

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

In re:

Laser Spine Institute, LLC.¹
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
Medical Care Management Services, LLC
Spine DME Solutions, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762
Case No. 2019-CA-2764
Case No. 2019-CA-2765
Case No. 2019-CA-2766
Case No. 2019-CA-2767
Case No. 2019-CA-2768
Case No. 2019-CA-2769
Case No. 2019-CA-2770
Case No. 2019-CA-2771
Case No. 2019-CA-2772
Case No. 2019-CA-2773
Case No. 2019-CA-2774
Case No. 2019-CA-2775
Case No. 2019-CA-2776
Case No. 2019-CA-2777
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION FOR ORDER
APPROVING SETTLEMENT OF CONTROVERSY WITH
MICHAEL D. SURGEN REGARDING CAUSES OF ACTION**

Soneet Kapila, as assignee (“Assignee”) for the benefit of the creditors of the Assignors
(defined below), by and through his undersigned attorneys, hereby files this motion pursuant to

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.

Florida Rule of Civil Procedure 1.100(b) and § 727.109(7) of the Florida Statutes, for approval of a settlement reached with Michael D. Surgen (“**Surgen**”), which resolves certain potential claims and causes of action asserted by the Assignee against Surgen. In support of this motion (the “**Motion**”), the Assignee states as follows:

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 Section 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: 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, together with LSI, the “**Assignors**”).

Relief Requested and Basis for Relief

3. In accordance with the Assignee’s rights under Chapter 727 of the Florida Statutes, the Assignee asserts that he possesses certain causes of action against Surgen, including, but not limited to, causes of actions to avoid and recover transfers under applicable law, including Chapter 726 Florida Statutes (the “**Causes of Action**”). Specifically, Surgen

received, on account of an equity investment in the Assignor, the sum of \$691,875 within the four years preceding the filing of the LSI Assignment Case. Surgen denies any and all liability related to the Causes of Action.

4. The parties desire to compromise, settle and finally terminate any and all claims that the Assignee may have against Surgen, including any claims relating in any way to the Causes of Action.

5. Accordingly, the Assignee seeks Court approval of the settlement between the Assignee and Surgen (the “**Settlement**”), which is set forth in the Settlement and Release Agreement (the “**Settlement Agreement**”), attached hereto as Exhibit A. The principal terms of the Settlement Agreement are summarized below²:

- a. Within 20 days from the date of the “Final Order,” as defined in Paragraph 3 of the Settlement Agreement, the Released Party³ agrees to pay or cause to be paid to the Assignee the total sum of \$2,500.00 (the “**Settlement Payment**”). Because this dispute was settled prior to the filing of the suit, no contingency fee is due,⁴ and the Assignee will retain the entire Settlement Payment.
- b. The Settlement Agreement is subject to Court approval.
- c. This Agreement shall be binding on the Parties on the Effective Date, subject only to approval of the Order, which shall be deemed to occur on the date upon which the last of the following occurs:
 - i. the Court has entered the Order; and
 - ii. the time to appeal, petition for an extraordinary writ, or move for reargument, rehearing, or a new trial has expired; and

² The summary of the Settlement Agreement provided herein is qualified in all respects by the terms of the Settlement Agreement. In the event of any conflict between this summary and the Settlement Agreement, the terms of the Settlement Agreement shall expressly control.

³ Capitalized terms not otherwise defined in this summary shall have the meaning ascribed to them in the Settlement Agreement.

⁴ Professional fees and costs associated with this matter, as allowed by the Court, will be paid as permitted by law.

- iii. no appeal, petition for an extraordinary writ, or motion for reargument, rehearing, or a new trial, has been filed; and
 - iv. if any appeal, petition for an extraordinary writ, or motion for reargument, rehearing, or a new trial has been filed, such filing or proceeding has been voluntarily withdrawn or resolved by the highest court (or any other tribunal having appellate jurisdiction over the Order) to which the Order was appealed, or to which a petition for an extraordinary writ was taken, or from which reargument, rehearing, or a new trial was sought, and the Order has not been reversed, vacated, stayed, modified or amended, and the time to take any further appeal, petition, or motion has expired without such actions having been taken.
 - v. Upon satisfaction of each condition (c)(i) through (c)(iv) above, the Order shall be referred to as the “Final Order.”
- d. The Releasing Parties, including all of their agents, representatives, predecessors, successors, assigns, affiliates, employees, attorneys, heirs, beneficiaries, creditors, insurers, and anyone claiming by or through them, agree to release, remise, acquit and forever discharge the Released Party from any and all claims, demands, actions, causes of action, liens, damages, expenses, costs, liabilities and/or all other obligations or rights of any kind whatsoever, whether known or unknown, without limitation, arising out of or relating in any way to any events or activities prior to the date hereof, including but not limited to the Causes of Action.

