

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Case No. 2019-CA-002762

LASER SPINE INSTITUTE, LLC,

Assignor,

to

SONEET KAPILA,

Assignee.

_____ /

BAILEY, ET AL. REQUEST FOR PRODUCTION TO BANK LENDERS

TO: Texas Capital Bank, N.A. as agent for the Lenders by and through counsel of record

Toby Gerber
Norton Rose Fulbright US LLP
2200 Ross Avenue
Dallas, TX 75201-7932

Pursuant to Florida Rules of Civil Procedure, Rule 1.350, counsel to Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Spine Centers of America, Inc. and Laserscopic Medical Clinic, LLC (collectively, "Laserscopic"), hereby serves this First Set of Requests for Production of Documents to Creditor Texas Capital Bank, N.A., individually and as agent under that certain Credit Agreement dated as of July 2, 2015, as amended, and including all associated documents, and as more fully detailed in and attached to the Proof of Claim dated July 12, 2019. The requested materials shall be produced at the offices of Pillsbury Winthrop Shaw Pittman, 600 Brickell Avenue, Suite 3100, Miami, FL 33131, on or before September 9, 2019, or at such other time as the parties may agree, which may include a rolling production.

DEFINITIONS

For the purposes of these requests (the “**Requests**”), the following Definitions shall apply:

1. The term “**You**” means any entity, syndicate, or group that made the Loan to the Debtors, including any administrative agent, collateral agent, or indenture trustee, and specifically including, but not limited to the **Lenders**.

2. The term “**Communication**” or “**Communications**” means every manner or means of disclosure, transfer, or exchange of information orally or in writing.

3. The term “**Concerning**” means relating to, evidencing, supporting, negating, refuting, embodying, containing, memorializing, comprising, reflecting, analyzing, constituting, describing, identifying, referring to, referencing, discussing, indicating, connected with or otherwise pertaining in any way, in whole or in part, to the subject matter being referenced.

4. The term “**Debtors**” means, collectively or individually, as context requires and to encompass responsive documents, any person defined as a Borrower, Debtor, or Guarantor within the Loan Documents within the Proof of Claim filed by Texas Capital Bank, N.A. and each of their agents, accountants, financial advisors, employees, attorneys, officers, directors, direct or indirect shareholders, members, representatives, affiliates, subsidiaries, predecessors and/or successors including those identified as the Assignors in the above-styled Assignment for the Benefit of Creditors Proceeding, Case No. 2019-CA-2762.

5. The terms “**Document**” or “**Documents**” have the meaning ascribed to them in Florida Rules of Civil Procedure and includes each and every form of communication, and also includes, without limitation, all written, printed, typed, recorded, or graphic matter of any kind,

type, nature, or description, in whatever form (e.g., final and draft versions) that is or has been in your actual or constructive possession, custody or control, including, but not limited to, all printed and electronic copies of electronic mail, notes, correspondence, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegrams, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, telexes, facsimiles, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, pamphlets or any written or recorded materials of any other kind, however stored (whether in tangible or electronic form), recorded, produced or reproduced, including backup tapes. The term “Document” shall include not only originals, but also any copies or reproductions of all such written, printed, typed, recorded or graphic matter upon which any notations, comments or markings of any kind have been made that do not appear on the original documents or that are otherwise not identical to the original documents. Any document with marks such as initials, comments or notations of any kind is not deemed to be identical to one without such marks and is to be produced as a separate Document.

6. The term “**including**” means including without limitation.

7. “**Loan**” shall mean any obligations between the Debtors and You arising out of or related to any funds loaned to or invested in the Debtors, specifically including the Proof of Claim filed on or about July 2, 2019 by Texas Capital Bank, N.A. as administrative agent.

8. “**Loan Documents**” has the meaning given by You in the Loan.

9. “**Collateral**” has the meaning given by You in the Loan.

10. “**Lenders**” Means any person who was (at any time) defined as a Lender under the Credit Agreement attached as Exhibit 2 to the Proof of Claim filed on or about July 2, 2019 by Texas Capital Bank, N.A. as administrative agent including all amendments and modifications thereto.

INSTRUCTIONS

The preceding Definitions apply to each of these Instructions, and for purposes of the Requests, the following Instructions shall be followed:

1. All responses shall comply with the requirements of the Florida Rules of Civil Procedure, the applicable rules associated with the Complex Division in the Circuit Court in and for Hillsborough County and such other rules as shall be applicable in this ABC Proceeding or as otherwise directed by the Court.

