

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

IN RE GILBERT, BARBEE, MOORE &
MCILVOY, P.S.C., d/b/a
GRAVES-GILBERT CLINIC,

Debtor and Debtor in Possession

Chapter 11

Case No. 22-10763-JAL

DECLARATION OF STEVEN K. SINCLAIR IN SUPPORT OF DEBTOR'S
PETITION AND CERTAIN FIRST DAY MOTIONS

I, Steven K. Sinclair, declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Financial Officer for Gilbert, Barbee, Moore & McIlvoy, P.S.C. d/b/a Graves-Gilbert Clinic ("**Debtor**").

2. I am familiar with the Debtor's day-to-day operations, business affairs, and books and records.

3. On December 29, 2022 ("**Petition Date**"), the Debtor filed a voluntary petition ("**Chapter 11 Case**") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Western District of Kentucky ("**Bankruptcy Court**"). To enable the Debtor to minimize the adverse effects of the chapter 11 filing, the Debtor is requesting various types of relief in "first day" motions (collectively, the "**First Day Motions**") that are being filed with the Court.

4. I am submitting this declaration (the "Declaration") in support of the Debtor's chapter 11 petitions and First Day Motions in the Chapter 11 Case. Except as

otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge, my review of public and nonpublic documents, or my opinion, based on my experience and knowledge the Debtor's operations and financial condition. If called upon to testify, I would testify competently to the statements set forth herein.

5. Part I of this Declaration describes the Debtor's business and the circumstances surrounding the commencement of this chapter 11 case. In Part II of this Declaration, I substantiate the truth and accuracy of the relevant facts set forth in the First Day Motions filed on December 29, 2022.

I. BACKGROUND

A. Debtor's Business

6. The Debtor was founded in 1937, is headquartered in Bowling Green, Kentucky, and has provided an array of health care services. In each of the last two years, the Debtor has provided care to over 1 million patients in the South Central Kentucky region.

7. Through its team of over 200 doctors—representing 30 medical specialties—and staff, the Debtor provides exceptional care to the community through its independent clinic and at area hospital and surgery centers, such as the Medical Center at Bowling Green and TriStar Greenview Regional Hospital.

8. The Debtor offers a range of healthcare services for patients of all ages and includes Allergy, Cardiology, Dermatology, Dermatopathology, Ear Nose & Throat, Endocrinology, Family Medicine, Gastroenterology, General Surgery, Geriatrics, Hand Surgery, Inpatient Specialist, Internal Medicine, Mohs Surgery, Neurology, Obstetrics &

Gynecology, Oncology & Hematology, Ophthalmology, Orthopaedics, Pathology, Pediatrics, Physical Therapy, Pulmonology, Radiology & X-Ray, Rheumatology, School Services, Sleep Center, Sleep Medicine, Sports Medicine, Urology, Walk In Care, and WorkCare.

9. As of the Petition Date, the Debtor employs over 1000 full and part time employees, including over 200 physician providers.

10. For the year ending December 31, 2021, the Debtor generated approximately \$200 million in gross receipts and operating expenses slightly in excess of receipts. In 2021, after inclusion of the revenue from pandemic related relief funds and the refund of certain medical fees, the Debtor made a profit of \$150,041.

11. The Debtor's primary assets consist of our patient lists, medical and office equipment, certain real property, and accounts receivable.

12. The Debtor's major secured creditor is U.S. Bank, N.A, which is owed approximately \$22 million. The Debtor estimates an aggregate undisputed unsecured trade debt of approximately \$7.6 million as of the Petition Date and disputed unsecured tort debt in the amount of \$21.3 million, plus court costs and interest.

