

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

**DUMITRU MEDICAL
CENTER, P.C., *et al*¹**

Case No. 18-52936
Chapter 11
Hon. Mark A. Randon

Debtor.

(Jointly Administered)

**INTERIM ORDER (A) AUTHORIZING ON AN EXPEDITED BASIS USE
OF CASH COLLATERAL (B) GRANTING ADEQUATE PROTECTION;
AND (C) SCHEDULING A FINAL HEARING ON THE MOTION**

Upon consideration of the Debtors' Motion for Entry of an Interim Order (the "Interim Order") (a) Authorizing the Debtors, on an Expedited Basis, Pursuant to Sections 105(a), 361, 362, 363, 364 and 552 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"), to use Cash Collateral, (b) Granting Adequate Protection, and (c) Scheduling a Final Hearing on this Motion (the "Final Hearing") (the "Motion"), as more fully described in the Motion; and upon consideration of the Affidavit of Dumitru O. Sandulescu, President of

¹ The Debtors in these jointly administered proceedings are: Dumitru Medical Center, P.C. (Case No. 18-52936-mar), Doctor One Housecall Physicians, P.C. (Case No. 18-52940-mar), and Dumitru O. Sandulescu (Case No. 18-52944-mar).

Dumitru Medical Center, P.C. and Doctor One Housecall Physicians, P.C. (the "Sandulescu Affidavit"); and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28 of the United States Code to consider the Motion and the relief requested therein; and venue being proper in this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; and it appearing that no other or further notice need be provided; and the Court having determined that entry of this Order is in the best interest of the Debtors, their estates, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and attested to in the Sandulescu Affidavit establish just cause for the relief granted herein, it is therefore,

THE COURT HEREBY FINDS:

A. On September 21, 2018 (the "Petition Date"), the Dumitru Medical Center, P.C. ("DMC"), Doctor One Housecall Physicians, P.C. ("Doctor One Housecall") and Dumitru O. Sandulescu ("Sandulescu") (collectively DMC, Doctor One Housecall and Sandulescu shall be referred to as the "Debtors") filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession of their property and have continued to operate their businesses and daily affairs as Debtors-in-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. There has been no

request for the appointment of a Chapter 11 trustee or examiner and, no Official Committee of Unsecured Creditors has been appointed.

B. Debtors require the use of the Cash Collateral, as defined in the Motion, for the maintenance and preservation of their assets, for the operation of their businesses in the ordinary course, for treatment of patients, meet ordinary and necessary living expenses and for payment of the expenses attendant thereto.

C. The relief requested in the Motion, and authorization for the use of Cash Collateral in the amounts shown in the budget attached to the Motion as Exhibit B, are necessary, essential and appropriate for the continued operation of the Debtors' businesses, the management and preservation of their assets, for Sandulescu's ordinary and necessary living expenses and are otherwise necessary to avoid immediate and irreparable harm to the Debtors' estate pending a final hearing on the Motion.

D. Pursuant to Local Rule 4001-2(c)(4) the Debtor has served (i) the United States Trustee for the Eastern District of Michigan; (ii) United Midwest Savings Bank; (iii) Bank of America; (iv) JP Morgan Chase Bank; (v) Ditech Financial, LLC; (vi) Specialized Loan Servicing; (vii) United Guaranty Services, Inc.; (viii) Wells Fargo; (ix) the Internal Revenue Service, (x) the parties included on the Debtors' list of twenty (20) largest unsecured creditors; and (xi) those

parties that have requested notice pursuant to Bankruptcy Rule 2002 with notice of this motion.

E. On the basis of the above and foregoing, it is in the best interests of the Debtors' estates that the Debtors be authorized to use the Cash Collateral subject to and on the terms and conditions of this Interim Order.

G. The Court has jurisdiction over this Case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Interim Order is entered in a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M).

In light of the foregoing, **IT IS HEREBY ORDERED BY THE COURT** as follows:

