

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

In re:

Laser Spine Institute, LLC ¹	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.

**ASSIGNEE'S MOTION FOR ORDER ESTABLISHING
PROCEDURES FOR MONTHLY AND INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Assignee, Soneet Kapila of KapilaMukamal, as assignee (“Assignee”), by and through his undersigned attorneys, files this Motion for Order Establishing Procedures for Monthly and

¹ 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.

Interim Compensation and Reimbursement of Expenses (the “**Motion**”). In support of the Motion, the Assignee states as follows:

General Background

1. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors (the “**Assignment**”) 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 hereinafter referred to as 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 (collectively, together with LSI, the “**Assignors**”).

Specific Background

3. In connection with the Assignment Cases, the Assignee, with this Court’s approval, has retained Stichter, Riedel, Blain & Postler, P.A. as his general counsel. The Assignee is using KapilaMukamal as his general accountants and financial advisors, although such firm is not a professional as defined in Section 727 of the Florida Statutes.

4. In addition to the retentions set forth in Paragraph 3, the Assignee has employed attorneys and accountants for limited and specialized services, which to date includes the following:

- (a) FisherBroyles, LLC as healthcare counsel;
- (b) Wagner Law Group as ERISA and employee benefits counsel;
- (c) RDK Management Solutions, Inc., as risk management consultant; and
- (d) Buell & Elligett, P.A., as litigation counsel to pursue business interruption claims; and
- (e) Vestal & Wiler, CPAs, to audit the Assignor's Retirement Savings Plan

5. The Assignee will also need to employ additional professionals to assist the Assignee and his general counsel as to specialized areas of law and to pursue causes of action. The services of these professionals are essential to the administration of these Assignment Cases.

6. In professional engagements outside of the insolvency arena, professionals generally expect to bill and be paid on a regular basis, generally monthly. The purpose of this Motion is simply to replicate these practices in the Assignment Cases.

7. As this Court is aware, the Assignee has no unencumbered liquid assets. Any such assets are encumbered by the liens of Texas Capital Bank, as administrative agent (the "**Bank**"). The fees and expenses sought to be paid by this Motion will be made from the Bank's cash collateral that is subject to security interests and set-off rights, pursuant to estimated budgets negotiated by the Assignee and the Bank.

Relief Request and Basis for Relief

8. In order to (a) permit the Bank to review the fees to compare them to budgeted amounts, (b) permit the Assignee to review the fees, and (c) ease the administrative burdens on the professionals and the Court, the Assignee requests that the Court approve the proposed

compensation procedures, as set forth herein, in order to provide a streamlined and otherwise efficient method for review and regular payment of professionals.

9. In summary, the requested monthly compensation procedure would permit all professionals retained with Court approval and KapilaMukamal (the “**Professionals**”) to present to the Assignee, general counsel for the Assignee, and the Bank a detailed statement of services rendered and expenses incurred through the date of such statement or for a specified period of time (i.e., the prior month).² If the Assignee does not object to the fees and if no timely objection is received from the Bank, the Assignee would have access to cash collateral in amounts sufficient to allow him to promptly pay 80% from funds available under the budgeted process the amount of fees incurred for the month, with a 20% holdback, and 100% of out-of-pocket expenses for the month. These payments would be subject to the Court’s subsequent ratification and approval as part of the normal interim fee application process.

10. The Assignee proposes that the payment of compensation and costs to the Professionals be structured as follows:

- (a) On or before the 10th day of each month following the month for which compensation is sought, each Professional will serve a monthly statement upon (i) the Assignee, c/o Soneet Kapila, KapilaMukamal, 1000 South Federal Highway, Suite 200, Ft. Lauderdale, Florida 33616; (ii) Assignee’s general counsel, c/o Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; and (iii) the Bank, c/o Toby L. Gerber, Esq. and Ryan E. Manns, Esq., 2200 Ross Avenue, Dallas, Texas 75201-7932 (collectively, the “**Application Recipients**”).
- (b) The monthly statement shall not be filed with the Court.
- (c) Each monthly fee statement shall contain an abbreviated narrative of the services rendered,³ accompanied by a printout or schedule of the

² This procedure is optional to the Professionals. Professionals may, if they wish, wait and file fee applications at the conclusion of the Assignment Cases.

³ The statements may be abbreviated to avoid any disclosure of attorney-client communications, accountant-client communications, or attorney work product. Should there be any inadvertent disclosures of privileged items, it shall not constitute a waiver of such privilege.

reimbursable expenses incurred and the professional and paraprofessional time spent (in sufficient detail to allow the review of this time by the Application Recipients), which shall ordinarily be for services rendered through a particular calendar month.

