

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

LASER SPINE SURGICAL CENTER, LLC,

Assignor,

to

SONEET KAPILA,

Assignee.

Case No. 2019-CA-002770
Division L

NOTICE OF FILING MOTION TO CONSOLIDATE

Assignee, Soneet Kapila of KapilaMukamal, by and through his undersigned attorneys, hereby notifies the Court, the Clerk of the Court, and all parties hereto of the Motion to Consolidate Pending Assignment Proceedings (the “**Motion**”) filed in the case styled *In re Laser Spine Institute, LLC*, Case No. 2019-CA-002762 (the “**LSI Proceeding**”), requesting that the instant case be consolidated with the LSI Proceeding. A true and correct copy of the Motion, without exhibits, is attached hereto as **Exhibit A**. Copies of the Exhibits to the Motion can be provided upon request.

Dated: March 18, 2019

/s/ Edward J. Peterson

Edward J. Peterson (FBN 0014612)

Matthew B. Hale (FBN 0110600)

Stichter, Riedel, Blain & Postler, P.A.

110 E. Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Email: epeterson@srbp.com; mhale@srbp.com

Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been sent by either the Court's Eportal noticing system, electronic mail, or U.S. mail on this 18th day of March, 2019 to:

Toby Gerber, Esquire
toby.gerber@nortonrosefulbright.com
Counsel for Texas Capital Bank, as Administrative Agent

Lara Fernandez, Esquire
lfernandez@trenam.com
Counsel for Texas Capital Bank, as Administrative Agent

Jennifer Altman, Esquire
jennifer.altman@pillsburylaw.com
Counsel for Joe Samuel Bailey, et al.

Kenneth Mather, Esquire
kmather@gunster.com
Counsel for Joe Samuel Bailey, et al.

Stuart Markman, Esquire
smarkman@kmf-law.com
Counsel for Joe Samuel Bailey, et al.

Nicole Greenblatt, Esquire
nicole.greenblatt@kirkland.com
Counsel for Assignors

/s/ Edward J. Peterson

Edward J. Peterson

EXHIBIT A

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

LASER SPINE INSTITUTE, LLC,

Assignor,

Case No. 2019-CA-002762

to

SONEET KAPILA,

Assignee.

_____ /

**MOTION TO CONSOLIDATE
PENDING ASSIGNMENT PROCEEDINGS**

Assignee, Soneet Kapila of KapilaMukamal (“Assignee”), by and through his undersigned attorneys, hereby files this motion, pursuant to Florida Rule of Civil Procedure 1.270(a), to consolidate pending related assignment proceedings. In support of this motion, the Assignee states as follows:

Background

1. On March 14, 2019, Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing the above-captioned assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “LSI Assignment Case”).

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (collectively, and together with LSI, the “Assignors”), listed below:

Case No.	Assignor
2019-CA-2764	CLM, Aviation, LLC
2019-CA-2765	LSI Hold Co, LLC
2019-CA-2766	LSI Management Company, LLC
2019-CA-2767	Laser Spine Surgery Center of Arizona, LLC
2019-CA-2768	Laser Spine Surgery Center of Cincinnati, LLC
2019-CA-2769	Laser Spine Surgery Center of Cleveland, LLC
2019-CA-2770	Laser Spine Surgical Center, LLC
2019-CA-2771	Laser Spine Surgery Center of Pennsylvania, LLC
2019-CA-2772	Laser Spine Surgery Center of St. Louis, LLC
2019-CA-2773	Laser Spine Surgery Center of Warwick, LLC
2019-CA-2774	Medical Care Management Services, LLC
2019-CA-2775	Spine DME Solutions, LLC
2019-CA-2776	Total Spine Care, LLC
2019-CA-2777	Laser Spine Institute Consulting, LLC
2019-CA-2780	Laser Spine Surgery Center of Oklahoma, LLC

3. The above-referenced assignment proceedings are collectively referred to as the “**Affiliated Assignment Cases,**” and together with the LSI Assignment Case, the “**Assignment Cases.**” Copies of the Petitions, without the attachments, for the Affiliated Assignment Cases are attached hereto as **Composite Exhibit A.**

4. In the years leading up to the Assignment Cases, LSI and its affiliates comprised one of the nation’s leaders in minimally invasive spine surgery, operating state-of-the-art outpatient surgery centers located near several major cities throughout the country with over 500 employees. Immediately prior to executing the assignment, LSI operated outpatient surgery centers in Tampa, Florida; Cincinnati, Ohio; Scottsdale, Arizona; and St. Louis, Missouri. LSI shuttered three other surgery centers in Ohio, Oklahoma, and Pennsylvania in the Fall of 2018. The Assignors filed the Assignment Cases to provide for the orderly liquidation of their assets for the benefit of their creditors.

