| | |
|---|---|
| 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. 2019-CA-2762 |
| to | |
| Soneet Kapila, | Division L |
| Assignee. | |

_____/

# EXHIBIT A

**ASSIGNEE'S MOTION FOR BOTH PRELIMINARY AND PERMANENT INJUNCTION AGAINST JOHN AND SHIRLEY LANGSTONS' CLAIMS AGAINST THE FORMER MANAGERS OF THE ASSIGNORS**

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

SONEET R. KAPILA, as Assignee,

Plaintiff, CASE NO.:

v. DIVISION:

ROBERT P. GRAMMEN,

Defendant.
_____/

**COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

Plaintiff, Soneet R. Kapila, in his capacity as the Assignee ("Plaintiff" and/or "Assignee") of Laser Spine Institute, LLC ("LSI") and each of its affiliated entities[1] (collectively, the "Companies") in the LSI Assignment Case (as defined below) sues Robert P. Grammen ("Defendant" or "Grammen"), and alleges:

**PRELIMINARY STATEMENT**

1. The Plaintiff seeks damages against the Defendant (i) as the recipient, and as a result, of certain fraudulent transfers made by the Companies to the Defendant in respect of his equity/membership interest in the Companies, and (ii) arising out of his acts and/or omissions, including those acts and/or omissions that constitute breaches of his respective duties owed to the Companies and/or rise to the level of willful misconduct and/or bad faith, in his capacity as former officer, manager, *de facto* manager, member and/or member of a board of managers of and for the Companies.

[1] The Plaintiff also acts as statutory assignee for the benefit of creditors for CLM Aviation, LLC, LSI Holdco, LLC ("Holdco"), 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, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

2. A non-exhaustive list of such acts and/or omissions from and after July 2015 through the filing of the LSI Assignment Case (as defined below) includes the following: (i) causing the Companies to incur in excess of $150,000,000 in debt (the "Dividend Loan") on or about July 2, 2015, which indebtedness the Defendant knew or should have known could not be repaid by the Companies and which caused the Companies to become insolvent, (ii) causing the Companies shortly thereafter to distribute an amount equal to approximately $110,000,000 of the proceeds of the Dividend Loan to the ultimate equity owners of the Companies in order to "take money off the table" in violation of applicable law and while facing millions of dollars in pending litigation claims, (iii) knowing that the Companies were in default of at least twenty (20) different provisions of the Dividend Loan by no later than November 2016, the Defendant not only failed and refused to cause the Companies to pursue claims and causes of action that existed at that time in favor of the Companies to recover some or all of the proceeds of the Dividend Loan that were unlawfully transferred, the Defendant instead attempted to release and insulate/exonerate himself from any liability in connection therewith, (iv) despite being in default of the Dividend Loan, having become increasing insolvent, facing millions of dollars in litigation claims, needing to substantially restate its financial results as of the end of 2015 by lowering the Companies' revenue and EBITDA by in excess of $50 million each, the Defendant continued to allow the Companies to pay exorbitant salaries and bonuses and otherwise failed to take appropriate action to address the Companies' financial difficulties, including continuing with the completion of its $56 million custom built corporate and surgical facility in Tampa through calendar year 2016, (v) despite its increased insolvency, the multiple defaults under the Dividend Loan and significant creditor litigation, the Defendant failed to cause the Companies to seek protection from its creditors, including through the filing and prosecution of an orderly

reorganization and/or insolvency proceeding, (vi) the failure of the Defendant to implement and/or follow adequate safeguards and controls in regard to material business, operational, regulatory functions and legal compliance functions, including the Worker Adjustment and Retraining Notification Act (the "WARN Act") compliance, and (vii) the continuation or implementation of self-insurance programs for employees, doctors, and patients at a time that the Companies were insolvent knowing that the Companies were unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice coverage when the Companies closed, resulting in claims against the Companies that should have been covered by insurance (individually and collectively, the "Wrongful Acts").

3. In addition, on the dates set forth on Exhibit A attached hereto, the Companies transferred to the Defendant the amounts listed therein (the "Transfers"), which Transfers are avoidable and recoverable by the Plaintiff under Florida Statutes §§726.105, 726.106, 726.108 and applicable law.