- (d) Each Application Recipient receiving a statement may object to the payment of the fees or the reimbursement of costs set forth therein by serving a written objection (which shall not be filed with the Court) upon the applicable Professional and the other Application Recipients so as to have such objection actually received by the applicable Professionals and other Application Recipients within fourteen (14) days of the date on which the statement is received. The objection shall state the nature of the objection and identify with specificity the amount of fees or costs to which objection is made. The objecting party shall attempt in good faith to object only to the portion of the statement that is deemed to be objectionable. If the parties are unable to reach a resolution to an objection, the affected Professional may either (i) file a request with the Court for payment of the difference between the maximum monthly payment and the actual monthly payment made to the affected Professional or (ii) forego the payment of the incremental amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection if requested by the parties.
- (e) In the absence of any timely objection, the Assignee is authorized to pay 80% of the fees and 100% of the expenses, except such fees or expenses as to which an objection may be served by one of the Application Recipients as provided below.
- (f) If the Assignee receives an objection to a particular fee statement, he shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth herein. All Professionals subject to these fee procedures shall establish a separate billing number for any time spent on the resolution of fee disputes. Any fees incurred in connection with such fee disputes shall not be paid pursuant to the monthly statement, but may only be sought and paid upon the filing of an interim fee application as set forth below and after order of the Court.
- (g) Similarly, if the parties to an objection are able to resolve their dispute following the service of an objection and if the party whose statement was objected to serves on all of the Application Recipients a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Assignee is authorized to pay the 80% of that portion of the fee statement which is no longer subject to an objection.

- (h) The service of an objection shall not prejudice the objecting party's right to object to any fee application on any ground, whether or not raised in the objection. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of, nor otherwise prejudice, that party's right to object to any subsequent fee application.
- (i) The first statement shall be served by each of the Professionals within ten (10) business days of the date of the order granting this Motion and shall cover the period from March 14, 2019 through April 30, 2019.
- (j) Unless the Court orders otherwise, each of the Professionals utilizing the procedures described herein shall file interim fee applications, for the amount of fees and costs sought above, every 120 days as follows:
 - (i) The first Interim Fee Applications may be filed on or after June 30, 2019, (the "**First Interim Fee Applications**"). The First Interim Fee Applications shall represent fees and costs incurred by the Professionals from March 14, 2019 through June 30, 2019. Thereafter, interim fee applications may be filed in accordance with the schedule set forth above covering the preceding four month time period.
 - (ii) Professionals who fail to file an application seeking approval of compensation and expenses previously paid pursuant to these fee procedures when such application is due may nonetheless file interim and final fee applications with the Court.
- (k) A determination by the Court that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- (l) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.
- (m) Neither the filing of nor the failure to file an objection to any monthly fee statement will bind any party in interest or the Court with respect to the interim or final allowance of applications for compensation or reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the compensation procedures are subject to disgorgement until final allowance by the Court.

11. The procedure suggested herein will enable parties to monitor costs of administration, and will enable the Assignee to maintain a more predictable cash flow availability and implement efficient cash management.

WHEREFORE, the Assignee respectfully requests that the Court enter an order in the form annexed hereto as **Exhibit A**: (i) granting this Motion; (ii) authorizing the procedures for compensating and reimbursing professionals as set forth herein; and (iii) granting the Assignee such other and further relief to which he is entitled.

/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.

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Tampa, Florida 33602

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

mhale@srbp.com

Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Assignee's *Motion for Order Establishing Procedures for Monthly and Interim Compensation and Reimbursement of Expenses* has been furnished on this 13th day of May, 2019 by the Court's electronic system to all parties receiving electronic notice, by either U.S. Mail or electronic mail to the parties listed on the Limited Notice Parties List.

/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

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

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

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Orlando, FL 32801
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CertificateofService@TheFloridaFirm.com

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

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Tampa, Florida 33602
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Shirley and John Langston
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c/o Cameron M. Kennedy, Esq.
Searcy Denney Scarola, et al
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c/o Brandon J. Hill, Esq.
Wenzel Fenton Cabassa P.A.
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MedPro Group
c/o Jeffery Warren, Esq. and Adam Alpert, Esq.
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Tampa, FL 33601-3913
Email: jwarren@bushross.com; aalpert@bushross.com;
mlinares@bushross.com; ksprehn@bushross.com

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c/o Walters Levine Lozano & Degrave
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Tampa, Florida 33606
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Kenneth Winkler
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Tampa, FL 33606

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EXHIBIT A
Proposed Order

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

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
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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,

_____ /

**ORDER GRANTING ASSIGNEE'S
MOTION FOR ORDER ESTABLISHING PROCEDURES
FOR MONTHLY AND INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

¹ 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.

