

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,

Consolidated Case No:  
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S RESPONSE TO SHIRLEY AND  
JOHN LANGSTON'S OPPOSITION TO MOTION FOR ENTRY  
OF AN ORDER PURSUANT TO FLA. STAT. § 727.109(15): (I)  
AUTHORIZING THE USE OF CASH COLLATERAL; (II) PROVIDING  
ADEQUATE PROTECTION TO LENDERS; (III) ESTABLISHING A  
LIEN CHALLENGE DEADLINE; AND (IV) GRANTING RELATED RELIEF**

Assignee, Soneet Kapila of KapilaMukamal, LLP, as assignee of Laser Spine Institute, LLC and the above-captioned affiliate assignors (the "Assignee"), by and through his undersigned attorneys, files this response to the Opposition (the "Opposition") filed by Shirley and John Langston (the "Langstons") to the Assignee's motion to authorize the use of cash collateral and

for related relief (the “**Motion**”).<sup>1</sup> The Opposition is misguided and should be overruled because it is based on at least three flawed assumptions: (i) the Assignee is not required to publish the reports that the Opposition demands; (ii) the Opposition incorrectly presumes that the Assignee has bargained away the estates’ ability to challenge the Agent’s liens; and (iii) the Opposition misstates the proposed adequate protection afforded the Agent. Indeed, with the explanations and clarifications below, the Langstons may consent to the relief requested in the Motion inasmuch as their interests in having the Assignee pursue meritorious litigation will actually be served by the granting of the Motion.

1. First, the Assignee is not required to publish the type of reports that the Opposition demands, much less as a condition to seeking the relief requested in the Motion. Without citing any authority, the Opposition demands a report to all creditors “with a full explanation of why LSI and its affiliates collapsed in this spectacular fashion, whether there are parties liable for the collapse, and how to best approach these cases.” Opp’n, 11. Under the ABC Statute, the Assignee will, as required, file “an interim report of receipts and disbursements” after six months, §727.108(9), and “a final report of all receipts and disbursements” upon distribution of all assets. §§727.108(13); 727.116. The requested report has no statutory or other basis, and the request to condition use of the Lenders’ cash collateral on such a reporting obligation “mixes apples and oranges” and is improper. Furthermore, the lack of a filed report to all creditors should not be confused with a lack of due investigation and analysis by the Assignee.<sup>2</sup> As discussed below, the Assignee continues to analyze all potential claims, including claims against the Lenders.

2. Second, the Opposition incorrectly implies that the Assignee already has determined not to challenge the Agent’s and Lenders’ liens or claims. E.g., Opp’n, 2 (“Essentially,

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<sup>1</sup> Capitalized terms not otherwise defined herein maintain the meanings ascribed to them in the Motion.

<sup>2</sup> Indeed, among other actions, the Assignee conducted a thorough examination of the Assignor on April 16, 2020.

the Assignee is proposing to waive all defenses to perfected lien claim without investigation, and grant lenders additional collateral.”) For the avoidance of doubt, the Assignee has not made a determination that the liens of the Lenders should not be challenged or that any defenses should be waived. Rather, the Assignee is in the process of performing his investigation of potential claims or defenses to the amount, validity, extent, priority, and perfection of the Lenders’ liens and claims. The Motion merely requests that the Court establish a deadline for the Assignee or any other party to complete an investigation as part of a larger arrangement with the Lenders to fund the investigation of claims.

3. Third, the Opposition misstates the effect of the lien-granting relief requested in the Motion, the so-called “dilemma facing the Assignee.” See, Opp’n, 9-10. The Motion seeks, in part, relief to finance investigation of litigation claims in exchange for a lien on recoveries from the proceeds of those claims. The Motion seeks to grant a lien on assets upon which the Lenders do not have a valid and perfected lien (commercial tort claims and insurance proceeds) in exchange for allowing the Assignee to use the Lenders’ cash collateral to pay for estate expenses that benefit all unsecured creditors – not just the Lenders as secured creditors. Only to the extent of such usage would the Lenders have a right to recovery from the proceeds of the litigation. The effect upon the estate and unsecured creditors is generally identical to a third-party credit facility (here interest-free), secured by a lien on the litigation recoveries. In exchange for that credit facility, unsecured creditors receive the benefit of professionals having the resources to analyze the viability of causes of action and the Lenders receive the benefit of the Lien Challenge Deadline—not a release or bar of all claims—that merely accelerates the Assignee’s examination of the validity and priority of those claims by or against the estates. For the avoidance of doubt, nothing in the Motion seeks to grant the Lenders any lien on litigation recoveries for the amounts owing to the Lenders at the

time of the initiation of these Assignment Cases.

4. Finally, most of the Opposition is dedicated to the Langstons' assertion of the existence of claims based on the Assignors' self-insured retention insurance policies and coverage. To the extent those claims exist against parties other than the Lenders, they are not impacted by the requested relief. To the extent there are claims against the Lenders that belong to the Assignee as a result of the policies and coverages, the Assignee is and will continue to investigate such claims.

5. With respect to the identification, preservation, and pursuit of the litigation claims with which the Langstons are concerned, obtaining the relief sought by the Motion is critical. Without funding to preserve and review the records of the Assignors and otherwise investigate the litigation claims, it would be difficult for the Assignee to adequately discharge his duties under §727.108(1) to collect assets and prosecute meritorious litigation. The Assignee is making considerable headway in performing those duties. For example, he has already interviewed litigation counsel to pursue causes of action and has proposed and, in some cases executed, tolling agreements with various parties who might be defendants in litigation. In any event, the timing and method of pursuing litigation is within the sound business judgment of the Assignee and should not be disturbed absent compelling circumstances.

6. For the reasons set forth above, the Opposition should be overruled.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing *Assignee's Response to Shirley and John Langston's Opposition to Motion For Entry of an Order Pursuant to Fla. Stat. § 727.109(15): (I) Authorizing the use of Cash Collateral; (II) Providing Adequate Protection to Lenders; (III) Establishing a Lien Challenge Deadline; and (IV) Granting Related Relief* has been furnished on this 3rd day of June, 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 attached.

*/s/ Edward J. Peterson* \_\_\_\_\_

Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

May 31, 2019

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