

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 REPLY TO SHIRLEY AND JOHN LANGSTON'S OBJECTION AND  
OPPOSITION TO ASSIGNEE'S NOTICE OF AND MOTION TO ABANDON CERTAIN  
ASSETS TO TEXAS CAPITAL BANK, AS ADMINISTRATIVE AGENT**

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 reply to the Opposition (the "**Opposition**") filed by Shirley and John Langston (the "**Langstons**") to the Assignee's motion to abandon certain assets to Texas Capital Bank, as Administrative Agent (the "**Motion**").<sup>1</sup> The Langstons oppose the Motion because they believe

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

there has not been an adequate showing of the value of the HFD Assets for purposes of the surrender, and because there has not been a final determination of the liens and claims of the Agent. As stated below, the surrender value is fully supported by the Assignee's business judgment as supported by his analysis. Additionally, the Assignee agrees that the relief should be granted on an interim basis to allow for further investigation of the Agent's liens.

1. The value of the credit given in exchange for the abandonment of the HFD Assets is the product of significant diligence and analysis by the Assignee and his staff, independently of and in conjunction with HFD and the Agent. The Assignee and his staff considered, among other things, the portfolio as a whole, the constituent parts of the portfolio generally, the aging of the accounts currently, and the collections performance historically achieved from that and similar receivables, as well as the costs necessary to achieve those collections. The value of the portfolio constituting the HFD Assets as of May 20 was approximately \$10.2 million, inclusive of interest. The \$10 million credit proposed in the Motion is based on the anticipated reduction in the portfolio as collections are made between that date and the time of the abandonment – the historical collection average is \$400,000 per week), and depending on the timing and the actual result of collections, is favorable to the assignment estates. Further detail on the HFD Assets and the valuation for purposes of the surrender credit amount can be provided if necessary.

2. The agreement between the Assignee and the Agent is more favorable than the Opposition proposes. See Opposition, ¶ 14 (surrender agreement should be modified “to provide clearly that the proceeds of liquidation will be set-off to amount of the secured debt ... instead of an agreed \$10,000,000 value....”). Here, rather than the collection risks inherent in the portfolio, the Assignee receives the benefit of the face value of the surrendered collateral. The value of the credit as requested in the Motion is beneficial to the estates.

3. As to the timing, separate from the Motion the Assignee filed a 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 (the “Cash Collateral Motion”). As stated more fully in the Cash Collateral Motion, the Assignee proposes to use the cash collateral in which the Agent asserts an interest to fund estate expenses, in exchange for a lien on assets in which the Agent does not assert an existing lien, which lien would secure repayment of the estate-related expenses. As part of the relief requested in the Cash Collateral Motion, the Assignee has requested a deadline by which the Assignee or other parties have to challenge the liens and claims asserted by the Agent.

4. By way of background for the benefit of the Court and others, for a considerable period of time prior to and continuing up through the date of the assignments and filing of the assignment schedules, the Assignors were represented by a prominent national law firm with great expertise in and familiarity with insolvency law, including avoidance actions and challenges to secured claims. While represented by that firm, on March 14, 2019, the Chief Financial Officer, Phil Pichiatti, verified the accuracy of Assignors’ schedules, including a list of Assignors’ causes of action against third parties. No actual or potential claims against the Agent or Lenders are listed. The general accuracy of those schedules was reaffirmed in the Assignors’ representative’s testimony at the Assignee’s examination of the Assignors on April 16, 2019. Although the Assignee is not bound by the schedules or testimony, there was nothing in the schedules or testimony that indicates the existence of any meritorious challenges to the claims of the Agent or the Lenders. The Assignee and his professionals have undertaken a review of the various loan and security documents executed by all of the Assignors, the UCC filings made against the Assignors as part of the loan, and the various other agreements, including the multiple amendments to the

loan documents with broad releases in favor of the Agent and the Lenders. However, the Assignee has not waived any lien or claim challenges rights in connection with the Cash Collateral Motion, and continues to investigate the validity and the priority of claims and liens.

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

/s/ Edward Peterson

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Counsel for Assignee

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing *Assignee's Response to Shirley and John Langston's Objection and Opposition to Assignee's Notice of and Motion to Abandon Certain Assets to Texas Capital Bank, as Administrative Agent* has been furnished on June 11, 2019 by the Court's electronic system to all parties receiving electronic service.

/s/ Edward Peterson

Edward J. Peterson