

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

CONSOLIDATED CASE NO: 19-CA-2762

In re: Assignment for the Benefit of Creditors of,  
  
LASER SPINE INSTITUTE, LLC, *et al*,

Assignors,  
To:

SONEET KAPILA,

Assignee.

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**JOINDER IN CLAIMANT HEADLEY'S MOTION TO DETERMINE  
ASSIGNORS' SELF-INSURANCE COMPLIANCE**

COMES NOW Plaintiff in Hillsborough County Case No. 16-CA-4548, Jonna Lemieux, by and through her undersigned attorney and hereby files her Joinder in Claimant Headley's Motion to Determine Assignors' Self-Insurance Compliance to determine the method of compliance, if any, with the provisions of the applicable Florida Statutes as set forth below, to determine whether any assets over which the Assignee asserts control are, in fact, segregated and/or trust funds allocated to medical malpractice claims pursuant to financial responsibility statutory compliance, and as grounds state as follows:

1. Pursuant to §727.102 Florida Statutes, this Court has jurisdiction over all matters arising under Chapter 727 Assignments.

2. Jonna Lemieux and Jason Lemieux have an ongoing lawsuit for damages resulting from medical malpractice in which Assignors (namely Laser Spine Institute, LLC hereinafter "LSI") herein as well as the doctor (Vernon Morris, M.D. hereinafter Dr. Morris) that performed the

procedures on Jonna Lemieux are named defendants. The Lemieux action is set forth in Hillsborough County Case No. 16-CA-4548.

3. In that action, the Assignors LSI as well as Dr. Morris have claimed to be self-insured. The Defendants claim that Assignor LSI provided the self insurance for both the doctor and the outpatient surgical center at LSI. They maintain that this coverage amounts to One-Million Dollars (\$1,000,000.00).

4. The Lemieuxs join Headley in requesting this Court to determine that this coverage was properly effectuated and remains in effect for both LSI and Dr. Morris in the manner mandated by Florida Statutes (whether the coverage is in the form of an irrevocable letter of credit pursuant to Chapter 675 or an escrow account pursuant to F.S. §625.52). The Lemieuxs request proof that any or all of these funds have not been commingled with other funds or dissipated in this action.

5. Assignor LSI utilized both medical doctors and osteopathic physicians and there are separate statutes that control self insured doctors. The same amount of coverage is required for all types of doctors performing surgery in outpatient surgical centers.

Florida Statute §458.320(2) specifically mandates that the full amount of these funds be available to the public before the practitioner. can practice medicine:

(2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(a) Establishing and maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s.625.52 in the per claim amounts specified in paragraph (b). The required escrow amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(b) Obtaining and maintaining professional liability coverage in an amount not less than \$250,000.00 per claim, with a minimum annual aggregate of not less than \$750,000.00 from an authorized insurer as defined under s.624.09, from a surplus lines insurer as defined under s.626.914(2), from a risk retention group as defined under s.627.942, from the Joint Underwriting Association established under s.627.351(4), through a plan of self-insurance

as provided in s.627.357, or through a plan of self-insurance which meets the conditions specified for satisfying financial responsibility in s.766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(c) Obtaining and maintaining an unexpired irrevocable letter of credit, established pursuant to chapter 675, in an amount not less than \$250,000.00 per claim, with a minimum aggregate availability of credit of not less than \$750,000.00...

Florida Statute §627.357, details the requirements of the mandated solvent trust fund which serves as actual "coverage" to those people injured or damaged as a result of medical malpractice, stating:

(6) The commission shall adopt rules to implement this section, including rules that ensure that a trust fund remains solvent and maintains a sufficient reserve to cover contingent liabilities under subsection (7) in the event of its dissolution.

(7)(a) The liability of each member for the obligations of the trust fund is individual, several, and proportionate, but not joint, except as provided in this subsection.

(b) Each member has a contingent assessment liability for payment of actual losses and expenses incurred while the member's policy was in force.

(c) The trust fund may from time to time assess members of the fund liable therefor under the terms of their policies and pursuant to this section. The office may assess the members in the event of liquidation of the fund.

.....

(g) If the assets of a trust fund are at any time insufficient to comply with the requirements of law, discharge the fund's liabilities, or meet the required conditions of financial soundness, or if a judgment against the fund has remained unsatisfied for 30 days, **the trust fund must immediately make up the deficiency or levy an assessment upon the members for the amount needed to make up the deficiency**, subject to the limitations set forth in this subsection.

