



Via Electronic, First Class and Certified Mail

April 26, 2019

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Re: **Named Insured: LSI HoldCo LLC and Laser Spine Institute, LLC**
Global Reservation of Rights on Defense and Indemnity
Excess Professional Liability Insurance Policies:
Policy No. EN004806, 3/1/2014-3/1/2015 (claims-made)
Policy No. EN004806, 3/1/2015-3/1/2016 (claims-made)
Policy No. EN004806, 3/1/2016-3/1/2017 (claims-made)
Policy No. EN004806, 3/1/2017-1/1/2018 (claims-made)
Policy No. EN004806, 1/1/2018-7/1/2019 (claims-made)

Dear Messrs. Knopik and Kapila:

We write on behalf of National Fire & Marine Insurance Company ("NF&M") regarding the matters listed on the attached Exhibit A (the "Claims"). We are copying this letter to the individual defendants named in the Claims and/or their representatives to advise of NF&M's current views and efforts relative to the sudden and unexpected assignment for the benefit of creditors by Laser Spine Institute, LLC ("LSI") and affiliated companies.¹ NF&M is working actively with the Assignee of LSI to try to reach an agreement on how the Claims will be handled going forward. **However, NF&M is proceeding subject to a full and complete reservation of its rights under the excess professional liability insurance policies listed above (the "Excess Policies") for the reasons discussed below.** We are directing this letter both to Mr. Knopik, who had been NF&M's point of contact at LSI, and Mr. Kapila, LSI's Assignee, given the present uncertainty as to the Excess Policies. If we should direct this and any further coverage-related correspondence to different or other persons, please let us know immediately.

As you know, NF&M issued excess professional liability coverage to LSI HoldCo LLC ("HoldCo") as "First Named Insured" on a claims-made basis for the policy periods listed above. Under each of the Excess Policies, HoldCo and all Insureds (as defined in the Excess Policies) are self-insured for \$1 million per claim/\$6 million aggregate per policy period including defense costs and indemnity ("SIR"). *See, e.g.,* 2017-18 Excess Schedule of Underlying Insurance ("The professional underlying SIR is a combined single limit of liability of \$1,000,000 per claim/

¹ Note that this correspondence addresses only the excess insurance policies issued to LSI and not separate policies issued to individual physicians in Pennsylvania.

\$6,000,000 aggregate for Indemnity and Expense”); 2018-19 Schedule of Underlying Coverage (same). As such, LSI and/or HoldCo have been paying to defend the Claims on behalf of the Insureds, and LSI and/or HoldCo are responsible under the policies for any defense and settlements and/or judgments payable within the applicable SIR. NF&M’s Excess Policies provide that the company would pay defense or indemnity for any Claim made during the applicable policy period only if and to the extent there is actual payment of the full amount of the SIR.

NF&M is aware that HoldCo, LSI and related entities have become parties to “Assignment for the Benefit of Creditors” proceedings in Florida pursuant to Florida Statutes section 727 (“Section 727”) and through these proceedings all of the companies’ assets will be liquidated to pay secured creditors and unsecured creditors. Under Florida’s Section 727, unlike federal bankruptcy protection, no “automatic stay” operates to halt pending lawsuits against insolvent parties. Furthermore, while claimants cannot pursue payment of judgments against insolvent parties outside of the Section 727 proceeding, individual doctors who have been named in these cases are not so shielded. We understand that the Assignee in LSI’s Section 727 proceeding filed motions to stay in some or all of the Claims and also has conveyed to defense counsel in these matters that no funds are available to continue to pay defense costs or to fund any settlements or judgments.

Under these circumstances, NF&M has advised defense counsel in all of the Claims to take immediate necessary steps to ensure that, to the extent possible, at least for an interim period (while solutions are explored), the Claims are stayed by court order or voluntarily by the parties. As well, defense counsel have been asked to perform any work in the near term that is necessary to avoid prejudice to the defense, while matters are being addressed. NF&M has reached out to the Assignee to discuss, and will continue to discuss, how to resolve (or defend and resolve) the pending Claims, and any future potential claims, under these circumstances. To be clear, no plan has been reached as of this date, but NF&M remains in discussions with the Assignee and his representatives.

