

IN THE 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.

**MOTION FOR AUTHORITY TO SELL
FURNITURE, FIXTURES, AND EQUIPMENT THROUGH
PUBLIC AUCTIONS AND FOR APPROVAL OF NOTICING PROCEDURES**

Soneet Kapila, as assignee of the above-captioned assignors (the “Assignee”), pursuant to Fla. Stat. §§ 727.108, 727.109, and 727.111, hereby seeks authority to sell the furniture, fixtures,

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.

and equipment of the Assignors through one or more public auctions and approval of the notice procedures set forth below. In support of this motion (the “**Motion**”), the Assignee states:

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 Chapter 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, the “**Assignors**”).

3. In the years leading up to the Assignment Cases, the Assignors composed one of the nation’s leaders in minimally invasive spine surgery, operating state-of-the-art outpatient surgery centers located near several major cities throughout the country. Immediately prior to executing the assignment, LSI operated four different outpatient surgery centers in Tampa, Florida; Cincinnati, Ohio; Scottsdale, Arizona; and St. Louis, Missouri (collectively, the “**Leased**

Facilities”). LSI shuttered three other surgery centers in Ohio, Oklahoma, and Pennsylvania in the Fall of 2018.

4. The Assignors filed the Assignment Cases to provide for the orderly liquidation of their assets for the benefit of their creditors. Since the filing of the Assignment Cases, the Assignee has been marshaling the physical assets, primarily consisting of furniture, fixtures, and equipment of the Assignors held at the Leased Facilities (the “**Assets**”).

5. Through this Motion, the Assignee seeks authority to sell the Assets at one or more public auctions, to be conducted by Centurion Service Group LLC (“**Centurion**”), which specializes in the disposition of medical equipment and related assets. The Assignee also seeks authority to pay Centurion from the proceeds of the auction(s) under the terms and conditions agreed-upon in the Inventory/Appraisal & Auction Agreement between Centurion and the Assignee, summarized below (the “**Centurion Fees**”):

- a. Appraisal Fee: \$30,000.00
- b. Costs and Fees of Auction: Actual costs and expenses in connection with the Auction Sales²
- c. Commission: 10% of Net Proceeds
- d. Buyer’s Premium: 10%, plus 3% webcast fee, if applicable

6. Texas Capital Bank, National Association, in its capacity as Administrative Agent (the “**Agent**”) to the lender group (the “**Lenders**”), asserts a lien on the Assets and consents to the auction of the Assets through Centurion, provided that (a) the net proceeds (after payment or reserve of agreed costs of sale) shall be remitted to lienholders as their interests may appear³ and

² An estimate of the costs and expenses is available upon request.

³ 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.

(b) nothing in this Motion or the Order granting this Motion shall be deemed or construed to modify LSI's obligations under the Credit Agreement (or any related documents or agreements), dated as of July 2, 2015 by and between Laser Spine Institute, LLC, LSI Management Company, LLC, Laser Spine Institute Consulting, LLC, and Medical Care Management Services, LLC, as Borrowers, and Texas Capital Bank, National Association, as Administrative Agent.

Relief Requested

7. The Assignee has continued to negotiate with landlords with respect to the disposition of the assets located at each facility. As reported in the Status Reports filed with the Court, the Assignee has executed a standstill agreement with the landlord at the Tampa location. Moreover, the Assignee and the landlord at the Cincinnati location have reached an agreement that allows the Assignee to leave the assets in place in Cincinnati without the further accrual of rent through June 24, 2019. The Assignee and the landlords have been pursuing a collaborative "turn-key" sale approach with prospective purchasers who intend to use the premises as a medical facility. Rent will not accrue as an administrative expense claim under those agreements while the Assignee explores options for the sale of the Assets and the landlord explores similar options to re-lease the premises. In addition, the Assignee removed the assets at the St. Louis location so that the assets can be auctioned.

8. Unfortunately, no acceptable offers currently exist for "turn-key" sales in-place at any of the Leased Facilities. The Assignee, however, is actively negotiating with potential purchasers and the Agent to reach acceptable agreements for the private sale of some portions of the Assets. But if the Assignee and the potential purchasers are unable to reach acceptable terms, the Assignee may have no choice but to conduct auctions of the Assets located at each of the Leased Facilities.