(h) If the trust fund fails to make an assessment as required by paragraph (g), the office shall order the fund to do so. If the deficiency is not sufficiently made up within 60 days after the date of the order, the fund is deemed insolvent and grounds exist to proceed against the fund as provided for in part I of chapter 631.

Florida Statute §627.912 details the reporting requirements of all claims against the self insured funds and requires that those claims be reported to the department within thirty (30) days of notification. These safeguards are to insure the "self insured" funds are actually available to the

public to cover damages incurred by malpractice.

If the self insured funds have been combined with the assets assigned or dissipated in any manner, the claimants herein that have interest in those funds should be fully apprised of the details of the accounts. Those accounts are required by statute to be maintained in accordance with Florida Statutes §458.320.

Pursuant to Florida Statutes §627.357, medical doctors are required to replenish any dissipated trust funds by assessment against the named insureds:

(g) If the assets of a trust fund are at any time insufficient to comply with the requirements of law, discharge the fund's liabilities, or meet the required conditions of financial soundness, or if a judgment against the fund has remained unsatisfied for 30 days, the trust fund must immediately make up the deficiency or levy an assessment upon the members for the amount needed to make up the deficiency, subject to the limitations set forth in this subsection.

(h) If the trust fund fails to make an assessment as required by paragraph (g), the office shall order the fund to do so. If the deficiency is not sufficiently made up within 60 days after the date of the order, the fund is deemed insolvent and grounds exist to proceed against the fund as provided for in part I of chapter 631.

Upon information and belief, and based upon the **Notice to Creditors and Parties in Interest of Posting on Website**, attached hereto as Exhibit "A," Jonna Lemieux believes that the One-million Dollars (\$1,000,000.00) earmarked as self insurance has been commingled with other company funds in violation of these statutes. This document was drafted by the Assignee's attorney and amounts to representations made on behalf of and/or by the Assignee. The document describes the self insurance fund existence but is mum as to where it is maintained and what its current status is. The document verifies, by this attorney's representations to creditors (some without counsel), that other funds, such as FSA accounts have in fact been commingled in violation of ERISA policies set forth at 29 U.S.C. §1102-1103.

These funds are NOT property of this Assignment estate and are NOT subject to any stay.

They are the primary coverage pledged to provide patients with independent funds upon proof of a malpractice action. The excess policies are also not property of this Assignment as they are not assets of this estate. The surgeons at an out patient surgical center can not continue their medical practice if they fail to replenish the self insurance amounts required by statute. *See*, Florida Statutes §458.320(3)(b).

WHEREFORE, Jonna Lemieux, joins Claimant Headley and respectfully moves this Court to verify, identify and segregate all funds pledged to support alleged self insurance applicable to cover medical malpractice claims as required by Florida law, and for such other relief as this Court deems appropriate.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of April, 2019 a true and correct copy of the forgoing was filed with the Florida Courts eFiling Portal and served by electronic mail and United States Mail upon the following persons:

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*/s/ Scott M. Miller*  
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CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:  
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**NOTICE TO CREDITORS AND PARTIES IN INTEREST OF POSTING OF WEBSITE**

TO: ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITIES  
(COLLECTIVELY, THE "ASSIGNORS")

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case 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.

**PLAINTIFFS'**

**EXHIBIT**

**A**



PLEASE TAKE NOTICE that a website dedicated to providing creditors up to date information regarding the the assignment proceedings has been created and can be accessed at <https://lsi-assignee.com>. This website provides access to pleadings and information filed in the assignment cases, a proof of claim form, and answers to frequently asked questions such as:

## CONTACT INFORMATION

### *How do I contact the Assignee?*

If you have questions or concerns, you should write the Assignee at the following address: Soneet R. Kapila, Assignee, KapilaMukamal, LLP, PO Box 14213, Fort Lauderdale, FL 33302. You may also communicate with the Assignee via email at [LSI@kapilamukamal.com](mailto:LSI@kapilamukamal.com) or voicemail at (954) 761-4505.

Due to the volume of calls, and for cost efficiencies of the Assignment for the Benefit of Creditors, it may not be possible for the Assignee to return every call. This website will be the primary source for case information and will be updated to reflect significant events.

### *Can we obtain more real-time updates on your website?*

The Assignee will file periodic reports with the Court and the reports will be uploaded to this website. This website will also be updated whenever there is something substantive to report. Website visitors may request an email when the website is updated by submitting their email address in the "Contact" field at the top of this page.

