UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 24-11217 (BLS)
VYAIRE MEDICAL, INC.,	.	
	.	
	.	
Liquidating Debtor.	.	Courtroom No. 1
	.	824 Market Street
	.	Wilmington, Delaware 19801
	.	
	.	Wednesday, November 19, 2025
. . . .	.	2:48 p.m.

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

APPEARANCES:

For David M. Barse, Plan Administrator:	Melissa M. Hartlipp, Esquire COLE SCHOTZ, P.C. 500 Delaware Avenue Suite 600 Wilmington, Delaware 19801
For Hartford Fire Insurance Company:	Gary D. Bressler, Esquire McElroy, Deutsch, Mulvaney & Carpenter, LLP 300 Delaware Avenue Suite 1014 Wilmington, Delaware 19801
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INDEX

(Proceedings commenced at 2:48 p.m.)

MS. HARTLIPP: ...on behalf of David Barse in his capacity as the plan administrator of Vyaire Medical, Inc. and its affiliated Debtors.

As noted on the agenda today, filed at Docket 1142, only one matter: Hartford Insurance Company's request for the allowance and payment of an administrative expense claim --

THE COURT: Can you get that microphone a little closer?

MS. HARTLIPP: Oh, yes.

THE COURT: Actually, I'll tell you what the deal is. They're both very directionally sensitive, so just pick one and stick with it.

MS. HARTLIPP: Okay.

THE COURT: It doesn't matter which one.

MS. HARTLIPP: All right. Great.

THE COURT: That would be perfect.

MS. HARTLIPP: Would you like me to start over?

THE COURT: No, I gotcha.

MS. HARTLIPP: -- is scheduled to go forward this afternoon.

As a general housekeeping matter, in advance of today's hearing, you know, the parties met and conferred and filed a joint stipulation of facts --

THE COURT: I have that, thank you.

MS. HARTLIPP: -- which I would move to admit into the record at this time. I'm happy to read it if Your Honor would like?

THE COURT: I definitely don't. I very much appreciate the parties' coordination in advance.

Mr. Bressler, good afternoon. It's good to see you, as always.

MR. BRESSLER: Good afternoon, Your Honor.

THE COURT: I assume that both sides are supportive of the stipulation; if so, then I would admit it into evidence as part of the record for our case.

MS. HARTLIPP: Yes.

MR. BRESSLER: Yes.

THE COURT: Very well.

MS. HARTLIPP: And with that, I would propose to hand the podium over to Mr. Bressler, as the movant this afternoon.

THE COURT: Very good.

MS. HARTLIPP: Thank you.

MR. BRESSLER: Your Honor, Gary Bressler, counsel for the Hartford surety entities.

We've agreed, subject to Your Honor's approval, to bifurcate this hearing in the following way.

THE COURT: Okay.

MR. BRESSLER: We've agreed for Your Honor to decide today whether or not Hartford is entitled to an administrative claim for fees and costs. If Your Honor found that Hartford is, there's still the issue of reasonableness of fees and what the standard is as to whether it should be reasonableness or something else.

We had discussed maybe having a discussion with Your Honor as to what you would want as to that; are you going to want a lawyer from our firm to testify as to what we did or how --

THE COURT: Could you remind me -- and I saw it in the papers, but I want to make sure I understand what we're fighting over -- what is the amount of the request?

MR. BRESSLER: So the amount through the effective date was about $28,000, but it keeps accruing, unfortunately.

THE COURT: Because of -- right.

MR. BRESSLER: Among other things, as we're fighting over fees, what we did when we submitted our post-effective date time, there are items for, say, negotiating a new indemnity agreement with the buyer. We put little asterisks next to them because we didn't include them in the fees. But, unfortunately, they just keep accruing until we resolve this issue, and it's our position we're entitled to our fees for fighting over our fees.

THE COURT: Okay. That sounds fine.