2. The following Requests shall be deemed continuing in nature. In the event You become aware of or acquire additional information relating or referring to any of the following Requests, such additional information is to be promptly produced.

3. You are to produce all responsive Documents in Your possession, custody or control, wherever located, including, without limitation, those in the custody of Your representatives and affiliates. A Document is deemed to be in Your possession, custody, or control if it is in Your physical custody, or if it is in the physical custody of any other person or entity and You: (i) own such Document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such Document on any terms; (iii) have an understanding, express or implied, that You may use, inspect, examine, or copy such Document

on any terms; or (iv) as a practical matter, You have been able to use, inspect, examine, or copy such Document when You sought to do so. Documents in Your control includes Documents in the possession or custody of any of Your financial or other advisors or any of their respective affiliates. If any requested Document was, but no longer is, in Your control, state the disposition of each such Document.

4. If any Document requested herein was formerly in Your possession, custody or control and has been lost or destroyed or otherwise disposed of, You are requested to submit in lieu of any such Document a written statement (a) describing in detail the nature of the Document and its contents, (b) identifying the person(s) who prepared or authored the Document and, if applicable, the person(s) to whom the Document was sent, (c) specifying the date on which the Document was prepared or transmitted, and (d) specifying the date on which the Document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the person(s) requesting and performing the destruction.

5. If any part of the following Requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for Your inability to respond to the remainder and stating whatever information or knowledge You have concerning the portion to which You do not respond.

6. If You object to any of these Requests, state in writing with specificity the grounds of Your objections. Any ground not stated shall be waived. If You object to a particular portion of any Request, You shall respond to any other portions of such Request as to which there is no objection and state with specificity the grounds of the objection.

7. The fact that an investigation is continuing or that discovery is incomplete shall not be a justification for failing to respond to these Requests based on the knowledge or information that You possess at the time You respond to these Requests. If an investigation is continuing or discovery is not complete with respect to the matter inquired into by any Request, so state in Your response to that Request.

8. Where any copy of any Document whose production is sought herein, whether a draft or final version, is not identical to any copy thereof, by reason of alterations, notes, comments, initials, underscoring, indication of routing, or other material contained thereon or attached thereto, all such non-identical copies are to be produced separately.

9. Hard copies of all Documents should be produced; in addition, copies of all Documents available electronically should be delivered in a readily accessible electronic form.

10. The words “and” and “or” are to be construed both conjunctively and disjunctively. The singular form of a noun or pronoun includes the plural form and vice versa. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Request.

11. If there are no Documents responsive to any particular Request, please state so in writing.

12. A Request for any Document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures, or attachments to such Document, in addition to the Document in its full and unexpurgated form.

13. Documents should be segregated according to the number of the Request to which You are responding or produced in the manner they are kept in the ordinary course of business. Documents attached to each other should not be separated.

14. Each Request for Documents herein includes a request for exact copies of all disks, CDs, DVDs and other removable media containing any information responsive to such Request. Electronic records and computerized information should be produced in an intelligible format or together with a sufficient description of the system or program from which each was derived to permit rendering the material legible.

15. If the identity of Documents responding to a Request is not known, then that lack of knowledge must be specifically indicated in the response. If any information requested is not in Your possession, but is known or believed to be in the possession of another person or entity, then identify that person or entity and state the basis of Your belief or knowledge that the requested information is in such person's or entity's possession.

16. If any privilege is claimed as to any Communication requested or sought to be identified herein:

- a. State the nature of the privilege claim (i.e., attorney/client communication, attorney work product, etc.);
- b. State the name of the party claiming privilege and the name of the attorney, if any, with respect to whom the privilege is claimed;
- c. State the basis for claiming the privilege as to the specific Communication;

- d. Identify all persons present at any Communication to which privilege is claimed and all persons to whom the subject matter of the Communication was discussed or disclosed; and
- e. State the date of each such Communication.

17. If any privilege is claimed as to any Document requested or sought to be identified herein:

- a. State the nature of the privilege claimed (i.e., attorney/client communication, attorney work product, etc.);
- b. State the basis for claiming the privilege as to the specific information or Documents; and
- c. State the date of such Document; identify the type of document (i.e., letter, memo, etc.); set forth the subject matter thereof, identify each person who prepared it and each person (if any) who signed it; identify each person to whom it was directed, circulated or shown; and identify each person now in possession of the Document.

