

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.

NOTICE OF FILING ASSIGNEE'S EXHIBIT LIST FOR EVIDENTIARY HEARING

Assignee, Soneet Kapila of KapilaMukamal, by and through his undersigned attorneys, hereby gives notice of filing the attached Exhibit List for Evidentiary Hearing accompanied by the Assignee's Exhibits in connection with the March 22, 2019 hearing on the Assignee's Emergency Motion for Authority to Make a Distribution to Pay Claims of Retained Employees.

Dated: March 21, 2019

/s/ Matthew B. Hale

Harley E. Riedel (FBN 183628)

Edward J. Peterson (FBN 0014612)

Matthew B. Hale (FBN 0110600)

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Counsel for Assignee

Exhibit Cover Sheet

Party submitting: Assignee

Ex. # 1

Admitted: Yes or No (circle one)

Case Style: Laser Spine Institute, LLC (Assignor) vs. Soneet Kapila (Assignee)

Case No.: 19-CA-26762

Nature of Hearing: Hearing on Assignee's Emergency Motion for Authority to Make a Distribution to Pay Claims of Retained Employees

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

In re:

LASER SPINE INSTITUTE, LLC,¹

Assignor,

Case No. 19-CA-2762

to

SONEET KAPILA,

Assignee.

/

**AFFIDAVIT OF ASSIGNEE SONEET KAPILA IN SUPPORT
OF ASSIGNEE'S EMERGENCY MOTION FOR AUTHORITY TO
MAKE A DISTRIBUTION TO PAY CLAIMS OF RETAINED EMPLOYEES**

1. My name is Soneet Kapila. I am over the age of twenty-one (21) years and am competent to execute this Affidavit. All statements contained in this Affidavit are based on my personal knowledge and experience, except as noted.

2. I am a founding partner of KapilaMukamal LLP ("KM"), an insolvency and restructuring advisory firm specializing in serving as and advising estate fiduciaries in liquidation and reorganization proceedings. I have served as an estate fiduciary in numerous roles, including Chief Restructuring Officer, S.E.C. Corporate Monitor, Examiner, Chapter 11 Trustee, Chapter 7 Trustee, Liquidating Trustee, and Receiver. As an estate fiduciary, I have overseen the liquidation

¹ Prior to filing this motion, the Assignee sought to administratively consolidate the assignment case of Laser Spine Institute, LLC with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

of businesses of many different sizes and across many different industries. I am a Certified Public Accountant (CPA), a Certified Insolvency and Restructuring Advisor (CIRA), a Certified Fraud Examiner (CFE), and I am Certified in Financial Forensics (CFF). I am a Fellow of the American College of Bankruptcy.

3. I am familiar with Chapter 727 of the Florida Statutes, which governs assignments for the benefit of creditors. Chapter 727 provides a comprehensive framework for the administration of insolvent estates and the treatment of creditor claims.

4. On March 14, 2019, Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to me, as Assignee. I accepted the assignment and, through counsel, filed a Petition with this Court on March 14, 2019, commencing an assignment for the benefit of creditors (the “**LSI Assignment Case**”).

5. Simultaneous with the filing of the LSI Assignment Case, I accepted assignments for 15 affiliates of LSI² and, through counsel, filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”):

6. I am submitting this Affidavit in support of my *Emergency Motion for Authority to Make a Distribution to Pay Claims of Retained Employees* (the “**Motion**”), filed on March 18, 2019 in the LSI Assignment Case. I have reviewed and am familiar with the Motion and the relief sought therein.

² LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, together with LSI, the “**Assignors**”).

7. The reason for the filing of this Motion is the principle underlying Assignment cases that unsecured creditors should be treated equally. Although I do not need Court approval to pay costs of administration incurred post-Assignment that are necessary to maintain the Estate, I cannot pay pre-Assignment unsecured claims without Court approval. As noted hereafter, the Assignors' payroll was paid in arrears, so portions of each paycheck might be pre-Assignment while other portions are post-Assignment and administrative in nature. All of the wage claims paid hereunder are entitled to priority in payment over general unsecured claims.

8. Although I had no involvement with any of the Assignors before March of 2019, since that time I have reviewed documents and conducted interviews as part of my duties in the Assignment Cases. From those sources, I understand that 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 in Tampa, Florida and in several other states with over 500 employees.³

9. When the Assignors' efforts to obtain financing for their operations fell through on or about March 1, 2019, the Assignors then ceased all business operations. In the Motion, I listed some of the items that I have accomplished or that are the subject of ongoing efforts. Suffice it to say, many matters needed immediate attention.