I will tell you that I would, I want to hear the question and I'll deal with the question of whether there's an entitlement to an admin claim. I would not expect, just as a matter of practicality, that we would turn this into an evidentiary hearing and bring witnesses in.

I'm sensitive to the issue of fighting fees over fees; there's no shortage of case law about that. In addition, you know, I think the issue of how much or the reasonableness of those is something, if the Court permits an admin claim, then, we'd be able to figure out that number, probably without a further evidentiary hearing that would probably materially increase the amount that is in dispute. So, I appreciate the practical approach of counsel.

MR. BRESSLER: Thank you.

Hartford also asserts a liquidated claim for $1,000 for a claim Customs has asserted that Hartford is paying. We would ask for the admission of all the documents that are on the agenda, which is the request of Hartford for an administrative expense, the plan administrator's objection, which has our proof of claim attached to it, our response, and then we already agreed to the stipulation of facts.

THE COURT: No, I appreciate that.

Rather than admitting those documents, they are all of record and the Court will -- I don't even know that I need to take notice of matters that are in the docket in front of me, but they are certainly part of the record, but not necessarily admitted. I think we're talking about distinction without the difference.

MR. BRESSLER: Okay. I also just want to mention we cited in the stipulation of facts to one of the pleadings, which is a first day motion as to surety bonds and the confirmation order.

THE COURT: And the confirmation order.

MR. BRESSLER: Your Honor, with that, if I may proceed with argument?

THE COURT: Sure.

MR. BRESSLER: For the stipulation of facts, it's acknowledged that Hartford issued four surety bonds on behalf of the Debtors and their non-debtor affiliates in the amount of $700,000 that were active on the following date of the debtors' cases. It's also not disputed that the Debtors executed two indemnity agreements in connection with the bonds, which, among other things, covered Hartford's attorney's fees and costs.

The Debtors, in their first day motion, at Docket 9, indicated that the bonds weren't needed for the debtors' operations. It's also acknowledged that the confirmation order says that the rights of Hartford, under the indemnity agreements, shall continue in effect.

The plan administrator cites to a number of cases that allegedly supports its argument, that since the indemnity agreements were executed prepetition, any claims under the indemnity agreements were prepetition and not an administrative claim; however, none of these cases have language in the confirmation order preserving the claimant's right under the contract that was entered into prepetition.

THE COURT: But I guess the question would be: Does that preservation change the character?

If the debtor didn't have that language, wouldn't you still be here?

MR. BRESSLER: If the debtor didn't have that language, we would still argue that we have an administrative claim.

THE COURT: Sure.

MR. BRESSLER: But I will tell you in that situation, it tends to always settle --

(Laughter)

THE COURT: Right.

MR. BRESSLER: -- and you never get to it. So whenever I've asserted that argument, I've never actually had a Court decide it because I've always resolved it.

But here, with the additional language, we think we have a more stronger argument as to why we're entitled to the fees, because it's consistent with the confirmation order. There are cases where we cited to where if there's language in the confirmation order preserving a position, the position is preserved. In addition, while we didn't cite to it in our response, going as far back as 1935 in Stoll v Gottlieb and the cases thereafter, 305 U.S. 165, the Court held that a confirmation order has *res judicata* effect.

THE COURT: It does. But, again, I guess the question I have is, imagine that we have a situation where you've got a landlord and the confirmation order says the landlord's rights are unaffected and then at the effective date, the lease is rejected, okay.

The fact that the confirmation order says his rights are unaffected or not impaired by confirmation doesn't change -- doesn't render something that -- actually, I'm not being articulate and it's not a good hypothetical. Let me take a step back.

I guess the trustee's point of view is that language is preserving language, presumably negotiated with the surety company, so that -- but it didn't change what those rights were. So I think my point would be if you've got -- if you don't have an admin claim by virtue of the facts that we have, then I think that the trust's position would be the language in the confirmation order didn't change that fact.

