



SO ORDERED.

SIGNED this 20 day of October, 2017.

James P. Smith

**James P. Smith
Chief United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA**

IN RE:)	
)	Chapter 11
THE WOMEN'S HEALTH INSTITUTE)	
OF MACON, PC,)	
)	Case No. 17-51196
Debtor.)	

**FINAL CONSENT ORDER AUTHORIZING USE OF CASH
COLLATERAL PURSUANT TO 11 U.S.C. § 363**

On June 7, 2017, Debtor The Women's Health Institute of Macon, PC ("WHI") (along with its affiliated debtor ELO Outpatient Surgery Center, LLC ("ELO") filed its Joint Motion for Permission to Use Cash Collateral [Doc. 7] (the "Motion"). On June 19, 2017, this Court entered the Interim Consent Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Notice of Final Hearing [Doc. 22]. On July 6, 2017, this Court entered the Second Interim Consent Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Notice of Final Hearing [Doc. 31]. On August 17, 2017, this Court entered the Third Interim Consent Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Notice of Final Hearing [Doc. 49]. On September 14, 2017, the Court entered the Fourth Interim Consent

Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Notice of Final Hearing [Doc. 59] (the "**Fourth Interim Order**"). In the Fourth Interim Order, the Court scheduled a final hearing on the Motion for October 12, 2017. Prior to that hearing, WHI informed the Court that Branch Banking and Trust Company ("**BB&T**") has agreed to permit WHI to continue to use the cash collateral of BB&T (the "**Cash Collateral**") on a final basis in accordance with the terms of this Final Consent Order (the "**Consent Order**"). BB&T and WHI (collectively, the "**Parties**") stipulate as follows:

A. **Pre-Petition Liens.** On or about June 2, 2015, BB&T made a loan to WHI secured by certain personal property located in Georgia pursuant to, among other documents, the following:

- a. Promissory Note dated June 2, 2015, in the original principal amount of \$500,000, made by WHI in favor of BB&T as payee (the "**Note**");
- b. Loan Agreement dated June 2, 2015, by and between WHI and BB&T (the "**Loan Agreement**")
- c. BB&T Security Agreement dated June 2, 2015, executed by WHI in favor of BB&T (the "**Security Agreement**"), conveying a security interest in and lien upon certain personal property owned by WHI and described in the Security Agreement, including, without limitation, all accounts (including health care insurance receivables) and general intangibles (including payment intangibles), among other categories of personal property (collectively, the "**Personal Property**");
- d. BB&T Commercial Guaranty agreements, each dated June 2, 2015, executed by Dr. Nnaemeka M. Umerah ("**Mr. Umerah**"), Stella A. Umerah ("**Mrs. Umerah**"), Anayo Umerah MD PC ("**Umerah PC**"), and ELO Outpatient Surgery Center

LLC ("**ELO**," and collectively with Mr. Umerah, Mrs. Umerah, and Umerah PC, the "**Guarantors**") (each, a "**Guaranty**" and collectively, the "**Guaranties**"); and

e. certain related documents, contracts, assignments, subordination agreements, instruments, and UCC filings.

All of such documents, as at any time amended, modified, or restated, are collectively referred to hereinafter as the "**Loan Documents**." BB&T has a first-priority security interest in the Cash Collateral.

B. **Pre-Petition Debt.** As of June 5, 2017 (the "**Petition Date**"), the principal amount of the indebtedness owed by WHI to BB&T under the Note was not less than \$500,000, exclusive of interest, costs, attorneys' fees, and other amounts chargeable to WHI under the Loan Documents.

C. **Need for Use of Cash Collateral.** WHI asserts that it requires the use of Cash Collateral to continue operating its business. WHI asserts that serious and potentially irreparable harm to WHI, its creditors and its estates may occur absent authorization for the use of Cash Collateral.

From the foregoing stipulations, the Parties agree as follows:

1. **Grant of Motion.** The Motion is *granted* as hereinafter set forth.