## EMPLOYEE INFORMATION

### *What is the status of my health insurance?*

Please note that Texas Capital Bank (the "Bank") asserts a lien on all of the assets of the Laser Spine Institute, LLC ("LSI") and related entities. Accordingly, the Assignee has no access to funds, except for some funding provided by the Bank for the wind-down of the estates. LSI made the decision to be self-insured as to employee medical benefits. At the time of LSI's cessation of operations Cigna, the administrator of the plan, held approximately \$195,000 as a reserve but that money has been exhausted to pay claims.

In light of LSI's insolvency, there are no further funds available to pay health insurance claims. The plan has terminated as of March 31, 2019 (the "Termination Date.") In seeking new insurance, you may tell your new carrier that your coverage has ended no later than the Termination Date.

Because the plan is terminated, it has no COBRA obligations, so terminated employees will not be getting COBRA notices and those already on COBRA will no longer have COBRA coverage.

The filing of a proof of claim is the exclusive method of recovering from the assignment estates. A proof of claim form can be accessed on the website.

### *What is the status of my Health FSA Account?*

Please note that Texas Capital Bank (the "Bank") asserts a lien on all the assets of the Assignors. Accordingly, the Assignee has no access to funds, except for some funding provided by the Bank for the wind-down of the estates.

We understand that some of the employees contributed to their FSA accounts. The Assignee has not been able to identify any funds related to your FSA account that were segregated by Laser Spine Institute. As is common for FSA



plans, it is my understanding that all of the funds were held in LSI's general operating accounts. Unfortunately, given LSI's insolvency, those funds are all subject to the Bank's lien and are not available to pay FSA benefits. The filing of a proof of claim is the exclusive method for you to share in any distribution from the assignment estates. A link to the proof of claim form can be found on this website in the [Creditors and Claims section](#)

**The deadline to file a proof of claim is July 12, 2019.**

## **GENERAL**

### *What is an Assignment for the Benefit of Creditors?*

An assignment for the benefit of creditors (also known as an "ABC") is a formal, voluntary transfer of a business and its assets to a private fiduciary—an Assignee—under the framework provided by Chapter 727 of the Florida Statutes. An Assignee is similar to trustee in a bankruptcy case, with fiduciary duties to all creditors of the assignment estate. In an assignment for the benefit of creditors case, the Assignee works to sell the business's assets within his business judgment and wind down the businesses in an orderly fashion. In addition, the Assignee has the ability to pursue certain causes of action. After the business's assets are liquidated, the assignee will pay the proceeds to the business's creditors in accordance with their respective priorities after payment of the administrative costs.

### *Is this a bankruptcy case?*

No. An assignment for the benefit of creditors is a statutory procedure authorized and prescribed by Chapter 727 of the Florida Statutes. It allows a business to transfer all of its assets to a fiduciary who will then liquidate the assets and use the proceeds to pay the creditors in accordance with their claims and the statutory priorities. Unlike bankruptcy cases, which are subject to federal bankruptcy law, assignment for the benefit of creditors proceedings take place in state courts and are subject to state law.

### *Who is the Assignee?*

The Assignee is Soneet Kapila, an accounting and insolvency professional who has experience serving in several fiduciary capacities, including as bankruptcy trustee, receiver, liquidating trustee, and as assignee in other cases. An assignee typically is an individual who is qualified by reason of experience and education and, although not necessary, often has experience serving as an estate fiduciary.

### *What are the qualifications for the Assignee?*

The assignee must be a neutral party free from conflicts of interest. He or she must be bonded in an amount determined by the assignment court. He or she must not be a creditor, an equity security holder of the assigning business, or have any interest adverse to the interest of the assignment estate.

### *Who does the Assignee work for?*

The Assignee works as a fiduciary of the assignment estate, and has fiduciary duties to estate creditors.

### *Will the Assignee pursue litigation claims, including fraudulent transfers claims?*

The Assignee has the right to pursue these actions to the extent allowed by Florida law. Further, Chapter 727 provides that one of the Assignee's duties is to prosecute any tort claims or causes of action previously held by the assignor business. State law will govern any litigation claims brought by the Assignee.

### *What happens to the assignor company?*

Once an assignment for the benefit of creditors agreement is executed and delivered, the company is divested of its assets and the assignee takes on ownership and control of all of the assets, subject to existing and valid liens and

encumbrances. Following the assignment, the assignor company has no assets, and any claims against assets of the company must be pursued through the filing of a proof of claim form.

## INFORMATION FOR CLAIMANTS

### *Will I be receiving a distribution?*

To be eligible to receive a distribution, a creditor must file a proof of claim with the Assignee within the statutory period of 180 days (July 12, 2019). After liquidation of estate property and payment of administrative claims, the Assignee will distribute funds to creditors based on their relative priorities. The priority of creditor claims is set forth in Section 727.114 of the Florida Statutes.