If you've got an admin claim, then you still have it, but it didn't elevate anything; it just made sure that nothing in the plan would change what your current rights were.

I'm not being clear, but --

MR. BRESSLER: This -- but this is a little different. This is (indiscernible). Sometimes rather than assuming the indemnity agreement, language is put in saying all the rights under the indemnity agreement survive. But I would submit that it's basically the same thing, that instead of the indemnity agreement being rejected -- it wouldn't make sense. You don't reject agreement and then, I would submit, and then say, All the rights under the agreement survive to continue on. That, to me, would be contradictory.

By preserving the rights under the indemnity agreement, that's the equivalent of assuming it; that the rights continue and that you have the right to assert them and it's not just a prepetition claim.

THE COURT: So the confirmation order provides at 113:

"Notwithstanding anything else to the contrary," yadda, yadda, "including trust and/or subrogation rights under any surety bonds, they shall continue in full force and effect, including to the extent applicable, following any indemnity agreement."

So, it continues in full force and effect. Is that functionally an assumption; is that your argument?

MR. BRESSLER: Your Honor, yes; it's the equivalent, because they're adopting it and then continuing it.

If it's still an unsecured claim, then that would render that language meaningless. What would be the effect of it if it's still an unsecured claim; it wouldn't have any purpose or meaning. The whole idea is your rights are going to continue and, therefore, we have the right to assert an administrative claim, just as if the contract had been assumed because it's continuing. They're not disowning it; instead, they're owning it.

THE COURT: So, I guess one of the things that I would wrestle with here is that as a practical matter on that side of the podium, this language is often, by all kinds of stakeholders, language similar to this is negotiated because the debtor has a, you know, an 80-page, single-spaced plan with a 400-page plan supplement that's got all kinds of potential landmines that people are afraid of.

And so language like this, I think it's often negotiated reservation of right or preserving language that says nothing bad in -- there is -- we used to say, with respect to Ms. Sleight from the U.S. Attorney's Office, she said she had this wall of text that basically outlawed anything that made the United States sad and -- because her point was, I don't know everything that's in here and if you think you're going to have something that gets you out of taxes or environmental liability or something else; it ain't happening.

And that is normally how I would view this kind of language, but I think you're giving it more teeth and I want to make sure I understand why.

MR. BRESSLER: Because it says any rights continue in effect. It just doesn't say, Nothing herein negatively be affects it. It's even stronger, saying, the rights under this agreement continue in effect, just as it would if an executory contract was assumed --

THE COURT: Okay.

MR. BRESSLER: -- and we would submit that is the difference.

And other -- I can't rattle them off, but in other cases where we've had similar language we're, then, able to settle for the indemnity agreement. This is not unusual.

The other thing I wanted to mention is they argue the attorney's fees provided no benefit. Assuming for a second, we lose the first argument and Your Honor doesn't accept what I'm saying, that they just automatically, everything continues, in effect, post-petition. During the case, the attorney's fees were incurred as part of the bonds being in place and the bonds provided a benefit. So, to the extent the agreement was regarded as executory, we were still providing a benefit during that time through the bonds and, therefore, we should be entitled to our attorney's fees.

THE COURT: Okay.

MR. BRESSLER: Finally addressing the one-thousand-dollar argument. If Your Honor finds that we can enforce our rights, that would include for reimbursement of the $1,000, they argue that because Customs did not file a claim, we can't now assert that claim; however, there are a number of cases that say that even if the underlying party didn't file a claim, this doesn't preclude a claim against the surety, so that the claim would have survived against our client, and that's why we had to tie it.

And I can -- there's an old Delaware District Court case, Tidewater v New Amsterdam, 20 F.2d 951, that said that and they said the way for the surety to protect its claim when the other party is -- when the bond beneficiary hasn't filed the claim, is for the surety to file a claim itself like we did. So, if Your Honor finds either that we're correct, that we could still enforce the indemnity agreement or we're correct that there was a -- let me go back.