2. **Authority to Use Cash Collateral.**

a. Upon entry of this Consent Order, WHI may use Cash Collateral for expenses only of the WHI (and not ELO or any other party) until December 1, 2017 (the "**Cash Collateral Period**") in accordance with the budget attached hereto as Exhibit A (as may be supplemented from time to time if the Cash Collateral Period is extended, the "**Budget**"). With respect to each line item in the Budget, expenditures of Cash Collateral

shall not exceed the amount set forth in the Budget by more than 10% of the amount permitted for each line item.

b. WHI shall not use, sell or expend, directly or indirectly, Cash Collateral or any proceeds, products, or offspring thereof, except as authorized in this Consent Order or any other order of the Bankruptcy Court, after notice and a hearing, allowing such expenditure. For the avoidance of doubt, WHI shall not, and is expressly not authorized, use Cash Collateral of the WHI for any expenses of ELO or any other party other than the WHI, under any circumstances.

c. WHI's authority to use Cash Collateral in accordance with the terms and conditions set forth in this Consent Order shall terminate at 11:59 p.m. on the date on which (i) the Cash Collateral Period expires, unless the Cash Collateral Period is extended by further order of the Court or mutually agreed upon by the parties (in which case no further order of the Court shall be necessary); (ii) WHI fails to make any adequate protection payment to BB&T required under the terms of this Consent Order in a timely manner; (iii) WHI fails to discharge any duty or other obligation imposed upon it in this Consent Order or has otherwise violated any requirement or condition to use of Cash Collateral provided in this Consent Order; or (vi) this Consent Order is amended, vacated, stayed, reversed, or otherwise modified without prior written consent of BB&T.

Until expended by WHI, all Cash Collateral shall remain subject to the asserted liens and claims of BB&T under the Loan Documents.

3. **Adequate Protection Granted to BB&T.** During the Cash Collateral Period, BB&T shall be entitled to adequate protection as follows:

a. **Adequate Protection Liens.** As adequate protection for any diminution in the value of BB&T's interest in the Cash Collateral or the Personal Property, including any diminution resulting from the use of Cash Collateral on or after the Petition Date pursuant to this Consent Order, BB&T is hereby granted, pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, valid, binding, enforceable, and automatically perfected liens on and security interests in (collectively, the "**Adequate Protection Liens**") the Personal Property, wherever located and whether created, acquired or arising prior to, on, or after the Petition Date.

b. **Loan Payments.** WHI shall make interest payments to BB&T in the amounts as calculated, and as and when such payments are due, under the Loan Documents (without regard to any default).

4. **Reporting.** WHI shall provide a copy of its monthly operating report, and any other reports BB&T reasonably requests, to counsel for BB&T and any other allegedly secured creditor who requests it.

5. **Survival of Provisions of This Order.** The provisions of this Consent Order and any action taken pursuant to the terms hereof shall survive the entry of any order dismissing this Chapter 11 case or converting this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code, and all of the terms and conditions of this Consent Order as well as the liens and security interests granted pursuant hereto shall continue in this or in any superseding case under the Bankruptcy Code, and such liens and security interests shall retain their priorities provided by this Consent Order until satisfied and discharged.

6. **Challenge by Trustee.** This Consent Order is entered without prejudice to (i) the claims, rights, and actions that the U.S. Trustee may have to challenge the nature, validity, or extent of the liens asserted by BB&T; and (ii) the right of BB&T to defend against any such challenge as to the nature, validity, or extent of such liens.

7. **Reservation of Rights.** Nothing in this Consent Order shall constitute or be construed to (i) be an admission by BB&T as to the adequacy of the protection provided herein or a consent by BB&T to the entry of a final order authorizing use of Cash Collateral; (ii) release, impair or alter in any way the obligations and liability of any Guarantor of the obligations evidenced by the Loan Documents; or (iii) prejudice the rights of BB&T or any other creditor to seek additional adequate protection or any other relief under the Loan Documents or applicable law. Nor shall entry of this Consent Order constitute a waiver of any prepetition default or any right or remedy of BB&T available under applicable non-bankruptcy law.

8. **Service of Order.** No further service of this Order shall be necessary.

9. **Order Immediately Effective.** Notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise, the effectiveness of this Consent Order shall not be stayed, and this Consent Order shall be immediately effective upon entry. This order may be extended upon agreement of the parties, or by order of this Court, after notice and a hearing.