10. The Assignors' Schedule A reflects that the largest secured creditor of the Assignment Cases is Texas Capital Bank, N.A., as Administrative Agent (the "**Bank**"), with outstanding loans totaling approximately \$144 million, secured by substantially all of the assets of the LSI and certain other Assignors. The Assignors maintained their primary bank accounts with

³ The other locations were Cincinnati, Ohio; Scottsdale, Arizona; St. Louis, Missouri; Cleveland, Ohio; Oklahoma City, Oklahoma; Warwick, Rhode Island; and Philadelphia, Pennsylvania.

the Bank, into which the proceeds of all accounts receivable were deposited. Thus, the cash held at the Bank appears to be subject to the Bank's security interests and to its common law, statutory and contractual rights of set-off. Likewise, the accounts receivable owed to the Assignors appear to be encumbered by the Bank's liens.⁴ I understand that prior to the commencement of these cases, as a result of the Assignors' defaults under the loan documents, the Bank froze the funds in the Assignors' accounts and asserted a lien on those funds. I was unable to immediately identify any unencumbered assets that would let me achieve an orderly liquidation process. Accordingly, I immediately engaged in discussions with the Bank to obtain its consent for the use of funds in the Texas Capital Bank account to pay vital expenses. Among these expenses were wages and benefits to employees who are needed to, *inter alia*, maximize asset recoveries, assist in compliance with legal requirements (including health care laws), and reduce claims against the Assignment Estates.

11. Specifically, I identified a core group of approximately 44⁵ critical employees (the "**Retained Employees**") whom I believed were necessary to assist me and my team with (i) the overall wind-down of operations, (ii) the identification, collection, and disposition of assets, (iii) the management and minimization of claims (some of these in active litigation), and (iv) similar vital tasks. The Retained Employees will also assist me with compliance with health care regulations and compilation and preservation of books and records, including health care records which may be subject to strict regulation.

⁴ By filing this Motion, the Assignee does not waive any rights, claims or defenses with respect to the amount or validity of the Bank's liens and claims. Because the Assignee has a statutory judgment lien on all assets of the Assignors that would "prime" unperfected liens, one of the important duties of the Assignee is to review the validity of other liens and security interests, which the Assignee will do in due course.

⁵ This number may vary depending upon the Assignee's continued analysis and investigation.

12. Through the Motion, *using funds that would otherwise be subject to the Bank's liens*, I have sought authority to make a distribution to pay the accrued pre-assignment payroll obligations and related withholding obligations with respect to the Retained Employees for the week beginning March 11, 2019 through the assignment date of March 14, 2018, totaling approximately \$117,000.00 (the “**Retained Employee Claims**”). Attached as **Exhibit A** to this Affidavit is a summary chart prepared by my team which sets forth in further detail the amounts of the Retained Employee Claims (the “**Summary**”). I have reviewed the Summary and the records used in its preparation, and thus I have personal knowledge of the Summary and its contents.

13. LSI pays its employees on a biweekly basis through the payroll processing company ADP. Because payroll is paid one week in arrears, the payroll period for the period covering the Retained Employee Claims (March 11, 2019 through March 14, 2019) is scheduled to be funded to ADP on March 27, 2019, together with the Assignee's regular payroll obligations for the post-assignment period of March 14, 2019 through March 24, 2019.

14. In my business judgment, the payment of the Retained Employee Claims is necessary to ensure the Retained Employees' continued assistance with my duties as Assignee to maximize the value of the assignment estates. In my experience as an estate fiduciary, non-payment of the Retained Employee Claims will likely result in many, if not all, of the Retained Employees terminating their employment. The Retained Employees' knowledge of and familiarity with the Assignors' business operations is irreplaceable and necessary to assist me in complying with my fiduciary obligations.

15. As noted, the Bank has agreed to allow me to fund the payment of the Retained Employee Claims from its cash collateral, which includes the funds held in LSI's bank account and the proceeds of accounts receivable collections. Arguably, therefore, only the Bank has a clear

interest in this issue as the Bank would otherwise be entitled to apply the funds to reduce its secured claim, leaving the Assignee no funds to pay the expenses.

Signed under penalty of perjury this 21st day of March, 2019.

Soneet Kapila

Soneet Kapila
Assignee for the Assignment Cases

STATE OF FLORIDA)
) ss
COUNTY OF HILLSBOROUGH)

SWORN TO AND SUBSCRIBED BEFORE ME this 21st day of March 2019, by Soneet Kapila, who is personally known to me, who produced Drivers license, and who did take an oath.