Relief Requested and Memorandum of Law

5. The Assignee seeks consolidation of the Affiliated Assignment Cases with the LSI Assignment Case to conserve economic and judicial resources and promote the orderly and efficient disposition of the Assignment Cases.

6. Rule 1.270(a) of the Florida Rules of Civil Procedure provides for consolidation of cases pending before a court “involving common questions of law or fact” and allows the court to “make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Fla. R. Civ. P. 1.270(a). Consolidation is appropriate when two or more actions involve common issues of law or fact in order to prevent piecemeal determination of claims. *See Wilson v. Wahl*, 383 So. 2d 311 (Fla. 2d DCA 1980). The decision to consolidate actions is within the sound discretion of the court, although the court’s discretion is not unlimited. *See Maharaj v. Grosman*, 619 So. 2d 399, 401 (Fla. 4th DCA 1993) (quashing trial court’s order denying consolidation).

7. Courts consider several factors in deciding whether to grant a motion to consolidate: (1) whether the trial process will be accelerated due to the consolidation; (2) whether unnecessary costs or delays can be avoided by consolidation; (3) whether there is the possibility for inconsistent verdicts; (4) whether consolidation would eliminate duplicative trials involving substantially the same core of operative facts and questions of law; and (5) whether consolidation would deprive a party of a substantive right. *See State Farm Florida Ins. Co. v. Bonham*, 886 So. 2d 1072, 1074 (Fla. 5th DCA 2004). As set forth below, an application of the factors to the present case militates in favor of consolidation.

8. The first factor weighs in favor of consolidation. Although assignment for the benefit of creditors proceedings typically do not culminate in trials, the procedural posture of the Affiliated Assignment Cases coincides with the posture of the LSI Assignment Case. Each of the

Assignment Cases was filed on the same day and therefore will proceed with the same general deadlines prescribed by § 727 of the Florida Statutes. Consolidation of all the Assignment Cases will not result in any delay and will expedite proceedings by allowing the Court to efficiently address common issues relating to the Assignment Cases.

9. The second factor—whether unnecessary costs and delays can be avoided by consolidation—also weighs in favor of consolidation. If the proceedings are not consolidated, the Assignee would need to file separate motions and pleadings in each of the sixteen cases. For example, the Assignee would need to file sixteen separate motions to employ counsel and sixteen separate notices to creditors for filed pleadings. Avoidance of unnecessary costs should be afforded even greater weight in an assignment for the benefit of creditors proceeding, given that the stated intent of the statute is to “ensure full reporting to creditors and equal distribution of assets according to priorities.” Fla. Stat. § 727.101.

10. The third and fourth factor tie together and both weigh in favor of consolidation. If different courts were to reach different conclusions on key issues such as the priority or validity of creditors’ claims and/or liens, such inconsistency would result in confusion and increased expense to the detriment of all creditors. Additionally, if disputes on such issues do arise, consideration of those issues under a consolidated proceeding would eliminate duplicative trials involving the same core set of facts and questions of law. Because of overlapping creditors, and considering that each assignor was part of the same overall business enterprise related to LSI, common issues of fact and law are bound to pervade any substantive issue the Court may ultimately need to determine in the Assignment Cases.

11. As to the last factor, consolidation will not deprive any party of substantive rights. Each creditor of a particular assignment case will receive the same rights and treatment as if the

Assignment Cases were not consolidated, and assets and claims for each of the Assignment Cases will be separately accounted for. Further, the reduction in administrative expenses afforded by consolidation will benefit creditors of each of the Assignment Cases.

WHEREFORE, the Assignee respectfully requests the Court grant this Motion and order that each of the Affiliated Assignment Cases be administratively consolidated with the LSI Assignment Case, and that the Court grant such other relief as is just and proper.

Dated: March 15, 2019

/s/ Edward J. Peterson

Harley E. Riedel (FBN 183628)

Edward J. Peterson (FBN 0014612)

Matthew B. Hale (FBN 0110600)

Stichter, Riedel, Blain & Postler, P.A.

110 E. Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Email: hriedel@srbp.com; epeterson@srbp.com

mhale@srbp.com

Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been sent by electronic mail on this 15th day of March, 2019 to:

Toby Gerber, Esquire
toby.gerber@nortonrosefulbright.com
Counsel for Texas Capital Bank, as Administrative Agent

Lara Fernandez, Esquire
lfernandez@trenam.com
Counsel for Texas Capital Bank, as Administrative Agent

Jennifer Altman, Esquire
jennifer.altman@pillsburylaw.com
Counsel for Joe Samuel Bailey, et al.

Kenneth Mather, Esquire
kmather@gunster.com
Counsel for Joe Samuel Bailey, et al.

Stuart Markman, Esquire
smarkman@kmf-law.com
Counsel for Joe Samuel Bailey, et al.

Nicole Greenblatt, Esquire
nicole.greenblatt@kirkland.com
Counsel for Assignors

/s/ Edward J. Peterson _____

Edward J. Peterson