Pursuant to the Parties' agreements set forth above, it is hereby

ORDERED that these stipulations and agreements are *approved*.

END OF DOCUMENT

We, the undersigned, on behalf of our respective clients, consent to the entry of this Consent Order.

BOYER LAW FIRM, L.L.C.

By: /s/ Wesley J. Boyer

Wesley J. Boyer
Georgia Bar No. 073126
348 Cotton Avenue
Suite 200
Macon, Georgia 31201
(478) 742-6481 Telephone

Wes@WesleyJBoyer.com
Counsel for WHI

PARKER, HUDSON, RAINER & DOBBS LLP

By: /s/ Eric W. Anderson

Eric W. Anderson
Georgia Bar No. 016810
303 Peachtree St NE
Suite 3600
Atlanta, Georgia 30308
(404) 420-4331 Telephone

eanderson@phrd.com
Counsel to Branch Banking and Trust Company

EXHIBIT A

(Budget)

WOMEN'S HEALTH INSTITUTE of MACON
Operating Budget

	<u>October</u>
PAYROLL (includes W/H remittance, ER taxes, garnishments)	
Net pay (Direct Deposit)	
Physicians	\$ 13,241.84
Midlevel Providers	10,843.36
Clinical Management/Administration	10,588.94
Medical Assistants	9,043.46
Administrative Assistants (Billing, reception and checkout)	16,616.34
W/H Tax remittances	25,339.18
Other EE Remittance (Insurance, 401k WH)	2,878.00
Garnishment remittances	1,006.50
UTILITIES	
Electricity	5,810.40
Phone, Internet and Cable	888.79
Water	89.34
OCCUPANCY	
Stockbridge Rent	12,333.30
Landscaping, parking lot and garbage disposal	644.60
Pest Control	60.50
Alarm	89.07
OTHER OPERATIONAL	
Advertising	
Bank Fees	303.20
Merchant fees	112.50
Bank Interest	7,836.00
Biohazard Disposal	275.00
Cleaning	715.00
Contracted Services (Ultrasound, lab, etc.)	6,754.00
Copiers and Equipment leases	1,023.32
Fees and Miscellaneous taxes	
Electronic Medical Records Program (monthly), IT	3,195.50
Insurance, property, WC, PSL	7,609.80
Laundry	1,390.40
Legal and Professional	10,000.00
Meals	
Medical Supplies	15,562.80
Postage and Office supplies	738.10
Professional Licensure and dues	715.00
Repairs	750.00
Travel	1,750.00
	<hr/>
Total	<u><u>\$ 168,204.24</u></u>

WOMEN'S HEALTH INSTITUTE of MACON
Operating Budget

	<u>November</u>
PAYROLL (includes W/H remittance, ER taxes, garnishments)	
Net pay (Direct Deposit)	
Physicians	\$ 13,241.84
Midlevel Providers	10,843.36
Clinical Management/Administration	10,588.94
Medical Assistants	9,043.46
Administrative Assistants (Billing, reception and checkout)	16,616.34
W/H Tax remittances	25,339.18
Other EE Remittance (Insurance, 401k WH)	2,878.00
Garnishment remittances	1,006.50
UTILITIES	
Electricity	5,810.40
Phone, Internet and Cable	888.79
Water	89.34
OCCUPANCY	
Stockbridge Rent	12,333.30
Landscaping, parking lot and garbage disposal	644.60
Pest Control	60.50
Alarm	89.07
OTHER OPERATIONAL	
Advertising	
Bank Fees	303.20
Merchant fees	112.50
Bank Interest	7,836.00
Biohazard Disposal	275.00
Cleaning	715.00
Contracted Services (Ultrasound, lab, etc.)	6,754.00
Copiers and Equipment leases	1,023.32
Fees and Miscellaneous taxes	
Electronic Medical Records Program (monthly), IT	3,195.50
Insurance, property, WC, PSL	7,609.80
Laundry	1,390.40
Legal and Professional	3,800.00
Meals	
Medical Supplies	15,562.80
Postage and Office supplies	738.10
Professional Licensure and dues	650.00
Repairs	1,200.00
Travel	825.00
	<hr/>
Total	<u><u>\$ 161,464.24</u></u>