THIS MATTER came before the Court for hearing on _____, 2019, at ____ .m. in Tampa, Florida, for consideration of the Assignee’s Motion for Order Establishing Procedures for Monthly and Interim Compensation and Reimbursement of Expenses for Professionals (the “**Motion**”) filed by the Assignee. The Motion requests the entry of an order establishing a procedure for compensating and reimbursing all Professionals on a monthly basis. Proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary. Upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Accordingly, it is hereby

ORDERED that:

1. The Motion is granted in all respects.
2. Interim compensation and reimbursement of the Professionals in these cases shall be in accordance with the terms of this Order.
3. All professionals now or hereafter employed by the Assignment Estates are authorized to participate in the interim compensation procedures as set forth in the Motion and below:
 - (a) On or before the 10th day of each month following the month for which compensation is sought, each Professional will serve a monthly statement upon (i) the Assignee, c/o Soneet Kapila, KapilaMukamal, 1000 South Federal Highway, Suite 200, Ft. Lauderdale, Florida 33616; (ii) Assignee’s general counsel, c/o Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; and (iii) the Bank, c/o Toby L. Gerber, Esq. and Ryan E. Manns, Esq., 2200 Ross Avenue, Dallas, Texas 75201-7932 (collectively, the “**Application Recipients**”).
 - (b) The monthly statement shall not be filed with the Court.
 - (c) Each monthly fee statement shall contain an abbreviated narrative of the services rendered,² accompanied by a printout or schedule of the

² The statements may be abbreviated to avoid any disclosure of attorney-client communications, accountant-client communications, or attorney work product. Should there be any inadvertent disclosures of privileged items, it shall not constitute a waiver of such privilege.

reimbursable expenses incurred and the professional and paraprofessional time spent (in sufficient detail to allow the review of this time by the Application Recipients), which shall ordinarily be for services rendered through a particular calendar month.

- (d) Each Application Recipient receiving a statement may object to the payment of the fees or the reimbursement of costs set forth therein by serving a written objection (which shall not be filed with the Court) upon the applicable Professional and the other Application Recipients so as to have such objection actually received by the applicable Professionals and other Application Recipients within fourteen (14) days of the date on which the statement is received. The objection shall state the nature of the objection and identify with specificity the amount of fees or costs to which objection is made. The objecting party shall attempt in good faith to object only to the portion of the statement that is deemed to be objectionable. If the parties are unable to reach a resolution to an objection, the affected Professional may either (i) file a request with the Court for payment of the difference between the maximum monthly payment and the actual monthly payment made to the affected Professional or (ii) forego the payment of the incremental amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection if requested by the parties.
- (e) In the absence of any timely objection, the Assignee is authorized to pay 80% of the fees and 100% of the expenses, except such fees or expenses as to which an objection may be served by one of the Application Recipients as provided below.
- (f) If the Assignee receives an objection to a particular fee statement, he shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth herein. All Professionals subject to these fee procedures shall establish a separate billing number for any time spent on the resolution of fee disputes. Any fees incurred in connection with such fee disputes shall not be paid pursuant to the monthly statement, but may only be sought and paid upon the filing of an interim fee application as set forth below and after order of the Court.
- (g) Similarly, if the parties to an objection are able to resolve their dispute following the service of an objection and if the party whose statement was objected to serves on all of the Application Recipients a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Assignee is authorized to pay the 80% of that portion of the fee statement which is no longer subject to an objection.

- (h) The service of an objection shall not prejudice the objecting party's right to object to any fee application on any ground, whether or not raised in the objection. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of, nor otherwise prejudice, that party's right to object to any subsequent fee application.
- (i) The first statement shall be served by each of the Professionals within ten (10) business days of the date of the order granting this Motion and shall cover the period from March 14, 2019 through April 30, 2019.
- (j) Unless the Court orders otherwise, each of the Professionals utilizing the procedures described herein shall file interim fee applications, for the amount of fees and costs sought above, every 120 days as follows:
 - (i) The first Interim Fee Applications may be filed on or after June 30, 2019, (the "**First Interim Fee Applications**"). The First Interim Fee Applications shall represent fees and costs incurred by the Professionals from March 14, 2019 through June 30, 2019. Thereafter, interim fee applications may be filed in accordance with the schedule set forth above covering the preceding four month time period.
 - (ii) Professionals who fail to file an application seeking approval of compensation and expenses previously paid pursuant to these fee procedures when such application is due may nonetheless file interim and final fee applications with the Court.
- (k) A determination by the Court that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- (l) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.
- (m) Neither the filing of nor the failure to file an objection to any monthly fee statement will bind any party in interest or the Court with respect to the interim or final allowance of applications for compensation or reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the compensation procedures are subject to disgorgement until final allowance by the Court.

4. Neither the payment of interim fees nor anything else in the Motion and Order prevents the Court from allowing or disallowing fees upon interim or final applications.

DONE AND ORDERED in Hillsborough County, Florida this ____ day of _____, 2019.

Steven Scott Stephens
Circuit Court Judge

Copy to:
Counsel of record