annual	\$74,643
Vyaire Holding Company	Axis Insurance Company	Director & Officer Side A Liability	P-001-000712001-03	Annual	\$27,621
Vyaire Holding Company.	ACE American Insurance Company	Director & Officer Side A Liability	G71089022 003	Annual	\$31,880
Vyaire Holding Company	Old Republic Professional Liability, Inc.	Director & Officer Side A Liability	ORPRO 13 101883	Annual	\$25,500
Vyaire Holding Company	Midvale Indemnity Company	Director & Officer Side A Liability	ACL-144453387-02	Annual	\$23,910
Vyaire Holding Company	Federal Insurance Company	Fiduciary Liability	J06349456	Annual	\$10,335
Vyaire Holding Company	Federal Insurance Company	Employment Practices Liability	J06349456	Annual	\$46,471
Vyaire Holding Company	Illinois National Insurance Co.	Fiduciary Liability	01-545-03-53	Annual	\$38,060
Vyaire Holding Company	Great American Insurance Co.	Special Risk	SCI273611442	Annual	\$10,427
Vyaire Holding Company	Allied World Assurance Company (U.S.) Inc.	Pollution Liability	0310-3558	Annual	\$65,148

Legal Entity	Insurance Carrier	Policy Type	Policy Number	Policy Term	Approximate Annual Premium
Vyaire Holding Company	Lloyd's Syndicate 1036 COF	Marine Cargo Liability	B0509MARCW2351091	Annual	\$330,000
Vyaire Holding Company	Lloyd's Syndicate No.4472 LIB.	Marine Cargo Liability	B0509MARCW2351092	Annual	\$103,125
Vyaire Holding Company	Federal Insurance Company	Global Property	3606-61-72 DTO	Annual	\$884,197
Vyaire Holding Company	Starr Surplus Lines Insurance Company	Global Property	23SSLDOND316061	Annual	\$230,000
Vyaire Holding Company	Princeton Excess and Surplus Lines Insurance Company	Global Property	78-A3-XP-0001068-00	Annual	\$140,000
Vyaire Holding Company	Mt. Hawley Insurance Company	Global Property	MPC0606018	Annual	\$50,000
Vyaire Holding Company	Endurance American Specialty Insurance	Global Property	ARP30048538600	Annual	\$120,000
Vyaire Holding Company	Lloyd's of London	Global Property	B0509BOWPN2352774 B0509BOWPN2352775 B0509BOWPN2352776 B0509BOWPN2352777	Annual	\$117,043
Vyaire Holding Company	Lloyd's of London	Global Property	B0509BOWPN2352776	Annual	\$106,667
Vyaire Holding Company	Ascot Specialty Insurance Company	Property DIC	UB211270B00463	Annual	\$140,961
Vyaire Holding Company	Princeton Excess and Surplus Lines Insurance Company	Property DIC	B2A3IM0003894-00	Annual	\$281,965

Exhibit D**Surety Bonds¹**

Principal	Bond No.	Obligee	Nature of Bond	Expiration Date	Bond Amount
Vyaire Medical, Inc. and Vyaire Medical 211, Inc.	20BSBAA2688	California State Board of Pharmacy	Pharmaceutical Bond	04/30/2025	\$100,000
Vyaire Medical, Inc. and Vyaire Medical 211, Inc.	20BSBIL8800	Nevada State Board of Pharmacy	Pharmaceutical Bond	10/21/2024	\$100,000
Vyaire Medical, Inc.	20BSBAA2687	Maryland Board of Pharmacy	Pharmaceutical Bond	04/30/2025	\$100,000
Vyaire Medical, Inc.	22C000T8M	Bureau of Customs and Border Protection	Custom Duty	06/07/2025	\$400,000

¹ The Surety for the Custom Duty Surety Bond is Hartford Insurance Company of the Midwest. The Surety for all other Surety Bonds herein is Hartford Fire Insurance Company.