THE COURT: Uh-huh.

MR. BRESSLER: I think you would have to find that we're correct, that we could enforce the indemnity agreement for this thousand-dollar claim, because it's a prepetition period.

THE COURT: Right.

MR. BRESSLER: So, I can't -- I don't have the same argument with the attorney's fees that were approved during the case.

THE COURT: I got it. Okay.

MR. BRESSLER: Thank you.

THE COURT: Sure. Thank you.

Ms. Hartlipp?

MS. HARTLIPP: Thank you, Your Honor.

Yes, and we (indiscernible) Mr. Bressler are exactly on point. I believe that our position is that -- and I believe the cases that Hartford cites to stand for the position that the clear language of the plan should control. And the clear language here seems to suggest that Hartford's rights remain the same. It's a reservation of rights that we've all seen time and time again and they continue on.

And I think assuming a contract is different than their rights continuing. And I think other provisions of the plan --

THE COURT: When were these fees incurred; are these fees post-confirmation or post-petition?

MS. HARTLIPP: Post-petition and post-effective date. I believe that they run through -- and, again, Mr. Bressler probably is more familiar with them and can correct me if I'm wrong -- but I believe they run through, at least, July of 2025 and that Hartford's position is that they continue to accrue as we continue this dispute.

THE COURT: And can I ask, do these fees -- and I know that they're in the stipulation -- but do these fees relate to, essentially, recovering -- is the -- are the charges, the time entries largely about this issue or are they about providing services as counsel to the surety bond in terms of renegotiating or memorializing an -- the analogy that I'm looking for is, we deal with the questions for fees often, relatively often, in the context of landlords.

MS. HARTLIPP: Yes.

THE COURT: And a landlord's lease will often say, You've got to pay my fees.

And I think the Bankruptcy Court, here, and I think most have generally said that you get your fees for the work you do on behalf of the landlord in connection with this proceeding, but that you don't get it, for example, simply for monitoring or for preparing your fee application or something else.

And so I'd like -- and, again, Mr. Bressler will have an opportunity to reply -- but I'd like your thoughts on that question.

MS. HARTLIPP: Yes, I believe that our position to that question is that we take the position that Hartford and Mr. Bressler have asserted an administrative claim and to assert an administrative claim, under Section 503, as Your Honor is more than aware, you need a post-petition transaction with the debtor and an actual, necessary benefit to the estate.

And so, the indemnity agreements at issue, we take the position that they're prepetition transactions because as Your Honor is, I'm sure, more than aware and as held in _Pinnacle_ and numerous other cases, I think, in this district and elsewhere, an indemnity obligation accrues upon the signing of the indemnity agreement and not when the fees arise, whether that's pre or post-petition, and so Hartford cannot be entitled to an administrative claim by virtue of the fact that there's no post-petition transaction with the Debtors and the estate.

And also dispute that Hartford and its attorneys -- its attorney's fees provided an actual and necessary benefit to the estate, period. I believe that Hartford, you know, says that the bonds benefited the estate, but the bonds, which the bond premiums were paid throughout the course of the bankruptcy, separate than the attorney's fees, and that Hartford's own legal counsel doing, I guess, protecting their interests is separate and doesn't meet the standards --

THE COURT: It doesn't benefit the estate.

MS. HARTLIPP: -- to provide an actual, necessary benefit to the estate.

THE COURT: Well, let me ask you, to that point, I know that at your -- in your submissions at paragraph 28, you recite:

"The Debtors paid a premium for the use of the bonds. The administrative claim is more than five times that premium."

Again, I have not studied the underlying bond agreements, but, so that would mean that the premium on the bonds was about five grand?

MS. HARTLIPP: Frankly, I'm not a hundred-percent certain of the numbers throughout the course of the bankruptcy.

THE COURT: Okay. They're in the record --

MS. HARTLIPP: Yes.

THE COURT: -- I know, because the stipulation is there.