Please note that Texas Capital Bank (the "Bank") asserts a lien on all of the assets of Laser Spine Institute and related entities. Accordingly, the Assignee has no access to funds, except for some funding provided by the Bank for the wind-down of the estates. Distributions to unsecured creditors will depend on, among other things, the amount of money recovered by the Assignee from unencumbered assets and the amount of the claims entitled to priority status. It is simply too early in the case to estimate the availability and amount of any distribution. The Assignee will provide updates on potential recovery as the case evolves.

### *How do I file a claim?*

All known creditors will receive a proof of claim form. The form is also available through this website in the Creditors and Claims section [click for claim form]. Please fill out the proof of claim form thoroughly and legibly and file the claim with the Assignee according to the directions prescribed in the claim form. If you fail to timely file a claim by the bar date of July 12, 2019, your claim will be barred from any recovery from the assignment estate.

### *Do you have an estimate of what percent of our original investment may be returned to us in the form of a distribution?*

It is simply too early to make such an estimate. The Assignee will provide updates on potential recovery as the case evolves.

### *When will the unsecured creditors receive their distributions?*

The Assignee has no estimate as to when or if there will be funds available to make distributions.

### *How long can this process take?*

Each case is different. How long it may take to properly monetize the assets and make appropriate distributions depends on many factors such as the timing of potential litigation. Each claim form must also be reviewed.

### *Is the Assignee under any time constraints by the Court?*

There are no specific time frames specified by the Court. The assignment is part of a state court insolvency proceeding. Litigation by its very nature takes time. Notwithstanding the foregoing, the Assignee intends to move as quickly as possible, given the circumstances, but respectfully requests creditors to be patient.

### *I am a defendant in a medical malpractice action. Is LSI continuing to defend the lawsuit?*

LSI was self-insured for malpractice claims in most states up to the first \$1 million in claims and had multiple layers of insurance in excess of \$1 million. The Assignee understands that the insurance policies also covered the physicians and other employees at LSI. Consequently, LSI was providing a defense for itself and all co-defendants. Absent infusions from third parties, LSI has no funds to continue this defense, and the Assignee understands that counsel for LSI and the other defendants in those actions will seek leave to withdraw as counsel of record.



Section 727.105 of the Florida Statutes prohibits the commencement of proceedings against the Assignee. Stichter Riedel has filed a notice of the commencement of the assignment in the underlying litigation in which LSI was a defendant. To share in distributions, if any, from the ABC, claimants must timely file claims in the assignment case by the claims bar date. There is a link to the [proof of claim form](#) on this website. The bar date for filing proofs of claim is July 12, 2019.

Because the filing of a proof of claim is the exclusive method of sharing in any distribution, any further proceedings in an underlying law suit will have no impact on the Assignee or the assets he is administering. Plaintiffs and co-defendants in the underlying state court action should consult with their counsel as different courts may view the effect of the assignment differently and may or may not decide to stay the underlying action.

Counsel to the Assignee, Stichter Riedel, has advised the excess carrier, National Fire & Marine Insurance Company, as administered by a MedPro Group Company ("MedPro"), and representatives of LSI, of the filing of the ABC and have been advised that MedPro is evaluating the situation.

*I was a patient at Laser Spine Institute. How can I obtain copies of my medical records?*

Complete the attached Patient Authorization to Release Medical Information and either mail to:

Laser Spine Institute, LLC  
Attention: Medical Records Team  
5332 Avion Park Drive  
Tampa, FL 33607

or send via email to [MedicalRecordsHelpDesk@laserspineinstitute.com](mailto:MedicalRecordsHelpDesk@laserspineinstitute.com)

*I am a patient who paid a deposit for a procedure that never occurred. What is the status of my deposit?*

Please note that Texas Capital Bank (the "Bank") asserts a lien on all of the assets of Laser Spine Institute ("LSI") and related entities. Accordingly, the Assignee has no access to funds, except for some funding provided by the Bank for the wind-down of the estates.

Some patients may have paid deposits for procedures that were scheduled for dates after LSI ceased operations. The Assignee was not in place when the deposits were paid by the patients.

The filing of a proof of claim is the exclusive method for you to share in any distribution from the assignment estates. A link to the proof of claim form can be found on this website in the Creditors and Claims section.

*What priorities of payment apply?*

The priorities are prescribed by the [Florida Statute 727.114](#).