9. Accordingly, through this Motion, the Assignee seeks authority to sell the Assets at one or more public auctions to be conducted by Centurion. The Assignee further seeks approval of procedures for noticing parties-in-interest the auction dates and locations, once the dates and locations are established by the Assignee in consultation with Centurion.

10. The Assignee proposes to file a Notice of Auction, not later than seven days prior to the proposed auction date, containing: (a) the date and time the auction will be held; (b) the location of the auction; and (c) instructions on how to obtain more information about the auction, including information on how to participate in the auction (a “**Notice of Auction**”). Centurion shall advertise the auction in its usual and customary manner, including by email and website, so as to locate customers who are willing to pay the highest price for the Assets.

11. The Assets will be sold “As Is”, “Where Is”, without any guarantees or warranties regarding their merchantability or fitness for any particular purpose, and all such guarantees and warranties are hereby expressly disclaimed.

12. The Assets shall be sold free and clear of any liens, claims and encumbrances, with any such liens to attach to the proceeds of the sale.

13. Section 727.108(1) of the Florida Statutes, which delineates the “Duties of Assignee,” provides that the Assignee shall “Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale” Fla. Stat. § 727.108. Additionally, Section 727.109(7) of the Florida Statutes authorizes the Court to “hear and determine a motion brought by the assignee for approval of a proposed sale of assets of the estate other than in the ordinary course of business.” Fla. Stat. § 727.109(7).

14. Given that the Assignee has not yet received any acceptable offers for in-place sales, the Assignee has determined, in his business judgment, that the sale of the Assets through

one or more public auctions may be necessary in the near future, as that may be the only way to dispose of the Assets. In the event the Assignee decides to sell some or all of the Assets at public auction, the Assignee believes in his business judgment that conducting the auctions through Centurion is in the best interest of the estate. Centurion specializes in the auction and sale of medical equipment and the Assignee believes that the auction process employed by Centurion is designed to achieve the highest and best prices for the Assets under the circumstances.

15. The Assignee, however, requests this grant of authority to conduct the auctions be provided without prejudice to the Assignee's ability to sell any of the Assets through private sale or in-place sales if, in the Assignee's business judgment, he believes an offer received from a private purchaser is in the best interest of the estates *vis a vis* selling such asset(s) at auction. Any such private sale shall be subject to notice and Court approval as required by Chapter 727 of the Florida Statutes.

16. As set forth above, the Agent and Lenders assert liens on the Assets and consent to the relief requested in this Motion. The Assignee submits that there is no equity in the Assets over and above the Lenders' secured claim.

17. The Assignee believes the procedure set forth herein provides adequate notice to parties-in-interest of the proposed sales of the Assets. The filing of this Motion, which the Assignee will notice for hearing at the regularly scheduled court calendar on June 27, 2019 at 2:00 p.m., will provide parties-in-interest sufficient notice of the of the auction process contemplated by this Motion. The Assignee will then file and serve each applicable Notice of Auction, described above, not later than seven days prior to the auction date. The Assignee seeks an order confirming that the notice procedures described herein satisfy the Assignee's duty to provide notice of the proposed sale of the estate assets.

WHEREFORE, the Assignee respectfully requests the entry of an order (i) granting the Motion, (ii) authorizing the Assignee to sell the Assets through one or more public auctions conducted by Centurion without further Court approval, (iii) approving the payment of the Centurion Fees from the auction proceeds, (iv) approving the notice procedures described herein, and (v) granting such other and further relief as is just.

Dated: June 14, 2019

/s/ Edward J. Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion for Authority to Sell Furniture, Fixtures, and Equipment through Public Auctions and for Approval of Noticing Procedures* has been furnished on this 14th day of June, 2019 by the Court's electronic system to all parties receiving electronic service, 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

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
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CIT Bank, N.A.
10201 Centurion Pkwy., #400
Jacksonville, FL 32256

Medport Billing, LLC
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Las Vegas, NV 89118

U.S. Bank Equipment Finance
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Marshall, MN 56258

Maricopa County Treasurer
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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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