Kristeen PM Polanco
Name (printed)

[Signature]
Name (signed)

Notary Public
My Commission Expires 3/12/23

EXHIBIT A

LASER SPINE INSTITUTE, LLC, Assignor
Case No. 19-CA-002762
CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA - CIVIL

Calculation of Pre-Petition Payroll

PRELIMINARY DRAFT as of 3/20/19:

This is a preliminary draft. It has been prepared based on preliminary information and assumptions. No one may rely on this draft. It is subject to change as additional information becomes available or is clarified.

Source: LSI Payroll Records

Job Title Description	Pre-Petition Payroll Funding: Mar 11th - 14th (4 days)
Director, Senior - ASC and Nursing Operations	\$2,584.62
Manager - Enterprise Diagnostics	\$1,977.88
Manager - Enterprise of Life Safety	\$1,378.46
Director, Senior - Nursing	\$2,135.41
Director, Senior - Nursing	\$2,191.68
Interim, Director, SR - Nursing and ASC Ops	\$2,310.00
Director - Executive	\$2,498.46
VP - Finance & Controller	\$3,101.54
Manager - General Accounting	\$1,723.08
Accountant - Senior	\$1,206.15
Manager - Procure to Pay Operations	\$1,464.62
Chief Legal Officer/General Counsel	\$5,849.85
Corporate Legal Assistant	\$798.87
Director - Legal Affairs	\$2,240.00
Executive Legal Assistant	\$1,206.15
Billing Specialist	\$800.31
Manager - Revenue Management	\$1,336.47
VP - Revenue Management	\$2,584.62
Appeals Specialist	\$722.18
Transcriptionist	\$864.82
Team Lead - Medical Coding	\$971.98
Team Lead - Revenue Management	\$752.64
Executive Assistant	\$1,213.29
Medical Records Specialist	\$628.99
Manager - Revenue Management	\$1,127.17
Medical Records Specialist	\$792.42
AR Collections	\$860.16
FP&A Analyst II	\$1,292.31
Human Resources Generalist	\$1,060.67
Payroll Specialist	\$844.03
VP, SR - Human Resources & Ancillary Services	\$3,876.92
Manager - Payroll and Compensation	\$1,464.62
Director - Facility & Asset Management	\$2,067.69
Manager - Strategic Sourcing	\$1,568.00
Mail, Shipping and Receiving Specialist	\$537.60
Security Engineer	\$1,809.23
Manager - EHR	\$1,602.46
Director, Senior - Information Technology	\$2,498.46
IT Security	\$1,599.23
IT Support Associate	\$913.56
Director, SR - Applications & Data Solution	\$2,670.77
EPMO Senior Project Manager	\$1,895.38
Voice Engineer	\$1,680.00
Systems Engineer - Senior	\$1,895.38
	\$116,559.67

Exhibit Cover Sheet

Party submitting: Assignee

Ex. # 2

Admitted: Yes or No (circle one)

Case Style: Laser Spine Institute, LLC (Assignor) vs. Soneet Kapila (Assignee)

Case No.: 19-CA-26762

Nature of Hearing: Hearing on Assignee's Emergency Motion for Authority to Make a Distribution to Pay Claims of Retained Employees

LASER SPINE INSTITUTE, LLC, Assignor
Case No. 19-CA-002762
CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA - CIVIL

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EVIDENCE DATA SHEET – CIVIL COURTS				Form No.	
Assignor: Laser Spine Institute, LLC		Case No. 19-CA-002762		-CA-	
		Division:		L	
Assignor Attorney Name and Address: Nicole L. Greenblatt, Esq. Kirland & Ellis LLP 601 Lexington Avenue New York, NY 10022		Bar #			
		Trial Date(s): 3/22/19			
vs.					
Assignee: Soneet Kapila		Verdict Date:			
		Court Reporter:			
Assignee Attorney name and address: Harley E. Riedel, Esq. Edward J. Peterson, Esq. Matthew B. Hale, Esq. Stichter, Riedel, Blain & Postler, P.A. 110 E. Madison Street, Suite 200 Tampa, FL 33602		Bar #: Harley E. Riedel – 183628 Edward J. Peterson – 14612 Matthew B. Hale – 110600			
Judge: SCOTT S. STEPHENS		Bailiff:			
LIST OF ASSIGNEE'S EXHIBITS					
EXH #	DESCRIPTION OF EXHIBITS	MARKED	ADMITTED	W OR W/O OBJECTION	LOCATION
1.	Affidavit of Assignee Soneet Kapila in Support of Motion				
2.	Calculation of Pre-Petition Payroll				
3.					
4.					
5.					
6.					
Inventoried by: _____			Date: _____		