B. Reason for the Chapter 11 Filing

13. On May 30, 2014, a medical malpractice complaint was filed against Dr. Tage F. Haase, Commonwealth Regional Specialty Hospital, Inc., Bowling Green-Warren County Community Hospital Corporation d/b/a The Medical Center at Bowling Green, and the Debtor, initiating the case styled *Alice and Lloyd Dean Duff v. Tage F. Haase, M.D., et al.*, Case No. 14-CI-00665 ("**State Court Action**"). On July 29, 2022, a jury entered a

verdict (the “**Verdict**”) against the Debtor in the total amount of \$21,310.887.24, representing \$13,310.887.24 for the patient and \$8,000,000.00 for her husband. On August 16, 2022, the Warren Circuit Court entered judgment solely against the Debtor in the amount of \$21,310,887.24 (“**Judgment**”). On December 19, 2022, the Warren Circuit Court entered an order ruling on the post-trial motions.

14. The Debtor intends to appeal the Judgment entered in the State Court Action. Based on errors in the Verdict and Judgment, I believe they will be overturned on appeal. I trust the legal process to address the mistakes that prevented a fair trial in the State Court Action.

15. With the impending expiration of the 10-day stay provided by KRS 426.030, the Debtor runs a substantial risk that judgment creditors could take steps to execute on the Judgment to the significant detriment of patient care and the operations of the Debtor.

16. The Chapter 11 Case was filed on the Petition Date to preserve the Debtor’s ability to continue to care for the over 1 million patients seen by the Clinic each year; protect the value of the Debtor’s assets for all of its creditors; continue operating our business; and—along with our entire team—provide important healthcare to our community while the appeal is pending. The Debtor’s chapter 11 filing will also permit it to consider restructuring alternatives during this Chapter 11 Case.

II. FIRST DAY MOTIONS

17. On December 29, 2022, the Debtor filed several motions (“**First Day Motions**”) seeking relief intended to maintain the Debtor’s business operations; preserve value for the Debtor, its stakeholders, and parties in interest. Each First Day Motion is

crucial to the Debtor's restructuring efforts and to the health and wellbeing of its patients. Any capitalized term not expressly defined in this Declaration bears the meaning given to it in the relevant First Day Motion.

18. I have reviewed and discussed with the Debtor's proposed counsel each of the First Day Motions (including the exhibits and supporting documentations attached to each) and incorporate by reference any factual statements set forth in the First Day Motions. It is my belief that the relief sought in each of the First Day Motions is tailored to the needs of this Chapter 11 Case and are critical to the Debtor's ability to achieve the goals of this Chapter 11 Case.

Cash Collateral Motion

19. Under the Debtor's *Motion for Interim Authority to Use Cash Collateral* ("**Cash Collateral Motion**"), the Debtor seeks authority to use Cash Collateral under the terms more specifically set forth in the Cash Collateral Motion.

20. The Debtor's major secured creditor is U.S. Bank, N.A. In order to fund continued operations, the Debtor requires access to the Cash Collateral of U.S. Bank, N.A. In consultation with the Debtor and its counsel, I concluded that the use of Cash Collateral is appropriate to facilitate the Debtor's ability to operate post-petition and, subject to this Court's authorization, to continue to pursue the appeal.

Cash Management Motion

21. Under the Debtor's *Motion for Authority to (i) Maintain Bank Accounts; (ii) Continue Using Existing Cash Management System; (iii) Continue Using Existing Business Forms; and (iv) Granting Related Relief* ("**Cash Management Motion**"), the

Debtor seeks authority to, in the ordinary course of business, (a) use its existing Cash Management System, including maintaining the Bank Accounts and prepetition Business Forms (without reference to the Debtor's status as a debtor in possession); (b) direct the Debtor's banks and financial institutions to maintain, service, and administer the Debtor's bank accounts and to the extent funds are available, honor and process all related checks and electronic payment requests consistent with the relief requested therein; and (c) to the extent necessary, allow the Debtor additional time to comply with the guidelines set forth in § 345(b) of the Bankruptcy Code.