## PARTIES, JURISDICTION AND VENUE

4. Plaintiff is the duly-appointed and acting statutory Assignee for the benefit of creditors of the Companies and has legal standing and authority to prosecute the claims set forth herein.

5. On March 14, 2019, 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 under Consolidated Case No. 2019-CA-2762 (the "LSI Assignment Case").

6. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing an assignment for the benefit of creditors proceeding for each

of 15 affiliates of LSI (the "Affiliated Assignment Cases" and together with the LSI Assignment Case, the "Assignment Cases"): 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, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

7. This is an action in which the matter in controversy exceeds the sum of $15,000.00, exclusive of interest, costs and attorney's fees. Venue and jurisdiction are proper in Hillsborough County, Florida because Hillsborough County, Florida is the principal place of business for the Companies, the causes of action accrued in Hillsborough County, Florida, the Defendant conducted significant business in Hillsborough County, Florida, the Transfers were made in Hillsborough County and the torts were committed in Hillsborough County and/or caused harm in Hillsborough County, Florida. Therefore, this Court has jurisdiction and venue is proper pursuant to Fla. Stat. §26.012, §86.011, §47.011, and §727.

8. Defendant Grammen was a manager on Holdco's Board of Managers and as a result of that position was a manager and/or *de facto* manager for the remainder of the Companies until his resignation on June 6, 2018. This Court has personal jurisdiction over Grammen because Grammen conducted significant business in this jurisdiction and the torts committed caused harm in this jurisdiction.

## FACTS COMMON TO ALL COUNTS

### A. Generally

9. In 2005, LSI was formed as a limited liability company organized under the laws of the State of Florida. LSI opened its first surgical facility in Tampa, Florida. At that time, it operated as a single-operating room facility focused on spine related orthopedic procedures.

10. During the succeeding years, LSI, as the parent company, formed a number of wholly owned subsidiaries and began to open additional surgical facilities around the country, including Scottsdale, Arizona (in 2008), Philadelphia, Pennsylvania (in 2009), Oklahoma City, Oklahoma (in 2011), Cleveland, Ohio (in 2014), St. Louis, Missouri (in 2015) and Cincinnati, Ohio (in 2015).

11. At its peak, LSI became a national spine-focused, orthopedic chain performing about 100,000 procedures in facilities in five different states and employing more than 600 individuals.

12. From its inception through early 2015, LSI was by all measures a successful business operation, generating gross revenues in 2010 of approximately $115 million, which revenues increased year over year through 2014 to approximately $268 million. Similarly, LSI's EBITDA increased from approximately $24 million in 2010 to approximately $77 million in 2014. During these years, the members/owners of LSI received substantial distributions on their membership interests.

13. Notwithstanding its apparent success through 2014, the Companies were facing a number of problems, including financial issues and substantial exposure to damages from a number of lawsuits that had been filed against the Companies.

**B. The Bailey Litigation**

14. One such litigation was filed in 2006 by Dr. Joe Samuel Bailey and his related entities, including Laserscopic Spinal Centers of America, Inc. (collectively, "LSE") (the "Bailey Litigation"). In the Bailey Litigation, LSE asserted claims against some of the Companies and others for breach of fiduciary duty, defamation, slander per se, FDUPTA violations, conspiracy and tortious interference

15. The Bailey Litigation proceeded to a bench trial in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Court") on the following dates: July 12-23, 2010; September 20-28, 2010; April 29, 2011 and May 9-20, 2011. On October 9, 2012, the Court issued a 131 page memorandum opinion. On November 2, 2012, the Court entered a Final Judgment in favor of the LSE as plaintiff, awarding damages of $1.6 million (the "Original Judgment"). Thereafter, both sides appealed. Upon information and belief, the Companies recognized that the Bailey Litigation was and would be a significant loss for the Companies that could have potentially catastrophic financial ramifications.