1. The Motion is granted.
2. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Motion.
3. *Authorization to Use Cash Collateral.* The Debtors are hereby authorized to use Cash Collateral subject to the terms of this Interim Order. The Debtors may use Cash Collateral for necessary operating expenses and ordinary living expenses and in the amounts described in the budget attached to the Motion as **Exhibit B**, as may be modified, supplemented, or extended from time to time upon the written agreement of the Debtors and their Prepetition Secured Creditors (as so modified, supplemented or extended, the "Budget"). Debtors shall provide

the Prepetition Secured Creditors an updated Budget each 30 days along with an accounting, on a cash basis, of the Debtors' revenue, expenses and use of cash, with an accounting of its use of cash. Debtors shall file and serve on all secured creditors proposed 13-week projection prior to the final hearing on the use of Cash Collateral. Cash Collateral shall not be used for any other purpose or in any amounts in excess of the amounts described in the Budget without the written consent of the Prepetition Secured Creditors and without further approval of the Court. The Debtors are authorized to use Cash Collateral only to pay necessary operating expenses of the businesses and Sandulescu's necessary living expenses, which include, but are not limited to: payment of current taxes incurred after the Petition Date; any and all property taxes incurred after the Petition Date; wages and salaries; fees of professionals, subject to appropriate Court approval; rent; supplies and materials; insurance premiums; necessary maintenance; utilities; and other ordinary course charges necessary for the Debtors' operations and to meet daily living expenses, including the fees required by 28 U.S.C. §1930. This Order does not, in and of itself, authorize the Debtor to pay prepetition debt.

4. *Adequate Protection.*

- a. *Replacement Liens:* United Midwest Savings Bank and the Internal Revenue Service are granted replacement liens in the post-Petition Date assets of the Debtors, including accounts receivable, in the same

extent, validity and priority as their liens existed on the Petition Date to the extent of the diminution of such secured creditors' collateral caused by Debtors' use of cash collateral, effective *nunc pro tunc*, as of the Petition Date. No liens are granted hereby in any Chapter 5 causes of action or their proceeds to the secured creditors. The automatic stay under Section 362(a) of the Bankruptcy Code is modified to the extent necessary to implement the terms of this Order.

b. *Adequate Protection Payments*: The Debtors shall make the following adequate protection payments to the Prepetition Secured Creditors:

i. Payments in the amount of the standard monthly payment in the current amount of Four Thousand Nine Hundred Sixteen and 58/100 Dollars (\$4,916.58) will be made to Midwest beginning on October 25, 2018 and continuing in that amount on the 25th day of each consecutive month through the effective date of any confirmed plan or the date of dismissal or conversion of this case;

ii. DMC will make monthly adequate protection payments to the Internal Revenue Service in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) beginning on October

15, 2018 and continuing on the 15th day of each month through the effective date of any confirmed plan or the date of dismissal or conversion of this case;

- iii. Dr. Sandulescu will make the regular monthly payments due to Bank of America, JP Morgan Chase Bank, Ditech Financial, LLC, Specialized Loan Servicing, United Guaranty Services, Inc., and Wells Fargo through the effective date of any confirmed plan or the date of dismissal or conversion of this case.
- iv. Debtors shall have a ten (10) day grace period to make its adequate protection payments to United Midwest Savings Bank and the IRS. Upon the failure of the Debtors to cure such default within ten (10) days of written notice issued after the grace period from such creditor served on Debtors' counsel via email, such Prepetition Secured Creditor shall be entitled to file an expedited motion to lift stay as set forth in paragraph 8 herein.
- v. Debtors shall at all times maintain such insurance on the Pre-Petition and all other tangible personal property as is required under its Security Agreement with United Midwest Savings

Bank and as required by the US Trustee's operating instructions.

5. In addition, to protect United Midwest Savings Bank and the Internal Revenue Service from any diminution in the value of their collateral, United Midwest Savings Bank and the Internal Revenue Service shall have an administrative expense claim under Bankruptcy Code § 507(b) for any unpaid adequate protection payments.

6. *Non-Payment Events of Default:* Any of the following shall constitute an "Event of Default" hereunder:

a. Debtors violate or fail to timely satisfy, post-petition, any non-payment term or condition of this Consent Order.

b. A trustee or examiner is appointed under Chapter 11 of the Code without the consent of the Prepetition Secured Creditors.

c. Debtors sell or encumber any item of property subject to the Prepetition Secured Creditors liens (including, without limitation, the Cash Collateral), without the prior written consent of the Prepetition Secured Creditors having a claim in such asset(s).

d. Debtors' Chapter 11 proceedings are converted to a Chapter 7 proceeding or dismissed.

e. Insurance as required hereunder is deemed inadequate, is allowed to lapse by the Debtors, or is otherwise terminated.

7. Remedies upon an Event of a Non-Payment Default. Upon the occurrence of a post-petition Event of Default (other than the absence of insurance), any Pre-petition Secured Creditor shall have the right to notify the Debtors' counsel of such Event of Default via e-mail and Debtors shall have ten (10) days (five (5) business day in the case of inadequate insurance) from the date of such notice to fully cure the Event of Default. In the event that Debtors fail to timely cure such Event of Default, Debtors' right to use Cash Collateral shall terminate and any Prepetition Secured Creditor may file with the Court, on an *ex parte* basis, an affidavit regarding Debtors' uncured Event of Default and submit a proposed order prohibiting further use of Cash Collateral, and may file a motion to lift the automatic stay on an expedited basis seeking the termination of the automatic stay with respect to such creditor's collateral.