MS. HARTLIPP: Yes, I would need to fresh my memory.

THE COURT: No, that's okay.

I guess I think you covered this, but I want to make sure that I understand your argument, with respect to the terms of the plan. And, again, you heard Mr. Bressler place significant weight on "rights shall continue."

MS. HARTLIPP: Yes.

THE COURT: I think it's -- I will say I understand the argument that it's tantamount to assumption. It certainly can't be equal to assumption; you can't assume without a motion and an order. It's almost, I think it's almost an estoppel argument, right, that, look, you told me that my rights would continue. And I continued to perform, I think, is the surety's argument, and now you're saying that those rights are cut off.

How do I deal with that?

MS. HARTLIPP: I think that as of the petition date, I think if it were to be assumed, right, then it would be, like, a cure issue.

THE COURT: Right.

MS. HARTLIPP: And so, I think that Hartford's rights to cover on a cure would be different than an admin claim. And so I think, you know, to the extent you might have potential -- not that, you know, not that I'm necessarily agreeing here that there would be one -- but to the extent that there might be a contingent, you know, unliquidated claim, you still have that claim. I think that, you know, nothing is precluding you from asserting that like you'd normally be able to in this sort of position.

THE COURT: Okay. I think I understand.

MS. HARTLIPP: And I think --

THE COURT: And I didn't want to cut you off. I know I asked a bunch of questions, so if there are any other points that you wanted to make?

MS. HARTLIPP: I think the one final point that I would make --

THE COURT: Of course.

MS. HARTLIPP: -- is that I think, under the -- going back to the terms of the plan, I think the terms of the plan don't contemplate the Wind-down Trust paying post-effective date fees incurred like (indiscernible) the Debtors have ceased to operate and exist and that the plan addresses prepetition and claims that arose during the bankruptcy and there's a wind-down budget budgeted for that.

THE COURT: Right. And these obligations are not included in that.

MS. HARTLIPP: Yes.

And these obligations, to the extent, especially to the extent they continue to accrue post-effective date, are not contemplated as part of the plan.

THE COURT: Very good.

MS. HARTLIPP: And I think with that, unless Your Honor has any further questions for me, I will turn the podium back over.

THE COURT: No, I don't.

Mr. Bressler, I'm going to give you the last word, and here's what we're going to do. I want you to respond to Ms. Hartlipp's comments and I think I have a question or two for you, so that I understand the back-and-forth.

The question was, depending on how the Court rules, we would need to address the question of the amount. I want to take under advisement -- I expect to rule this week or early next week -- I want the opportunity to study the surety documents themselves. We deal with surety bonds a lot, but to your comment, they are rarely contested. So, I want to make sure that I understand the mechanic of this and I'm not looking to either change established practice, but, you know, again, I've seen you in my courtroom on surety issues. They're critical, but quiet in a bankruptcy proceeding, typically.

So, I just wanted you to know that that's what I intend to do, but I would appreciate the benefit of any response to Ms. Hartlipp's comments you have.

MR. BRESSLER: They tend to be quiet because most of the time, we do resolve them.

THE COURT: Uh-huh.

MR. BRESSLER: It's usually the day before the hearing, but we do get them resolved.

THE COURT: Yeah.

MR. BRESSLER: So, I wanted to first answer a question Your Honor had as to what type of fees were incurred between the petition date --

THE COURT: Sure.

MR. BRESSLER: -- and the effective date.

They were -- they weren't, primarily, to preserve a claim for fees; although, we submit in the confirmation order, there's language that does that. There are -- here's how we normally get involved. We get involved -- and we did in this case -- we get involved with cash collateral financing; getting language in the order to make sure that the surety's rights are protected.

We get involved, and we did in this case, with the two sales and what's going to happen with the bonds and protecting rights, both, as to what happens with the bonds and what might happen concerning setoff, recoupment, those types of rights.