## **SALE OF ASSETS**

*How will the Assignee conduct a sale of assets?*

Sales of assets must be done in a commercially reasonable manner.

*How does the Assignee take the assets of the company?*

An assignment for the benefit of creditors is commenced through a written assignment document that assigns and transfers all assets of the assignor to the assignee, who becomes the rightful party to liquidate the assets and wind-down the business. The assignee takes the assets of the assignor business subject to existing valid liens and

encumbrances. An assignee typically sets up a separate bank account through which he or she administers the estate, collects receipts, and makes approved disbursements.

*Are the assets of Laser Spine Institute available for sale?*

Yes, the assets of Laser Spine Institute are available for sale. If you are interested in purchasing any of the assets available for sale, please contact LSI@kapilamukamal.com. **If you are interested in purchasing assets, you must first execute a Confidentiality and Non-Disclosure Agreement.**

*What assets are available for sale?*

All assets of Laser Spine Institute, LLC and its affiliates, including the turnkey state of the art medical center in Tampa, Florida, along with medical equipment, sterilization equipment, furniture, and intangible property including trademarks, patents, copyrights, brand names and domain names. Laser Spine Institute also had surgical centers located in Scottsdale, Arizona, Cincinnati, Ohio, Cleveland, Ohio, St. Louis, Missouri, and Wayne, Pennsylvania. The Assignee is also working to sell assets in these locations.

Dated: April 9, 2019

/s/ Edward J. Peterson

Harley E. Riedel (FBN 183628)

Edward J. Peterson (FBN 0014612)

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Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been sent by electronic mail on this 9th day of April, 2019 to Avalon Document Services for service on all parties in interest on the mailing matrix. Upon service to such parties in interest, a certificate of service will be filed with the clerk of the Court.

/s/ Edward J. Peterson

Edward J. Peterson

**Part One: Plan Design & Tax Issues (con't)**

**Health Savings Accounts (HSA)**

**Flexible Spending Accounts (FSA)**

Prefunding ("Uniform Coverage" Rule)	No. Notice 2002-45, Part IV, 6/26/02.	No. HSA is individual account	Yes. For Health FSA, not Dependent Care FSA; Prop. Reg. 1.125, Q&A 7(b)(2), 3/7/89.
Forfeit Contributions	No. Funds provided by Employer.	No. Unused funds retained in HSA.	Yes. Employees' risk, "Use-It or Lose It"
Rollover Contributions	Permitted, but employer may retain savings. Notice 2002-45, Sec. I, 2002-28 IRB 93.	Yes (includes Employer funds, if any). IRC §223((d)(1)(E)).	Yes. Prior year's contributions may be used for up to 2-1/2 months in new plan year if Plan amended prior to any new plan year.
Employer Payroll Savings	No. Deduction under Code §162(a)	Yes, if employee funds through cafeteria plan. No, if Employer funded - deduction, see HRA.	Yes. 7.65% FICA to \$90,000 for 2005 and Workers' Compensation
Employee Tax Savings	Yes. Tax-Free Reimbursement, Code §§105(b), 106.	Yes, if funded through cafeteria pan, Code §125.	Yes. Same as HRA, see also Code §§125(a), 129(a)(1).
		<b>Note:</b> At the time of this publication, some states do not allow a tax deduction for HSA premiums, the contributions to the savings account or its earnings.	Yes. HSA contribution pre-tax effective 1/1/04, Medicare Act §1201(i) created Code §125(d)(2), Notice 2004-2, Q&A 33. A HDHP is required - see Source of Contributions.

**Part Two: Administration**

**Health Savings Accounts (HSA)**

**Flexible Spending Accounts (FSA)**

ERISA Covered	Yes. Department of Labor (DOL), 29 USC §1002(1).	The HDHP is ERISA covered, but the HSA is not an "ERISA" covered welfare benefit plan even with Employer contributions if HSA qualifies for DOL's "safe harbor" exemption consisting of 5 conditions (see below).	Yes. Same as HRA
		Under the HSA safe harbor exemption, the HSA must be completely voluntary on the part of the employee and the Employer: (1) cannot limit the ability of eligible employees to move their funds to another HSA beyond the restrictions imposed by the Code; (2) cannot impose conditions on utilization beyond the Code's restrictions; (3) cannot make or influence investment decisions with respect to HSA contributions; (4) cannot represent that HSA is an employee welfare plan established or maintained by the employer; and (5) cannot receive any payment or compensation in connection with the HSA. DOL Field Assistance Bulletin 2004-1, 4/7/04. See also safe harbor exemption for group insurance plans at 29CFR §2510.3-1(i).	