In the meantime, while these efforts are ongoing, NF&M wishes to advise all Insureds that it is proceeding subject to a full and complete reservation of rights under the Excess Policies. The Excess Policies have no obligation to defend any claims or potential claims within the SIR or to pay judgments or settlements that, in combination with defense costs, do not exceed the SIR. In this regard, all of the Excess Policies issued between March 1, 2014 and January 1, 2018, include the following Condition “G”:

G. Maintenance of Schedule Coverages.

1. The **scheduled coverages** shall be maintained by the **Insured** at all times and the **Insured** shall do nothing to restrict the terms or limits provided by the **scheduled coverages**.
2. The limits of insurance applicable to the policies listed on the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlements which would be covered by the provisions of this policy.
3. The limits of insurance applicable to any Self Insured Retention (SIR) listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlement which would be covered by the provisions of this policy and **claims expense** associated with those payments, if claims expense depletes the SIR.
4. If the **Insured** fails to maintain or meet all terms and conditions of a **scheduled coverage** or if the company, trust or other entity providing the **scheduled coverage** shall become insolvent, the **Company’s** duty to pay **excess loss** will apply as if the **scheduled coverage** had been so maintained.

The current policy issued for the claims-made period from January 1, 2018 to July 1, 2019, includes a similar Condition ("L"):

L. MAINTENANCE OF UNDERLYING COVERAGES, TERMINATION AND RENEWAL

1. The limits of liability of the underlying coverage must be maintained in full effect during the **policy period**, except for any reduction or exhaustion of such limits of liability solely by reason of actual payment of a **claim** covered by the **underlying coverage**. Failure to comply with this condition will not invalidate this policy; however, the **company** will not be liable under this policy to any greater extent than it would have been had there been full compliance with this condition. If any **underlying coverage** is not maintained, or the **company** or other entity which issued the **underlying coverage** is unable to pay or has filed for bankruptcy or has become insolvent, the **insured** will be deemed to be self-insured for the limits of liability of such **underlying coverage**. The insolvency of, or filing of bankruptcy or non-payment by the company or entity issuing any **underlying coverage** shall not act to modify any duty owed by the **company** under this policy. Under no circumstances will such insolvency, bankruptcy or non-payment require the **company** to assume, or in any way be responsible for any **underlying coverage**, or otherwise assume any obligation owed by any **insured** under this policy. Notwithstanding anything to the contrary in this policy, all coverage under this policy will be void from its inception in the event that any **underlying coverage** is rescinded by agreement or legal process for fraud or other material misrepresentation by the **insured**.

2. Unless specifically indicated in any endorsement, this policy shall not drop down for any reason other than the exhaustion of the limits of liability of the **underlying coverages**, including without limitation the inability to collect (in whole or in part) any limits of liability of the **underlying coverage**. The risk of any inability to collect any limits of liability (in whole or in part) whether by reason of financial impairment or insolvency of any issuer of any **underlying coverage** or for any other reason, is expressly retained by the **insured** and is not **insured** or assumed by the **company**.

3. In the event of a material modification to any **underlying coverage** by endorsement or otherwise, the coverage under this policy will become subject to such modification, only if, and to the extent that, the **company** consents to such modification by written agreement.

4. If any **underlying coverage** is terminated during the term of this policy, the **first named insured** shall notify the **company** of such termination immediately, along with the particulars and details and a copy of any notice of termination received.

Furthermore, the Excess Policies issued between March 1, 2014 and January 1, 2018, include this Condition "N":

N. Bankruptcy, Insolvency or Non-Payment by an Insured.

The filing of bankruptcy by, or the insolvency of or non-payment by, an **Insured**, or by any other entity providing a **scheduled coverage**, shall not act to modify any duty owed by the **Insured** or the **Company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **Company** to assume, or in any way be responsible for, any **scheduled coverage**, or otherwise assume any obligation owed by any **Insured** under this policy. Unless prohibited by law, the **Company** will have no duty to pay any **excess loss** for any **claim** unless the **Insured**, or any other entity providing **scheduled coverage**, pays the limits of liability of the **scheduled coverage** in full.

The current policy issued for the claims-made period from January 1, 2018 to July 1, 2019, includes a similar Condition ("D"):

D. BANKRUPTCY OR INSOLVENCY

The bankruptcy or insolvency of an **insured** or an **insured's** estate, or the non-payment by an **insured** or by any other organization responsible for a Maintenance Retention, shall not act to modify any duty owed by an **insured** or the **company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-

payment require the **company** to assume or in any way be responsible for any Maintenance Retention, or otherwise assume any obligation owed by any **insured** under this policy. The **company** will have no duty to pay **loss** or **claims expense** for any **claim** or **potential claim** unless the **insured** or any other organization responsible for the Maintenance Retention timely pays the Maintenance Retention in full.

