

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

In re:

Laser Spine Institute, LLC<sup>1</sup>  
CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762  
Case No. 2019-CA-2764  
Case No. 2019-CA-2765  
Case No. 2019-CA-2766  
Case No. 2019-CA-2767  
Case No. 2019-CA-2768  
Case No. 2019-CA-2769  
Case No. 2019-CA-2770  
Case No. 2019-CA-2771  
Case No. 2019-CA-2772  
Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION TO EMPLOY  
VESTAL & WILER, CPAS TO CONDUCT AUDIT OF  
RETIREMENT SAVINGS PLAN AND TO PAY FEES RELATED THERETO**

Soneet Kapila ("Assignee"), by and through his undersigned attorneys, hereby files this motion pursuant to Florida Rule of Civil Procedure 1.100(b) and § 727.108(7) of the Florida

<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.

Statutes, to employ the certified public accounting firm of Vestal & Wiler, CPAs in the Assignment Cases for the purposes of conducting an audit of the retirement savings plan of the Assignors in order to remain in compliance with ERISA regulations. 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 an 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 (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”): 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.

3. The Assignee seeks authority to employ Vestal & Wiler, CPAs (“**Vestal**”), *nunc pro tunc* to May 3, 2019, as his certified public accountant to audit the financial statements of the Laser Spine Institute Retirement Savings Plan for the year 2018 and the partial year of 2019 (the “**Services**”) on the terms set forth in the engagement letter attached as **Exhibit A**.

### **Relief Requested**

4. One of the Assignee's duties is "to the extent necessary, employ at the expense of the estate one or more . . . accountants . . . to assist the assignee in carrying out his or her duties under this chapter." Fla. Stat. § 727.108(7). The Assignee has selected Vestal because it has considerable experience in conducting audits of retirement savings plans. The Assignee believes that Vestal is well qualified to represent him in these proceedings.

5. Vestal represents no interest adverse to the Assignee or to the estates in the matters upon which it is to be engaged by the Assignee, and its employment would be to the best interest of this assignment.

6. Vestal's fee for performing the Services is \$14,000.00, payable as follows: (a) \$7,000.00 upon its engagement; and (b) \$7,000.00 at completion of its engagement, in the event that the audits for each year are able to be performed concurrently, plus out-of-pocket costs. However, if the audits are not able to be performed concurrently, the fee will be approximately \$10,000.00 for each year, plus out-of-pocket costs (collectively, the "Fee").

7. Although the Assignee will seek payment of the Fee from the retirement plan, out of precaution, the Assignee seeks authority to pay the Fee from the assignment estates to the extent not paid from the retirement plan. The employment of Vestal is in the best interests of creditors because it is required under the ERISA regulations, and the Services will help to ensure a proper accounting for the assets in the retirement savings plans.

WHEREFORE, the Assignee respectfully requests that he be authorized to employ and appoint Vestal & Wiler, CPAs to represent him in the Assignment Cases under Fla. Stat. §

727.108(7), *nunc pro tunc* to May 3, 2019, authorize him to remit payment to Vestal under the terms described above, and that the Court order such other and further relief as is just and proper.

/s/ Edward J. Peterson

Edward J. Peterson (FBN 0014612)  
Stichter, Riedel, Blain & Postler, P.A.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602  
Telephone: (813) 229-0144  
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Counsel for Assignee

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Motion has been furnished on this 6<sup>th</sup> day of May, 2019 by the Court's electronic system to all parties receiving electronic service, and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties List and:

Vestel & Wiler  
Attn: Irene McNutt  
[imcnutt@vestal-wiler.com](mailto:imcnutt@vestal-wiler.com)

/s/ Edward J. Peterson

Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

April 29, 2019

**Assignors and Assignor's Counsel: (via the Court's electronic servicing system)**

CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Laser Spine Institute, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC  
c/o Nicole Greensblatt, Esq.  
Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, NY 10022  
Email: [ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)

**Assignee and Assignee's Counsel (via the Court's electronic servicing system)**

Soneet Kapila  
c/o Stichter Riedel, Blain & Postler, P.A.  
Attn: Edward J. Peterson, Esq.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602