22. As described more fully in the Cash Management Motion, the Debtor maintains three separate commercial Bank Accounts with U.S. Bank, N.A. U.S. Bank is FDIC-insured.

23. In the ordinary course, the Debtor uses its Cash Management System to accept funds into, makes payments from, and transfers between the Bank Accounts as needed in its business judgment to meet its financial obligations and maintain and support its business operations.

24. The Debtor also uses regularly uses preprinted and clinic-specific Business Forms, including letterhead; envelopes; invoices; purchase orders; and other common forms in the day to day conduct of its affairs.

25. The Debtor pays the majority of its vendors contemporaneously upon receipt of invoices, and only operates on credit terms with a small number of vendors. In light of this fact, I believe that, if the Debtor is forced to change the Bank Accounts or Cash Management System, it will disrupt the Debtor's ordinary business activities at a

time when the Debtor is striving to maintain continuity as it transitions its operations into chapter 11.

26. Consequently, I believe that maintaining the Cash Management System, Bank Accounts, and Business Forms during this Chapter 11 Case is necessary and in the best interests of the Debtor and its bankruptcy estate, and the relief sought under the Cash Management Motion should be granted.

Motion to Protect Confidential Patient Information and Limit Notice in this Chapter 11 Case

27. Under the Debtor's Motion Seeking Order: (I) Authorizing Implementation of Procedures to Protect Confidential Patient Information and (II) Limiting Notice of Service of Pleadings ("**CPI Motion**"), the Debtor seeks authority to establish specific procedures to (a) protect the confidential information of its patients from improper disclosure; and (b) limiting notice of filings in this Chapter 11 Case to certain Service Parties, to avoid incurring unnecessary costs associated with mass mailings that would otherwise be sent to potentially tens of thousands of individuals in the Chapter 11 Case.

28. With respect to establishing procedures to protect the confidentiality of patient information, the Debtor will be able to maintain the confidential information of the Debtor's Patients to ensure that the Debtor complies with the confidentiality requirements of HIPAA.

29. I believe that the requirements to maintain confidentiality under HIPAA conflict with the requirements to disclose information under the Bankruptcy Code,

specifically the duty to file a list of all creditors under § 521(a)(1)(A) and the duty to file schedules of all assets and liabilities under § 521(a)(1)(B)(i).

30. To ensure that Patient information is protected from disclosure, therefore, I believe it is in the best interest of the Debtor, its estate, and creditors in this Chapter 11 Case that the Court grant the CPI Motion, and allow the Debtor to prepare and maintain a Patient Matrix and Patient Schedules as set forth in the Motion, and that the Debtor be allowed to file the Patient Matrix and Patient Schedules, redacting the names and addresses of the Patients, but making these documents available to the Court; the U.S. Trustee, any applicable state regulatory agency (through its state attorney general) and any other party that first obtains authority from this Court to review the Patient Matrix or Patient Schedules.

31. I believe that the procedures proposed in the CPI Motion will properly balance the open disclosure of information under the Bankruptcy Code while simultaneously protecting Patient information to avoid noncompliance with HIPAA.

32. I also believe that the limited notice procedures requested under the CPI Motion are reasonable and will serve the best interests of the Debtor, its estate, and creditors in this Chapter 11 Case without prejudice to any party in this Chapter 11 Case by ensuring all relevant parties in interest receive notice of the Excluded Pleadings in this Chapter 11 Case, namely: (i) notices of (a) the meeting of creditors set in this Chapter 11 Case under § 341 of the Bankruptcy Code, (b) the time fixed for filing proofs of claims under Bankruptcy Rule 3003(c), and (c) the time fixed for filing objections to, and the hearings to consider, approval of a disclosure statement and a chapter 11 plan; and (ii)

notice and transmittal of ballots for accepting or rejecting a chapter 11 plan in this Chapter 11 Case.