8. Remedies upon an Event of a Payment Default: In the event the Debtors fail to make any of the adequate protection payments as set forth in this Order, the respective creditor whose payment has been defaulted shall provide notice thereof to counsel for the Debtors as set forth herein. Upon the failure of the Debtors to cure such default within ten (10) days of notice, Debtors' right to use cash collateral under this Order and the Final Order shall cease upon the filing of

an Affidavit of Default by the respective creditor and such creditor shall have the right to seek to lift the stay on an expedited basis.

9. *Reservation of Rights.* The Interim Order shall in no way limit the rights of any official unsecured creditors committee, should one be appointed, the United States Trustee or any other party in interest, to investigate and/or challenge the validity and/or priority of the liens of the Prepetition Secured Creditors in the Cash Collateral, or the right of the Prepetition Secured Creditors to seek additional adequate protection or to assert its rights and claims against the Debtors and any third parties. If (i) there is a Creditors Committee, (ii) the Creditors Committee timely files an action or other pleading pursuant to this paragraph to contest or dispute the validity, extent, priority, etc. of lien filed against the Debtors' assets and (iii) the case later converts to a Chapter 7, then the Chapter 7 Trustee shall succeed to the rights of the Creditors Committee.

10. *Notice.* Within 24 hours of the entry of this Interim Order, the Debtors shall serve by first class U.S. mail, postage prepaid, a copy of the Motion and this Interim Order upon the following: (i) the Office of the United States Trustee for the Eastern District of Michigan; (ii) United Midwest Savings Bank; (iii) Bank of America; (iv) JP Morgan Chase Bank; (v) Ditech Financial, LLC; (vi) Specialized Loan Servicing; (vii) United Guaranty Services, Inc.; (viii) Wells Fargo; (ix) the Internal Revenue Service, (x) the parties included on the Debtors' list of twenty

(20) largest unsecured creditors; and (xi) those parties that have requested notice pursuant to Bankruptcy Rule 2002.

11. The deadline to file an objection to this Interim Order is 14 days from the entry of this Order, except that an official committee, should one be appointed, may file objections within 14 days after it is served with the entered order. If an objection is timely filed, the final hearing will be held. If no objection is timely filed, the interim or preliminary order may become a final order. Any objection to the continued effectiveness of this Interim Order or to a final order under similar terms to those terms set forth herein shall be in writing and shall be filed with the Court and served on each of the follow persons or entities:

(a) Counsel for the Debtors: Strobl & Sharp, P.C., 300 E. Long Lake Rd., Suite 200, Bloomfield Hills, MI 48304. Attention: Lynn Brimer;

(b) Office of the United States Trustee, 211 W. Fort Street, Suite 700, Detroit, Michigan 48226;

(c) United Midwest Savings Bank, 6460 Busch Blvd., Ste. 200, Columbus, Ohio 43229.

(d) Bank of America, 475 Cross Pointe Parkway, PO Box 9000, Getzville, New York 14068-9000.

(e) JP Morgan Chase Bank, P.O. Box 9001022, Louisville, Kentucky 40209-1022.

(f) Ditech Financial, LLC, P.O. Box 6172, Rapid City, South Dakota 57709-6172.

(g) Specialized Loan Servicing, 8472 Lucent Blvd., Ste. 300, Littleton, Colorado 80129.

(h) United Guaranty Services, Inc., 230 N. Elm Street, Greensboro, North Carolina 27401.

(i) Wells Fargo, P.O. Box 5169, Sioux Falls, South Dakota 57117-1690.

(j) Internal Revenue Service, Kevin Erskine, Assistant United States Attorney, U.S. Department of Justice, 211 W. Fort St., Ste. 2100, Detroit, Michigan 48332.

(k) Internal Revenue Service, SBSE/Insolvency Unit of the IRS, P.O. Box 330500 – Stop 15, Detroit, Michigan 48232.

12. **Final Hearing.** A final hearing on the Motion will be held on the **22nd day of October 2018 at: 11 a.m.**, as the same may be continued or adjourned by the Bankruptcy Court.

This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Interim Order.

Signed on October 01, 2018



/s/ **Mark A. Randon**

Mark A. Randon
United States Bankruptcy Judge