**Secured Creditors:**

CarePayment, LLC  
5300 Meadow Rd., #400  
Lake Oswego, OR 97035

Steris Corporation  
5960 Heisley Rd.  
Mentor, OH 44060

CIT Bank, N.A.  
10201 Centurion Pkwy., #400  
Jacksonville, FL 32256

Medport Billing, LLC  
6352 S. Jones Blvd., #400  
Las Vegas, NV 89118

U.S. Bank Equipment Finance  
1310 Madrid St.  
Marshall, MN 56258

Maricopa County Treasurer  
c/o Peter Muthig, Esq.  
222 N. Central Ave., #1100  
Phoenix, AZ 85004  
Email: [muthigk@maco.maricopa.gov](mailto:muthigk@maco.maricopa.gov)

**Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)**

Highwoods Realty Limited Partnership  
c/o Eric E. Ludin, Esq.  
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Joe Bailey; Mark Miller; Ted Suhl; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; Laserscopic Surgery Center of Florida, LLC; Laserscopic Diagnostic Imaging; Laserscopic Spinal Center of Florida, LLC; and Tim Langford  
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Tertiary Email: [dmedina@trenam.com](mailto:dmedina@trenam.com)

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[mlinares@bushross.com](mailto:mlinares@bushross.com); [ksprehn@bushross.com](mailto:ksprehn@bushross.com)

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Tampa, Florida 33606  
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# **EXHIBIT A**



May 2, 2019

Mr. Soneet Kapila, as Assignee<sup>1</sup> for the entities listed in footnote one below.  
KapilaMukamal, LLP  
1000 South Federal Highway, Suite 200  
Fort Lauderdale, Florida 33316

Dear Mr. Kapila:

***The Objective and Scope of the Audit***

You have requested that we audit the financial statements of the Laser Spine Institute Retirement Savings Plan (the Plan), which comprise the statement of net assets available for benefits as of May 31, 2019 (estimated based on last day of plan) and December 31, 2018, and the related statements of changes in net assets available for benefits for the short plan year ended May 31, 2019 and the year ended December 31, 2018, and the related notes to the financial statements and report on the supplemental schedule(s) of the Plan, which are to be included in the Plan's Form 5500 filing with the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL).

As permitted by 29 CFR 2520.103.8 of the DOL's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974 (ERISA), you have instructed us not to perform any auditing procedures with respect to asset information certified or provided by the Vanguard Fiduciary Trust Company, other than comparing that information with the related information included in the financial statements and supplemental schedule(s). Under ERISA, the plan administrator is generally responsible to the Plan participants for the financial information and the ability of the certifying entity to issue such ERISA certification.

We are pleased to confirm our acceptance and understanding of this audit engagement by means of this letter.

***The Responsibilities of the Auditor***

Except as noted above, we will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Because of the significance of the information that we will not audit, we will not express an opinion on the financial statements and supplemental schedule(s). The form and content of the information included in the financial statements and supplemental schedule(s), other than that derived from the information certified or provided by the Vanguard Fiduciary Trust Company, will be audited by us in accordance with GAAS, and will be subjected to tests of your accounting records and other procedures as we consider necessary to enable us to express an opinion as to whether they are presented in compliance with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

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<sup>1</sup> Laser Spine Institute, LLC, 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.



In making our risk assessments, we consider internal control relevant to the plan's preparation and fair presentation of the financial statements and supplemental schedule(s) in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the plan's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit, including those that were remediated during the audit.

As a part of our audit, we will perform certain procedures, as required by GAAS, directed at considering the plan's compliance with applicable Internal Revenue Code (IRC) requirements for tax-exempt status. As we conduct our audit, we will be aware of the possibility that events affecting the plan's tax status may have occurred. Similarly, we will be aware of the possibility that events affecting the plan's compliance with the requirements of ERISA may have occurred. We will inform you of any instances of tax or ERISA noncompliance that come to our attention during the course of our audit. You should recognize, however, that our audit is not designed to nor is it intended to determine the plan's overall compliance with applicable provisions of the IRC or ERISA.