And then we got involved a fourth time in connection with the plan in negotiating language under the plan. There was probably a little time reading other pleadings, but those are the primary things we normally get involved in that we did in this case, so it wasn't primarily just to protect the claim for fees; although, we're submitting --

THE COURT: Although that's in there.

MR. BRESSLER: -- that's part of what's in the confirmation order.

THE COURT: Okay.

MR. BRESSLER: Post-effective date, we have included some time just dealing with general bankruptcy issues, but most of the post-effective date time, but not all, has dealt with this fee issue. We had discussions. They wrote a detailed letter why they felt we weren't entitled to it. We responded. We went back and forth.

So -- and, also, obviously, with the pleadings we've had to prepare for this hearing, and we would submit because they continue to contest it, rather than our resolving it, that those fees were necessary to protect our rights. I understand that if I don't get the first set of fees, we're not going to get the second set of fees.

And I would, again, just try to stress that this order doesn't just say, Nothing herein affects our rights; it's stronger. It says, "The indemnity agreement shall continue in full force and effect." That's a little different than a lot of the provisions that just say, Nothing herein affects your rights.

The rights under the debt to enforce the terms of the indemnity agreement were specifically preserved by the language in the order. It's not often people get something: Nothing herein affects (A); nothing herein affects (B). But it doesn't normally saying, All your rights under this document are preserved. If all our rights under the document are preserved, one of the those rights is the rights to attorney's fees.

I don't -- they said there were no benefit. I already presented argument. The benefit was the bonds. Not -- obviously, not the fees, but they're all -- but they're together; the indemnity agreement and the bonds really have to be looked at together.

THE COURT: Very good.

All right. As I said, I'm going to take the matter under advisement. I expect to deal with this promptly. I will not be writing an opinion on this; I want to be clear.

And to the extent that we need further proceedings, then once I rule, I will get the parties on the phone. We'll do it -- if we head down that path, we would do it, as I said, in a way that is cognizant of the amounts that are at issue.

MR. BRESSLER: I think we both appreciate that, Your Honor.

THE COURT: Ah, that's fine.

All right. Anything else before we adjourn?

MS. HARTLIPP: Just one quick further question.

THE COURT: Ms. Hartlipp?

Yeah, can you get to the podium?

MS. HARTLIPP: Yes.

THE COURT: Yes, ma'am?

MS. HARTLIPP: My question would be, to the extent that you expect to rule this week, would you expect that to be a virtual, just get us on the phone or...

THE COURT: I would probably not get you on the phone; I would probably do it by letter --

MS. HARTLIPP: Okay.

THE COURT: -- or by the Court's own order. So, no, look, I know that we're coming up on holidays and everything else and I -- but, no, that's a good question, because often, I advise that I'm going to take something under advisement, but usually if I intend to do a bench ruling, then I will tell the parties that I will get you on the phone.

I don't see that here. The issues are narrow enough that I just need to make sure I understand exactly the business framework that we're talking about from the documents that you've been kind enough to stipulate into the record so that I understand what I'm being asked to do, okay.

MS. HARTLIPP: Yes, understood.

THE COURT: All right. Anything else this afternoon?

MR. BRESSLER: I realize I didn't address one thing that --

THE COURT: Back to the podium, then.

MR. BRESSLER: -- that (inaudible) said.

So, I can't tell you what the exact premiums are, but they're not hundreds of thousands of dollars. But I would submit the important number is our possible exposure under the bonds, because that's what we're trying to protect by incurring the attorney's fees, not the premiums, which are usually a few percentage points of what the bonds are.

THE COURT: That, I understand. No, I appreciate that.

MR. BRESSLER: Thank you.

THE COURT: Okay. With that, we are adjourned.

Thank you very much, counsel.

MS. HARTLIPP: Thank you.

THE COURT: Thank you, Dana.

THE CLERK: Have a good one.

(Proceedings concluded at 3:17 p.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 December 5, 2025

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