33. The Debtor has a Patient list of approximately ##### individuals who have received care at the Debtor's clinic over the last five years. Consistent with Kentucky law, these Patients will be given notice of the Excluded Pleadings, but if the Debtor is required to serve every party on the Patient Matrix with notice of routine, procedural, or other matters that do not directly impact these Patients it will be burdensome in terms of the cost associated with serving these parties unnecessarily.

34. I therefore believe that the relief sought in the CPI Motion is necessary to avoid improper disclosure of Patient information, and the limited notice procedures proposed in the CPI Motion serve the best interests of the Debtor, its estate, and creditors in this Chapter 11 Case.

Employee Wage and Benefits Motion

35. Under the Debtor's Motion for Entry of an Order (A) Retroactively Approving the Debtor's Payment and Honoring Certain Prepetition Wages, Benefits, and Other Obligations Paid Prior to the Hearing on this Motion, (B) Authorizing the Debtor to Pay and Honor Certain Prepetition Wages, Benefits, and Other Obligations; (C) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations; and (D) Granting Related Relief (the "Wage and Benefits Motion") the Debtor seeks authority to pay and honor certain wage and benefits obligations to its Employees.

36. As of the Petition Date, the Debtor employs more than 1,000 full- and part-time Employees. None of the Employees are party to a collective bargaining agreement or similar labor agreement.

37. In the ordinary course of business, the Debtor incurs and pays obligations relating to the Employees' wages, salaries, and incentive-based compensation. The Debtor also incurs a number of obligations related to the Employees, such as employee benefits, federal and state withholding taxes and other withheld amounts, health benefits, expense reimbursements, and other benefits that the Debtor has historically provided in the ordinary course of business.

38. The Employee Obligations incurred by the Debtor in the ordinary course of its business are as follows:

(A) Wages, Payroll Taxes, and Deductions

39. The Debtor pays Employee wages and salaries on a bi-weekly basis ("**Wage Obligations**") in the ordinary course of business.

40. The Debtor pays the Employees through direct deposit or paper check. The Debtor's estimated bi-weekly gross payroll for Employees averages approximately \$3,500,000.00.

41. The Debtor is also required by law to withhold from the Employees' paychecks amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate Taxing Authorities. In addition, the Debtor is required to make matching payments from its own funds on account of social security and Medicare taxes

and to pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (together with the Withholding Taxes, the "Payroll Taxes"). On average, the Debtor remits to the Taxing Authorities approximately \$11,000,000.00 (which includes payroll taxes withheld from Partners) on account of the Payroll Taxes per month. Debtor has a prepetition Payroll Taxes obligation of \$1,393,343.54 related to certain prepetition payroll.

42. In addition to deductions relating to the Debtor's health and welfare plans, the Debtor routinely deducts certain amounts from the Employees' paychecks on account of miscellaneous items, including garnishments, child support, Aflac and other similar deductions (collectively, the "Deductions"). The Debtor requests that it be allowed to continue honoring its obligations under the Deductions postpetition in the ordinary course of business and consistent with its pre-petition practices.

43. The Debtor's most recent payroll for Employees was paid on December 23, 2022. There is a one-week lag between payroll accrual and payroll payments (*i.e.*, the December 23, 2022 payroll payment relates to the period from December 5, 2022, through December 18, 2022).

44. Payment of prepetition Wage Obligations is necessary to ensure that the Debtor's Employees do not resign following the Petition Date. The Debtor's Employees are absolutely essential to providing patients the care they need, and any loss of employees during the immediate post-petition period would be catastrophic for the

Debtor's ongoing operations, particularly in light of staffing challenges across the healthcare industry.

(B) PTO: Vacation and Sick Leave

45. In addition to the Wage Obligations, the Debtor provides paid vacation time and sick leave to certain eligible Employees. Employees accrue vacation time and sick leave throughout the year. Unused vacation time and sick leave is typically carried over at the end of each fiscal year. I believe it is in the best interests of the Debtor to honor all paid time-off for Employees that accrued prepetition, and to allow the Employees to continue accruing vacation and sick leave post-petition in the ordinary course of business.