6. Section 727.109 of the Florida Statutes specifically empowers the Court to enter an order approving “the compromise or settlement of a controversy” upon motion by the Assignee. Fla. Stat. § 727.109(7). Further, in the context of a Chapter 727 assignment for the benefit of creditors proceeding, only the Assignee may bring and settle a fraudulent transfer claim under

Chapter 726 of the Florida Statutes. *Smith v. Effective Teleservices, Inc.*, 133 So.3d 1048, 1053 (Fla. 4th DCA 2014).

7. In accordance with the foregoing, the Assignee has determined in an exercise of his business judgment that the Settlement is in the best interests of the assignment estates. Although the Settlement amounts to a token recovery on the face amount of the Causes of Action, entry into the Settlement provides for a certain and early recovery for the assignment estates and avoids the risks and delays inherent in litigation. Moreover, by settling the Causes of Action before commencement of litigation, the Assignee avoids the costs and expense of litigation. As noted above, pursuant to the terms of retention agreed to between the Assignee and special litigation counsel, the Assignee will not be required to pay a contingency fee to special litigation counsel.⁵

8. In the course of settlement discussion with Surgen, Surgen's counsel contended that any judgment against Surgen would be uncollectable, introducing an additional risk element in the litigation. Accordingly, the Assignee conducted due diligence on the collectability issues raised by Surgen and, after reviewing documents and information provided by Surgen to the Assignee, determined that Surgen was virtually uncollectable, meaning that further pursuit of the Causes of Action would be fruitless. The Assignee has concluded, within his business judgment, that the Settlement presented above is fair, reasonable, and in the best interests of the assignment estates.

9. For the reasons discussed above, the Assignee submits that the Court should approve the Settlement Agreement.

WHEREFORE, the Assignee respectfully requests that this Court enter an order (i) granting this Motion, (ii) approving the Settlement and the Settlement Agreement, (iii) authorizing and directing Surgen to pay to the Assignee the Settlement Payment, subject to the terms of the

⁵ The Assignee will, however, seek pre-judgment interest in the cases that are litigated.

Settlement Agreement, in full and complete satisfaction of the Causes of Action and any claims relating in any way to the Causes of Action, and (iv) providing for such other and further relief as is just and proper.

DATED: January 15, 2020

/s/ Edward J. Peterson

Edward J. Peterson (FBN 0014612)

Matthew B. Hale (FBN 0110600)

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Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Assignee's Motion for Order Authorizing Settlement of Controversy with Michael D. Surgen Regarding Causes of Action* has been furnished on this 15th day of January, 2020 by the Court's electronic system to all parties receiving electronic service, and by either U.S. mail or electronic mail to the parties listed on the attached Limited Notice Parties list.

/s/ Edward J. Peterson

Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

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
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC
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Assignee and Assignee's Counsel (via the Court's electronic servicing system)

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Lake Oswego, OR 97035

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

Medport Billing, LLC (MAIL RETURNED)
6352 S. Jones Blvd., #400
Las Vegas, NV 89118

U.S. Bank Equipment Finance
1310 Madrid St.
Marshall, MN 56258

Maricopa County Treasurer
c/o Peter Muthig, Esq.
222 N. Central Ave., #1100
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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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EFO Holdings, L.P.
EFO Genpar, Inc.
EFO Laser Spine Institute, Ltd.
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Assignors,

Consolidated Case No.
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

EXHIBIT A

**ASSIGNEE'S MOTION FOR ORDER
APPROVING SETTLEMENT OF CONTROVERSY WITH
MICHAEL D. SURGEN REGARDING CAUSES OF ACTION**

SETTLEMENT AGREEMENT AND RELEASE

This is a Settlement Agreement and General Release (the “Agreement”) effective as of the date signed by the last party (“Effective Date”) by and between Soneet Kapila as the Assignee (the “Assignee”) of the Assignors (defined below) (the Assignee and Assignors are collectively referred to as the “Releasing Parties”), and Michael Surgen (the “Released Party”) (the Releasing Parties and the Released Party together are the “Parties”).

Whereas, 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 Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Civil Division on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “LSI Assignment Cases”).