In all events, the Excess Policies require the Insureds to cooperate with NF&M in the investigation, defense and/or settlement of the Claims. *See, e.g.,* 2017-18 Excess Policy, Condition (C)(2); 2018-19 Excess Policy Condition (C)(2).

Under the Excess Policies, therefore, NF&M has no obligation to fund the SIR, which remains the responsibility of LSI and the other Insureds. Furthermore, full satisfaction of the SIR is a condition precedent to NF&M's payment obligation under the Excess Policies. NF&M does not waive, and indeed expressly reserves, all rights available to it under the Excess Policies and at law in connection with the SIR and any failure on the Insureds' part to satisfy the SIR in full in connection with any Claim, future claim and/or potential claim.

In short, please be assured that NF&M, without waiving any of its rights, is willing and anxious to work with the Assignee and the Insureds to the extent practicable to explore viable solutions in these extremely difficult and unexpected circumstances. **If, however, arrangements ultimately cannot be made for the Claims to be defended, and the SIRs to be funded as required by the Excess Policies and applicable law, then NF&M reserves the right to deny coverage given the failure of a material condition precedent to coverage.** NF&M appreciates the cooperation it has received from the Insureds to date and acknowledges that the Insureds, likewise, are reserving their rights under the Excess Policies and at law.

Should you have questions about this letter or these matters, please feel free to call or email me.

Sincerely,

/s/Geoffrey C. Lambert

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Cc: MedPro Group Claims

EXHIBIT A

Claim#	State	Name	Policy Year	Insured Defendants
1024864	FL	Thompson v. Laser Spine Institute, LLC	3/1/2015	Mark Flood, D.O., LSI
1029947	FL	Headley v. Laser Spine Institute, LLC	3/1/2015	Zoltan Bereczki, M.D., LSI
1031744	FL	Holley v. Laser Spine Institute, LLC	3/1/2015	Michael Weiss, M.D., Robert Gruder, M.D., LSI
1031775	FL	Lemieux v. Laser Spine Institute, LLC	3/1/2015	Vernon Morris, M.D., LSI
1032370 1044933	PA	Kimble v. Laser Spine Surgery Center of PA	3/1/2015	Rubenstein and LSI
1032145	FL	Legg v. Laser Spine Institute, LLC	3/1/2016	Mark Flood, D.O., LSI. Denna Ali, M.D. and Dung Ung, M.D by NOI
1036238	OH	Albanese v. Laser Spine Institute, LLC	3/1/2016	Dr. Shall and LSI
1037181	FL	Farley v. Laser Spine Institute, LLC	3/1/2016	Zoltan Bereczki, M.D., LSI
1038666	FL	Winkler v. Laser Spine Institute, LLC	3/1/2016	Zoltan Bereczki, M.D., LSI
1043739	FL	Castamore v. Laser Spine Institute, LLC	3/1/2017	Zoltan Bereczki, M.D., LSI
1047007	FL	Langston v. Laser Spine Institute, LLC	3/1/2017	Thomas Francavilla, M.D.
1051199	OK	Sims v. Laser Spine Surgery Center of Ok	3/1/2017	LSI; Dr. Flood & Nees
1064009 1046613	PA	Smith v. Laser Spine Surgery Center of PA	3/1/2017	Richard T. Meagher, M.D., Eric I. Finkelstein, M.D., LSI, LLC and Laser Spine Surgery Center of Pennsylvania, LLC
1061084	OH	Waechter v. Laser Spine Surgery Center of OH	1/1/2018	Dr. Picha, LSI
1063467	OK	Rinke v. Laser Spine Surgery Center of OH	1/1/2018	LSI; Dr. Martin & Dr. Nees
1063621	FL	Collins v. Laser Spine Institute, LLC	1/1/2018	Zoltan Bereczki, M.D., LSI
1065340	MO	Stough v. Laser Spine Institute, LLC	1/1/2018	Dr. Michael Weiss; Dr. Christopher Reeves; LSI
1066465	OH	Daniels v. Laser Spine Institute, LLC	1/1/2018	Dr. Robert Blok
1066771	MO	Schafer v. Laser Spine Institute, LLC	1/1/2018	LSI
1072666	FL	Jenkins v. Reginald Davis	1/1/2018	Reginald Davis., M.D.
1072657	OH	Jones v. LSI and Jonathan Carmuche	1/1/2018	Unable to determine LSI surgeon from records, LSI
1074142	OH	Roush v. Laser Spine Institute, LLC	1/1/2018	LSI
1053591	FL	Elkhandler v. Laser Spine Institute, LLC	1/1/2018	Zoltan Bereczki, M.D., LSI