46. Based on my review of the Debtor's books and records, with a few exceptions, the payment of any Employee Obligations to any individual Employee or former Employee should not exceed the \$15,150.00 priority amount.

(C) Expense Reimbursements

47. The Debtor reimburses certain Employees for approved expenses incurred in the scope of their employment on behalf of the Debtor. These expenses include purchases of clinic and office supplies, travel, meals, certain internet and cellular phone expenses, car mileage reimbursements, and other miscellaneous business expenses. To the extent these expenses are incurred in furtherance of the Debtor's business, they are reimbursed in full ("**Expense Reimbursement Obligations**") after submission of appropriate documentation. The Debtor reimburses Employees for expenses through direct deposit or by issuing checks. In this direct-reimbursement context, the Employees

are personally liable to their banks for such costs, or front an outlay of cash, in the first instance. The Debtor estimates that it pays approximately \$25,000.00 per pay period on account of all Expense Reimbursement Obligations.

(D) Healthcare Plans

48. In the ordinary course of business, the Debtor maintains health benefit plans and policies for the Employees and certain of the Employees' dependents and beneficiaries, which include medical insurance (including prescription drugs) and dental insurance. Premiums for the Healthcare Plans are withheld from the Employees' gross pay and included within the Deductions.

49. The Debtor offers full-time Employees different medical plans (the "Medical Plans") as a self-insured employer, with claims administered by ARC Administrators. Each of the plans offers comprehensive medical and preventative care coverage, but the Employees' premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which plan is selected and whether the Employee has dependents covered by the applicable Medical Plan.

50. The Debtor offers full-time Employees dental and vision plans (the "Dental and Vision Plans" and together with the Medical Plans, the "Healthcare Plans") through Paramount Dental and EyeMed Vision Care. The Dental and Vision Plans generally cover preventative dental and maintenance vision services and basic and major restorative services, but the Employees' premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which Dental and Vision Plan the Employee selects and whether the Employee has dependents covered by the applicable Dental and Vision Plan. The Debtor

offers full-time Employees life and disability insurance (“Life/Disability Plans”) through Symetra.

51. The Debtor pays an aggregate of approximately \$865,000.00 per month to ARC Administrators, Paramount Dental, EyeMed Vision Care, and Symetra on account of the Medical Plans, the Dental and Vision Plans, and the Life/Disability Plans, including funds the Debtor receives from Employee contributions through payroll deductions and later remits, to provide the Healthcare Plans to eligible Employees.

52. In addition to the Healthcare Plans for Employees, the Debtor provides qualifying terminated Employees with the opportunity to receive other benefits, such as outplacement assistance and the ability to continue medical insurance in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and subsidies in connection with the continuation of such benefits (together with Healthcare Plans, the (“Healthcare Obligations”). As of the Petition Date, the Debtor does not believe that it owes any amount to former Employees in connection with ongoing COBRA benefits. However, and out of an abundance of caution to the extent such obligations are outstanding, the Debtor is seeking the authority, but not direction, to pay those amounts owed in respect of prepetition COBRA obligations.

(E) *Workers’ Compensation*

53. In the ordinary course of business, the Debtor maintains workers’ compensation insurance through ClearPath Mutual. The Debtor makes monthly premium payments to ensure continued coverage. The Debtor believes that it is current with respect to its obligations in connection with the premium installment payments

required in the ordinary course of business. Monthly premiums are approximately \$7,700.00 per month (“**Workers’ Compensation Obligations**”).

54. I believe that continuing to honor the Employee Obligations is crucial to the Debtor’s ability to preserve the value of its estate and that granting the Wages and Benefits Motion is necessary to avoid immediate, irreparable harm to the Debtor in this Chapter 11 Case. Without the ability to continue honoring the Employee Obligations, the Debtor will be at serious risk of losing its valued Employees which would unquestionably be destructive to the Debtor’s business as it seeks to reorganize. I therefore request that the Court grant the relief sought in the Wages and Benefits Motion.