18. In the event that any Document called for by these Requests has been destroyed, lost or discarded, that Document is to be identified by stating:

- a. The nature of the Document;
- b. Any addressor and addressee;
- c. Any indicated or blind copies;
- d. The Document's date, subject matter, number of pages, and attachments and appendices;

- e. All persons to whom the Document was distributed, shown, or explained;
- f. Its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; and
- g. The persons authorizing or carrying out such destruction or discard.

DOCUMENT REQUESTS

1. Your loan files relating to the Debtors.
2. Your collateral files relating to the Debtors.
3. Your loan files relating to the Loan.
4. Your collateral files relating to the Loan.
5. All agency, trust, syndication or other inter-creditor agreements between the Lenders relating to the Loan.
6. All Documents Concerning the Loan relating to the Debtors, including, but not limited to, all iterations, amendments, partial releases, and former versions of them.
7. All deposit account control agreements relating to the Loan.
8. All Documents Concerning the perfection of liens created by the Loan Documents (as the term “Loan Documents” defined within the Loan).
9. All Documents Concerning unencumbered assets of the Debtors or assets not subject to valid, perfected liens.
10. All Documents and Communications Concerning the Loan among, within, or between the Lenders.
11. All Documents and Communications Concerning the Loan between the Lenders and the Debtors.
12. All Documents and Communications Concerning the Collateral from the Lenders.
13. All Documents Concerning any title opinion (including original title opinions, division order title opinions, supplemental title opinions, lending title opinions, and acquisition title opinions) created by, for or on account of the Lenders or Debtors.

14. All Documents and Communications Concerning any capacity or authority of any person to act in relation to the Loan, either as agent of one or more Lenders or one or more Debtors.

15. Any Document evidencing an opinion on the validity or enforceability of the Loan, Loan Documents, or any portion thereof.

16. All Documents and Communications Concerning any Collateral from the Debtors.

17. All Documents and Communications Concerning any and all payments from the Debtors on account of the Loan.

18. All Documents and Communications Concerning any default or waiver of any default under the Loan Documents.

19. All Documents evidencing the solvency or insolvency of the Debtors.

20. All Suspicious Activity Reports relating to the Loan.

21. All minutes of any meeting relating to the Loan.

22. All Communications with the Assignee, Soneet Kapila, Assignee Counsel or others on his behalf regarding the Assignor, the estate of the Assignor, the Loans and/or Laserscopic.

23. All Documents and Communications between the Lenders regarding the Loan.

24. All Documents and Communications regarding Laserscopic Concerning their Proof of Claim filed in the above-styled proceeding.

25. All Documents and Communications regarding the current status of the Loans as recorded on the books and records of the Lenders including information sufficient to determine whether all or a portion of the Loan has been written off or written down by the Lenders.

26. All Documents evidencing any insurance coverage that may provide coverage relating to any actions or inactions of the Lenders in connection with the Loan.

27. All Documents sufficient to identify whether any of the Guarantors, the Sponsor Group [as defined in the Exhibit 3 to the July 2, 2019 Proof of Claim] or Grantors have banking relationships with the Lenders other than Concerning the Loan.

28. All Documents evidencing when the Lenders became aware of the litigation between Laserscopic and certain of the Assignors as identified in Schedule 6.5 attached to Exhibit 3 of the Proof of Claim dated July 2, 2019.

29. All Documents and Communications Concerning the litigation between Laserscopic and certain of the Assignors as identified in Schedule 6.5 attached to Exhibit 3 of the Proof of Claim dated July 2, 2019.

30. All Communications with bank regulators and/or any governmental regulatory body regarding the Loan.

31. All Documents and Communications Concerning the solvency, credit worthiness and/or financial wherewithal of the Borrowers and/or Guarantors prior to the Loan being issued.

32. All Documents and Communications Concerning the use of the proceeds of the Loan.

[Remainder of Page Intentionally Blank]

Dated: August 6, 2019.

Respectfully submitted,

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SERVICE LIST FOR BANK DISCOVERY

Assignee and Assignee's Counsel (via the Court's electronic servicing system)

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