***The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework***

Our audit will be conducted on the basis that plan management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility

- for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America which includes the determination that the certification from the qualified institution includes the appropriate valuation of investments as of the Plan's year end;
- for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatements, whether due to fraud or error;
- for the supplemental schedule(s) and that they were derived from, and relate directly to, the underlying accounting and other records used to prepare the financial statements including the fair presentation of the supplemental schedule(s) and the form and content of the financial statements and supplemental schedule(s) in compliance with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA;
- for identifying and determining that the plan complies with the laws and regulations applicable to its activities; and
- to provide us with
  - access to all information which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;
  - additional information that we may request from management for the purpose of the audit; and
  - unrestricted access to persons within the plan from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit of the financial statements and to report on the supplemental schedule(s).

Management is responsible for informing us about related party transactions, including transactions with parties in interest, as defined in Section 3(14) of ERISA and the regulations thereunder.



Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

The Assignee makes no representation about the accuracy of the financial statements.

#### *Other Relevant Information*

You have not engaged us to prepare or review the plan's Form 5500 filing with the DOL. Because the audited financial statements are required to be filed with the Form 5500, professional standards require that we read the Form 5500 prior to its filing. The purpose of this procedure is to consider whether information or the manner of its presentation in the Form 5500 is materially inconsistent with the information or the manner of its presentation appearing in the financial statements. These procedures are not sufficient nor are they intended to determine that the Form 5500 is completely and accurately prepared. In the event that our report is issued prior to our having read the Form 5500, you agree not to attach our report to the financial statements included with the Form 5500 filing until we have read the completed Form 5500.

Our engagement will also include preparation of the Plan's financial statements and supplemental schedule(s). In order for us to perform this nonattest service, the plan administrator, in conjunction with management of the Plan Sponsor, agrees to perform the following functions:

- Assume all management responsibilities with respect to the preparation of the Plan's financial statements
- Oversee the service, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or expertise
- Evaluate the adequacy and results of the service performed
- Accept responsibility for the results of the services

The working papers for this engagement are the property of Vestal & Wiler, CPAs and constitute confidential information. Except as discussed below, any requests for access to our working papers will be discussed with you prior to making them available to requesting parties.

Our firm, as well as other accounting firms, participates in a peer review program covering our audit and accounting practices. This program requires that once every three years, we subject our system of quality control to an examination by another accounting firm. As part of this process, the other firm will review a sample of our work. It is possible that the work we perform for you may be selected for its review. If it is, the firm is bound by professional standards to keep all information confidential.

We may be requested to make certain working papers available to the DOL pursuant to authority given to it by law or regulation. If requested, access to such working papers will be provided under the supervision of Vestal & Wiler, CPAs personnel. Furthermore, upon request, we may provide photocopies of selected working papers to the DOL. We will mark all information as confidential and maintain control over the duplication of all such information. However, the DOL may intend or decide to distribute the photocopies or information contained therein to others, including other governmental agencies.

We estimate that our fees for these services will be approximately \$14,000 for the audits if they are able to be performed concurrently. Otherwise, the fee will be approximately \$10,000 for each year. The assignment estates will also be billed for other out-of-pocket costs such as report production.

The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our fee will be billed as work progresses and is payable upon receipt. In accordance with our firm policies, work may be suspended if your account becomes overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, you will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees. It is understood that neither Soneet Kapila nor KapilaMukamal, LLP is liable for any fees and costs. The fees and costs will be paid by the assignment estates, subject to the approval of the Court handling the assignment cases (the "Assignment Court"). All fees and costs are subject to approval of the Assignment Court.

### *Reporting*

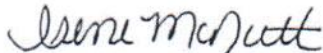
We will issue a written report upon completion of our audit of the Laser Spine Institute Retirement Savings Plan's financial statements. Our report will be addressed to you as Assignee. We cannot provide assurance that a limited-scope audit opinion as permitted by Regulation 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph, or withdraw from the engagement.

We appreciate the opportunity to serve you. If this letter correctly expresses your understanding, please sign the enclosed copy where indicated and return it to us along with a retainer of \$7,000.

The terms of this engagement letter are subject to the approval of the Assignment Court.

Very truly yours,

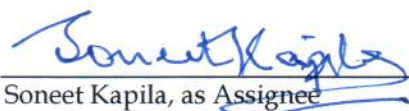
VESTAL & WILER



Irene McNutt  
Client Services Audit Partner

### ACKNOWLEDGED:

This letter correctly sets forth the understanding of the Laser Spine Institute Retirement Savings Plan.

  
Soneet Kapila, as Assignee

May 31/19  
Date