Utilities Motion

55. Under the Debtor’s Motion for Entry of an Order (I) Determining Adequate Assurance of Utility Payment; (II) Prohibiting Utility Companies From Altering, Refusing or Discontinuing Service on Account of Prepetition Invoices; and (III) Approving Adequate Assurance Procedures (the “Utilities Motion”), the Debtor seek authority to prohibit its Utility Companies from altering, refusing, or discontinuing service to the Debtor without an order of this Court; and establishing procedures for the adequate assurance of payment for future utility services.

56. The Utility Companies (identified on Exhibit A to the Utilities Motion) include providers of water, electric, telephone, internet, and other similar Utility Services for the Debtor’s clinics and offices.

57. In the year preceding the Petition Date, the Debtor’s estimated average monthly payment to the Utility Companies is approximately \$65,881.00 in aggregate. I

anticipate that the Debtor will have sufficient funds to pay all post-petition charges for the Utility Services by virtue of cash on hand as of the Petition Date and expected cash flows from post-petition operations.

58. To provide adequate assurance of future payments for Utility Services, the Debtor proposes to establish a Utility Reserve of \$32,500.00. The Debtor further seeks the authority to implement the Proposed Adequate Assurance for each Utility Company by making a deposit with each Utility Company in an amount not to exceed 50% of one month's average utility bill, calculated by taking the last 12 months' invoices and dividing them by 12 (or, if the Utility Company has provided services the Debtor for less than 12 months, replacing 12 with the number of months the Utility Company has provided services to the Debtor).

59. In addition to the Proposed Adequate Assurance, the Debtor seeks to establish Adequate Assurance Procedures (as set forth in the Utilities Motion) for the Utility Companies to make additional requests for adequate assurance. I believe that the Proposed Adequate Assurance and Adequate Assurance Procedures are reasonable and tailored to the specific relief the Debtor needs to continue operating during this Chapter 11 Case without interruption.

60. As a healthcare provider, the Debtor is in a vulnerable position. Without the continual flow of utility services vital to its operations, the Debtor's business could be severely impacted by an inability to see and treat patients at its clinic. I therefore believe that the relief sought in the Utilities Motion is imperative to safeguarding the Debtor's operations while simultaneously providing the Utility Companies with assurance that

the Debtor will remain current on its Utility Service obligations during this Chapter 11 Case.

Critical Vendor Motion

61. The Debtor relies on highly specialized vendors with unique goods and services to provide optimum healthcare to its patients. Many of these vendors are the sole-source providers of goods and services critical to the Debtor's operations. Many of these vendors possess intrinsic knowledge of the Debtor's operations given longstanding histories of their collaborative involvement with the Debtor.

62. In many instances, replacement of authorized vendors of the goods and services which the Debtor requires to provide healthcare may not be feasible or may be impractical in a shortened period of time. This constricts the Debtor's ability source such goods and supplies from other vendors.

63. I believe that any disruption in the supply of these Critical Vendors' goods or services would jeopardize the Debtor's ability to operate as I believe that many of these Critical Vendors cannot be replaced and without them the Debtor would suffer insurmountable operational and financial challenges.

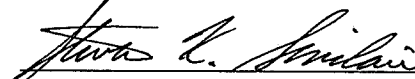
B. Conclusion

64. For the reasons stated here and in each of the First Day Motions, filed in connection with the commencement of this Chapter 11 Case, I request that each First Day Motion be granted in its entirety, together with any other, further relief the Court deems appropriate under the circumstances.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

December 29, 2022



Steven K. Sinclair, CPA, CMPE
Chief Financial Officer
Gilbert, Barbee, Moore & McIlvoy, P.S.C.
d/b/a Graves-Gilbert Clinic