

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>	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.

**MOTION TO APPROVE TERMINATION OF MEDPRO GROUP EXCESS  
HEALTHCARE LIABILITY POLICY EFFECTIVE AS OF MAY 23, 2019**

Soneet Kapila, as assignee (“**Assignee**”) for the benefit of the creditors of the Assignors (defined below), by and through his undersigned attorneys, seeks Court approval to terminate the

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<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 (the “**Assignors**”).

excess medical malpractice liability insurance policies maintained by the Assignors with MedPro Group, on behalf of National Fire & Marine Insurance Company (collectively, “**MedPro**”), effective as of May 23, 2019, the date this matter will be presented to the Court at the monthly omnibus hearing, together with any amendments thereto that may result from ongoing discussions with MedPro. In support of this motion (the “**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 (collectively, together with LSI, the “**Assignors**”).

3. Texas Capital Bank, National Association, in its capacity as Administrative Agent to the lender group (“**TCB**”), asserts a lien on virtually all personal property of the Assignors, under a Credit Agreement (or any related documents or agreements) dated as of July 2, 2015 by

and between the Assignors, as borrowers and/or guarantors, and TCB, as lender.<sup>2</sup> The Assignee has virtually no unencumbered assets with which to operate the wind-down or fund expenses that are not approved by TCB.

#### **Description MedPro Insurance Policy**

4. Prior to the filing of the Assignment Cases, LSI maintained an Excess Healthcare Liability Policy with MedPro (the “**MedPro Policy**”), which provided medical malpractice coverage in excess of the self-insured retention amount of \$1 million per claim or an aggregate of \$6 million self-insured retention for all claims during a specific policy period (the “**Self-Insured Retention**”). Under this structure, MedPro’s insurance obligations (i.e., to fund defense costs or pay settlements) up to the \$20 million policy limit would not arise until LSI paid the applicable Self-Insured Retention.

5. The MedPro Policy term expires on June 30, 2019. Because the Assignors ceased medical operations on March 1, 2019, the coverage provided under the MedPro Policy is no longer necessary. The MedPro Policy, however, is a “claims-made and reported” policy, which allows claims to be reported until the policies expire or are cancelled. However, because the Assignee has no unencumbered cash available to pay any Self-Insured Retention, the MedPro Policy would not effectively provide any coverage or benefit with respect to newly reported claims.

6. Cancellation will trigger a thirty-day deadline for additional claims under the built-in Automatic Limited Extended Reporting Period provision in the MedPro Policy. Assuming cancellation is effective as of May 23, 2019, this deadline to file a claim under the MedPro Policy would be June 22, 2019. The Assignee will provide notice of this Motion to the notice parties prescribed in the Court’s *Order Granting Assignee’s Motion to Limit Notice* (the “**Limited Notice**”).

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<sup>2</sup> The Assignee continues to investigate the validity and the priority of claims and liens and nothing herein shall be deemed a waiver of the Assignee’s rights to contest the validity and priority of claims and liens.

**Parties List**”) and all physicians who worked for the Assignors as of March 1, 2019, the date the Assignors ceased operations. The Assignee will also post notice of the deadline to file claims under the MedPro Policy on the website established by the Assignee for the Assignment Cases.

7. LSI paid the \$2,087,444 annual premium (including \$101,328 in taxes and fees) required by the Policy through a premium financing arrangement, with the last installment paid on January 1, 2019. If the Assignee terminates the MedPro Policy as of May 23, 2019, the assignment estates would receive a refund of the unearned premium totaling approximately \$130,000.<sup>3</sup>

8. The MedPro Policy allows LSI to unilaterally cancel or terminate coverage. The applicable excerpts from the MedPro Policy relating to cancellation are as follows:

E. CANCELLATION, NONRENEWAL AND/OR TERMINATION OF COVERAGE

1. This policy may be canceled by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.

...

4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure.

...

H. FIRST NAMED INSURED

1. The **first named insured** shall be authorized to act on behalf of all **insureds** with respect to this policy, with full authority to bind all **insureds**. The **first named insured's** authority shall include, but is not limited to, the following actions:

- a. receipt of notices of cancellation or nonrenewal;
- b. requesting or receiving endorsements issued to form a part of this policy;

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<sup>3</sup> Cancellation of the MedPro Policy would likely provide an additional \$42,408 refund of unearned premium resulting from the cancellation of additional policies providing \$55 million coverage in excess of MedPro's \$20 million.

- c. payment of premiums due;
- d. receiving return premium; and
- e. receiving and/or responding to an offer for an **extended reporting period** for any **insured**.

(Excess Healthcare Liability Policy, Policy No. EN004806).

9. The MedPro Policy also includes general liability coverage. The Assignee, however, has arranged for replacement general liability coverage uncoupled from the medical malpractice coverage the Assignee intends to terminate. If the Court grants this Motion, the replacement general liability coverage will become effective on May 23, 2019, the proposed effective date of cancellation of the MedPro Policy.

#### **Relief Requested and Basis for Relief**

10. The Assignee seeks Court approval to cancel the MedPro Policy and obtain refund of the unearned portion of the funded premiums, an amount expected to be approximately \$130,000. Continuing to maintain the MedPro Policy through the policy period, which terminates by its own terms on June 30, 2019, would not provide any benefit to the assignment estates because the Assignee has no funds available to cover the Self-Insured Retention required by the MedPro Policy. Indeed, substantially all of the Assignee's funds are encumbered by TCB's asserted liens. Additionally, because the Assignors ceased operations prior to filing the Assignment Cases, there is minimal risk that any unfiled malpractice claims would be deemed post-assignment claims with potential administrative expense priority.

11. Under Section 727.109(15) of the Florida Statutes, this Court is authorized to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” Fla. Stat. § 727.109(15). The Assignee seeks approval of his cancellation of the MedPro Policy described herein as necessary to allow him to carry out his duty to “[c]ollect and reduce to

money the assets of the estate,” Fla. Stat. § 727.108(1), as cancellation of the MedPro Policy will allow for recovery of the unearned premiums. The Assignee submits that the cancellation of the MedPro Policy is a sound exercise of his business judgment as an estate fiduciary.

12. The Assignee is currently engaged in negotiations with MedPro about the relief requested in this motion and potential alternative solutions, including a malpractice claims resolution process, but to date no resolution has been reached.

13. The recovery of significant unearned premiums, compared to the lack of benefit to the assignment estates provided by the MedPro Policy, warrants the granting of this Motion and approval of the Assignee’s termination of the MedPro Policy.

WHEREFORE, the Assignee respectfully requests that this Court enter an order (i) granting this Motion, (ii) approving the Assignee’s termination of the MedPro Policy effective as of May 23, 2019, (iii) authorizing and directing MedPro to pay to the Assignee the unearned premium in connection with the MedPro Policy, calculated as of May 23, 2019, and (iv) providing for such other and further relief as is just and proper.

Dated: May 17, 2019

/s/ Edward J. Peterson  
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Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion to Approve Termination of MedPro Group Excess Healthcare Liability Policy Effective As of May 23, 2019* has been furnished on this 17th 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 attached 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  
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**Assignee and Assignee's Counsel (via the Court's electronic servicing system)**

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

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