

**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.
To:	2019-CA-2762

Soneet Kapila,

Division L

Assignee.

**JOINDER OF TEXAS CAPITAL BANK, N.A. AS ADMINISTRATIVE AGENT TO THE
LENDER GROUP, TO ASSIGNEE’S REPLY TO LASERSCOPIC SPINAL CENTERS
OF AMERICA, INC., LASERSCOPIC MEDICAL CLINIC, LLC AND LASERSCOPIC
SPINE CENTERS OF AMERICA, INC.’S RESPONSE IN LIMITED OPPOSITION
TO SONEET KAPILA, AS ASSIGNEE’S 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**

1. Texas Capital Bank, N.A., (the “Agent”) hereby joins the Assignee’s reply (the “Reply”)¹ to Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America Inc.’s (collectively, the “Laserscopic Parties”) response in

¹ Capitalized terms not otherwise defined herein maintain the meanings ascribed to them in the Motion and Reply.

limited opposition (the “Objection”) to Soneet Kapila, as Assignee’s 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.

2. In joining the Reply, the Agent specifically reiterates the following:

- a) The Laserscopic Parties’ representations that they do not have sufficient information to evaluate the Agent’s claim and secured status ring hollow – certain representatives of the Laserscopic Parties (or their affiliates) have been in possession of the Agent’s loan documents for weeks (indeed, before the Objection was filed). The Agent and Lenders’ claims have now been served on the Assignee and all of the core documents supporting the basis of the claims are attached to the claims. The proposed Lien Challenge Deadline provides ample time for parties in interest to assess and investigate the Agent and Lenders’ claims – forty (40) days from the entry of the order granting the Motion. Notably, the Lien Challenge Deadline will not expire prior to the July 12, 2019 proof of claim bar date.
- b) Contrary to the Laserscopic Parties’ arguments in the Objection, rather than granting the Agent and Lenders a blanket lien on all of the litigation proceeds, the Motion narrowly seeks to grant the Agent and Lenders adequate protection liens “*to the extent of any diminution in the value of its interests in the Collateral since the filing of the Assignment Cases as a result of the use of its cash collateral to fund expenses that benefit creditors as a whole.*” (Motion ¶ 9) (emphasis added). Pursuant to Fla. Stat. § 727.109(15), this Court has jurisdiction to adequately protect the Agent and Lenders in a manner that is akin to the protections afforded to secured lenders in bankruptcy cases. Tellingly, the Laserscopic Parties have not cited to any contrary authority.
- c) The Laserscopic Parties’ allegation that the Agent and Lenders have waived any interest in the tort litigation proceeds is without foundation in law or fact. The Agent and Lenders entered into a covenant not to initiate litigation against certain parties as part of the credit arrangement with the Assignors, but *never* waived or released any right to share in litigation proceeds against those parties or anyone else.² The proposed adequate protection liens are intended to protect the collateral of the Agent and Lenders against diminution in value resulting from use by the Assignee to

² For the avoidance of doubt, notwithstanding the unsubstantiated waiver allegations of the Laserscopic Parties, the Agent and Lenders are prepared to vigorously defend any attacks of their rights to share in litigation proceeds on account of the Agent and Lenders’ significant unsecured deficiency claim to the extent necessary in a supplemental proceeding

benefit the creditor body as a whole, including the Lasercopic Parties. In contrast, the Lasercopic Parties seek the benefit of the collateral without protecting the Agent and Lenders.

3. As addressed in the Motion, the Assignee has no unencumbered funds and continues to incur expenses, some of which benefit the Agent and Lenders specifically and some of which benefit all creditors generally. Therefore, access to Cash Collateral is crucial. Without the ability to use Cash Collateral, the Assignee will lose the opportunity to preserve value not only for the Lenders, but for the Assignment estates' other stakeholders as well. Accordingly, the interests of the Agent and Lenders (as well as those of the Assignors' other creditors and parties in interest) will be best served by permitting the Assignee's continued use of Cash Collateral. Indeed, entry of an order granting the Motion is necessary to maintain the Assignee's ability to fund wind-down expenses through the use of Cash Collateral. 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).

4. The Agent submits that the relief requested in the Motion, specifically: (i) authorization of the use of cash collateral in accordance with the Budget; the granting of adequate protection liens to the extent that there is a diminution in the value of the Agent and Lenders' Collateral; and (iii) the establishment of the Lien Challenge Deadline are all critical components to the overall compromise the Agent and Lenders have reached with the Assignee to allow for the consensual use of the Agent and Lenders' Cash Collateral. The adequate protection liens and the establishment of a Lien Challenge Deadline, in particular, constitute reasonable and customary requests. The Agent and Lenders are unwilling to authorize the consensual use of Cash Collateral absent these basic protections.

5. For all of the foregoing reasons and the arguments asserted in the Reply which are incorporated herein by reference, the Objection should be overruled.

Dated: June 18, 2019

Respectfully submitted,

/s/ Stephanie C. Lieb

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2019 a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System which will send a notice of electronic filing to counsel of record.

/s/ Stephanie C. Lieb
Attorney