Whereas, simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings under the Florida statutes for fifteen affiliates of LSI (the “Affiliated 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, together with LSI, the "Assignors").

Whereas, the Assignee asserts that certain causes of action may exist in favor of the Assignee against the Released Party, including, but not limited to, causes of actions to avoid and recover transfers under applicable law, including Chapter 726 Florida Statutes (the "Causes of Action").

Whereas, the Parties desire to compromise, settle and finally terminate any and all claims that the Assignee may have against the Released Party, including any claims relating in any way to the Causes of Action.

Now, therefore, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Settlement Payment:** Within 20 days from the date of the "Final Order," as defined in Paragraph 3 below, the Released Party agrees to pay or cause to be paid to the Assignee the total sum of \$2,500.00 (the "Settlement Payment").

2. **Approval of Agreement by the Court:** The Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Court") is presiding over the LSI Assignment Cases and Affiliated Assignment Cases. The Parties agree that the Assignee must have this Agreement approved by the Court. Within five business days of the Effective Date, the Assignee agrees to file a motion with the Court requesting approval of this Agreement, giving notice to all creditors and an opportunity to object to the Agreement.

3. **Binding Effect and Final Order:** This Agreement shall be binding on the Parties on the Effective Date, subject only to approval of the Order, which shall be deemed to occur on the date upon which the last of the following occurs:

- a. the Court has entered the Order; and
- b. the time to appeal, petition for an extraordinary writ, or move for reargument, rehearing, or a new trial has expired; and
- c. no appeal, petition for an extraordinary writ, or motion for reargument, rehearing, or a new trial, has been filed; and
- d. if any appeal, petition for an extraordinary writ, or motion for reargument, rehearing, or a new trial has been filed, such filing or proceeding has been voluntarily withdrawn or resolved by the highest court (or any other tribunal having appellate jurisdiction over the Order) to which the Order was appealed, or to which a petition for an extraordinary writ was taken, or from which reargument, rehearing, or a new trial was sought, and the Order has not been reversed, vacated, stayed, modified or amended, and the time to take any further appeal, petition, or motion has expired without such actions having been taken.
- e. Upon satisfaction of each condition of Paragraph 3(a) through 3(d), the Order shall be referred to as the "Final Order."

4. **Release:** In consideration of the foregoing, the Releasing Parties, including all of their agents, representatives, predecessors, successors, assigns, affiliates, employees, attorneys, heirs, beneficiaries, creditors, insurers, and anyone claiming by or through them,

do hereby release, remise, acquit and forever discharge the Released Party from any and all claims, demands, actions, causes of action, liens, damages, expenses, costs, liabilities and/or all other obligations or rights of any kind whatsoever, whether known or unknown, without limitation, arising out of or relating in any way to any events or activities prior to the date hereof, including but not limited to the Causes of Action. The Releasing Parties confirm that they own the claims released herein, and have full authority to enter into this Agreement.

4. Additional Provisions:

(a) It is understood and agreed that this Agreement is entered into for the settlement of disputed claims, whether known or unknown, and this Agreement is not to be construed as an admission of liability on the part of any party released hereby, all such liability being denied.

(b) The Parties expressly acknowledge that they are executing this Agreement freely and voluntarily after having received full advice concerning their rights from their respective attorneys and that it is not based in any manner upon representations made to them by any of the parties released herein. Each of the Parties hereto represents and warrants that it has full right and authority to enter into this Agreement.

(c) The Parties agree that this Agreement was jointly negotiated and drafted by the parties and shall not be construed by a court of law against any party as the drafter thereof.

(d) The Parties expressly acknowledge that this Agreement shall be binding upon them and anyone else deriving or who might thereafter derive any rights from or through them.

(e) The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

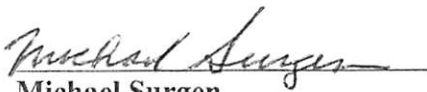
(f) This Agreement contains the entire agreement between the parties with regard to the matters set forth herein and may only be modified by a writing signed by all of the Parties.

(g) This Agreement shall be governed by the laws of the state of Florida. Any action to enforce this Agreement or litigate any related dispute shall be filed only in the appropriate court in Hillsborough County, Florida.

(h) The Parties hereby acknowledge that they have read each page of this Agreement, that they fully understand them, that they agree to them, and voluntarily sign them.

(i) This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.

Released Party


Michael Surgen

Releasing Parties

By: 
Soneet Kapila, as Assignee