

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

In re:

Laser Spine Institute, LLC	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,

Division L

To:

Soneet Kapila,

Assignee,

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**SHIRLEY AND JOHN LANGSTON'S MOTION TO COMPEL  
ASSIGNEE TO PURSUE OR ASSIGN ALL CLAIMS AGAINST THIRD  
PARTIES RELATING TO THE VIOLATION OF STATUTORY SELF-  
INSURANCE REQUIREMENTS TO MEDICAL MALPRACTICE  
PLAINTIFFS**

Shirley and John Langston, by and through undersigned counsel, now respectfully move this Court for an order compelling the Assignee to pursue all claims relating to the violation by Assignors of Florida's statutory medical malpractice self insurance statutes, or in the alternative, to assign said claims to the individual medical malpractice plaintiffs, and states:

**Summary.** Laser Spine Institute, LLC, (“LSI”) and its affiliates appear to have been operating in violation Florida’s self-insurance statutory requirements for physicians. To date, it appears that LSI failed to post the required escrow or establish other ability to meet self-insurance requirements, leaving the defendant practitioners without coverage and the medical malpractice plaintiffs without the statutory benefits of self-insurance. The Assignee appears to have no motivation or intent to pursue these claims, as the beneficiaries are solely the plaintiffs and the defendant practitioners. This Motion seeks to compel the Assignee, Sonett Kapila, to either pursue these claims or, in the alternative, assign these claims to the medical malpractice plaintiffs and/or the defendant practitioners.

### **Background**

1. Pursuant to § 727.102, this Court has jurisdiction over all matters arising under Chapter 727 Assignments.
2. Shirley and John Langston (“the Langstons”) are Plaintiffs in a medical malpractice case pending in the Circuit Court of Hillsborough County, Florida, against Laser Spine Institute, LLC (“LSI”) and one of the former physician employees of LSI, Dr. Thomas Francavilla, titled, Shirley and John Langston v. Laser Spine Institute, LLC, and Dr. Thomas Franavilla, Case No. 17-CA-10423, Circuit Court of Hillsborough County, Florida (the “Langston Malpractice Case”), in the Defendants claim to be self-insured for the first one million dollars of claims.
3. Beginning March 1, 2019, culminating on March 14, 2019, LSI along with a series of what the Motion describes as “15 affiliates,” ceased operations and filed these state court proceedings under Chapter 727 of the

Florida Code as assignments for the benefit of creditors.

4. LSI is a common Florida LLC, not a professional association, which employed physician employees and in the case of the Langstons, rendered medical care through its physician employees. LSI entered contracts to provide medical services to the Langstons, paid the physician employees, hired and paid other health care workers, and engaged in a nationally advertised business of providing “laser” spine surgery. LSI apparently contracted with one of its “affiliates,” which held a Florida ambulatory surgical center license, but the physician employees were only employees of the unlicensed common LLC, LSI. The Langstons allege that LSI and its physician employee were negligent in the treatment and care of Shirley Langston, causing damage.

5. Laser Spine Institute LLC and Dr. Francavilla claim to have been "self-insured," as to medical malpractice claims, in part, and pursuant to Florida law, Dr. Francavilla was required to post either an irrevocable letter of credit or an escrow account in the amount of \$250,000/\$750,000 in accordance with Chapter 675 for the letter of credit and § 625.53, Fla. Stat., for the escrow account. It appears that the employee physicians were operating with the understanding that LSI's employment contract included LSI's responsibility to comply with the Florida self-insurance requirements. Regardless, there appears to have been no compliance with this statute. If that is the case, LSI was operating illegally, and the attorneys, insurance companies, and individual owners, and others, may have liability to the medical malpractice plaintiffs, the practitioners, and the Assignee.

## Analysis

6. Pursuant to § 727.101:

The intent of this chapter is to provide a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this chapter.

Also see *Pro Finish, Inc. v. Estate of Estate of All Am. Trailer Mfrs.*, 204 So. 3d 505, 507 (Fla. 4th DCA 2016) (“The intent of chapter 727 is to provide a uniform procedure, ensure full reporting to creditors, and ensure equal distribution per priority.”)

7. § 727.108 describes the “duties of assignee,” which includes the following subsections:

- a. In subsection, 1, prosecuting, or selling and assigning the right to prosecute, tort claims and causes of action, and remedies are not limited by a claim that the assignor acquiesced or participated in the wrongful act;
- b. In subsection 2, examining the assignor under oath, which the Assignee noticed for April 16, 2019;
- c. Subsection 3 requires notice to all creditors of matters concerning the administration of the estate;
- d. Subsection 9 requires an “interim report of receipts and disbursements within 6 months after the filing date,” with certain exceptions;
- e. Subsection 10 requires the Assignee to “[e]xamine the validity

and priority of all claims against the estate,”; and

- f. Subsection 11 provides for the abandonment of assets to perfected lien creditors where Assignor determines that there is no equity or the assets are burdensome.

8. The Assignee has the authority to bring the Assignor’s legal malpractice claims under the direct wording of the statute, which was amended after the Florida Supreme Court determined that issue in *Cowan Lebowitz & Latman, PC v. Kaplan*, 902 So. 2d 755 (Fla. 2005).

9. The Langstons filed a motion in these proceedings to determine the self-insurance compliance with the foregoing, and Assignee’s counsel has indicated that there was no compliance. This raises the specter of claims for fraud, breach of fiduciary duty, negligent misrepresentation, legal malpractice, and similar claims, against the controlling persons and attorneys, both in-house and outside counsel, who designed this business platform and induced physicians to provide medical care in Florida without complying with the statutorily mandated self-insurance requirements. There are possibly other defendants, including insurance companies, accountants, and lenders. Some of these claims may be derivative claims, and derivative claims may solely be brought by the Assignee, *Moffatt & Nichol, Inc. v. B.E.A. International Corp.*, 48 So. 3d 896, 899 (Fla. 3d DCA 2010).

10. The Assignee has the power to assign claims, *Pro Finish, Inc. v. Estate of Estate of All Am. Trailer Mfrs.*, 204 So. 3d 505, 507 (Fla. 4th DCA 2016), and to the extent that the Assignee is not going to bring these claims, the Assignee should be required to assign the claims to the individual malpractice

plaintiffs and/or the defendant practitioners. The claims assigned should include all possible parties who may be responsible or complicit in the operation of LSI in violation of the self-insurance statutes, including lenders, accountants, controlling parties, attorneys, in-house counsel, insurance companies, excess insurance carriers, and any other third parties who designed, structured, benefitted by, or otherwise caused the statutory violations to occur.

### **Conclusion**

The operative statutes provide that the Assignee may assign tort and contract claims, including legal malpractice claims. LSI appears to have been operating in violation of Florida's medical self-insurance requirements. As a result, employee practitioner defendants and medical malpractice plaintiff are being denied the benefits of the statutory requirements. The responsible parties should be held accountable for the damage caused by these violations, and if the Assignee is not going to pursue these claims, then the claims should be assigned to the medical malpractice plaintiffs, the defendant practitioners, or in such other fashion as to allow those parties injured by the statutory violations to pursue remedies.

**Wherefore;** the Langstons move this Court for the entry of an order compelling the Assignee to either pursue or assign all claims relating to the statutory violations of Florida's self-insurance requirements.

Certificate of Service: I hereby certify that a copy of the foregoing has been filed and service will be made through the Court's efilng service this 28 day of May, 2019.

/s/Donald J. Schutz

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