16. On February 3, 2016, the Second District Court of Appeals (the "Second DCA") issued an opinion reversing the Original Judgment and determined that: (1) LSE could obtain a disgorgement of the Companies' profits irrespective of the amount of LSE's actual damages or whether it suffered any financial loss, (2) the Court's factual findings supported an award of punitive damages, and (3) damages should be awarded for the FDUPTA violations because monetary relief could be awarded to business enterprises in addition to consumers. The Second DCA remanded the case back to the trial court and noted, among other things, that the evidence supported an award of out-of-pocket damages of $6,831,172 and disgorgement damages in the neighborhood of $271 million.

17. On remand, the Court entered an Amended Final Judgment on January 30, 2017, adding an award of punitive damages in the amount of $5,750,000, a FDUPTA damage award of $1,050,000, and confirming the prior damages award of $1.6 million.

18. Another appeal ensued and the Second DCA reversed and remanded again, directing the Court to award out-of-pocket damages of $6,831,172 and holding that the disgorgement damages "at a minimum" are between $264 million to $265 million.

19. In December 2012, which was approximately one month after the Original Judgment was entered, the Defendant, together with others, caused Holdco to be formed as a new holding company in Delaware. On January 1, 2013, the members of LSI, which was the then existing holding company, entered into a new operating agreement with Holdco and, among other things, transferred all of their membership interests in LSI to Holdco.

20. From and after January 1, 2013, Holdco became the parent holding company and was the sole manager of LSI and the direct and indirect sole manager of the remainder of the Companies. In addition, from and after January 1, 2013, a "Board of Managers" was established at Holdco in order to manage Holdco and indirectly the Companies.

**C. <u>The Dividend Recapitalization, Insolvency and Defaults.</u>**

21. Upon information and belief, LSI, through the Defendant and others, admitted that the Companies were experiencing serious deficiencies in and failures of internal controls and accounting procedures during and after 2015. Primarily, LSI needed to write-down approximately $34 million of accounts receivable for fiscal year 2015 and it had to establish a reserve for bad debt of approximately $22.5 million for fiscal year 2015. These write downs and reserves required LSI to restate its financial results for fiscal year 2015. Specifically, LSI's

revenue for 2015 was reduced from $322 million to $263.5 million and its EBITDA was reduced from $74.6 million to $16.1 million for the twelve-month period ending December 31, 2015.

22. LSI, through the Defendant and others, later admitted that it had a "dire need of immediate liquidity" in 2015, and that it was facing serious financial issues.

23. After the significant loss in the Bailey Litigation, in 2014, the Defendant, among others, entertained offers from third parties to purchase equity in the Companies. Ultimately, the managers and members of Companies decided that rather than sell equity in the Companies, the Companies would instead pay dividends to its equity owners. In fact, according to an internal email from one of the managers to several of the other managers in December 2015, the "*Board decided that our company was too special to sell. Because several members of the Board wanted to 'take some money off the table' we decided to put some debt on the company through a dividend recap instead of selling a piece of the business*."

24. To that end, in the early part of 2015 and despite the existing and impending financial issues facing the Companies, which the Defendant knew or should have known, the Companies approached Texas Capital Bank, who was their then existing senior secured lender, and proposed to borrow a substantial amount of money in order to make dividend/distribution payments to the owners/members of the Companies.

25. Thereafter, on or about July 2, 2015, certain of the Companies, namely LSI, LSI Management Company, LLC, Laser Spine Institute Consulting, LLC and Medical Care Management Services, LLC (collectively, the "Borrowers") entered into a $150,000,000 credit agreement (the "Dividend Loan") with Texas Capital Bank (the "Lender"). The obligations under the Dividend Loan were guaranteed by Holdco and the remainder of the Companies.

26. In connection with the Dividend Loan, the Companies agreed, among other things, to: (a) maintain certain financial covenants; (b) maintain certain cash balances; and (c) maintain its primary depository, purchasing and treasury services with the Lender. The Dividend Loan was secured and collateralized by substantially all of the assets of the Companies.

27. After the Dividend Loan closed, the Defendant, along with others, almost immediately authorized and ratified the distribution of an amount equal to $110,473,942 of the loan proceeds to the equity holders/members of the Companies (the "Dividend Distributions").

28. As a direct result of the Dividend Distributions, the Companies became insolvent by tens of millions of dollars.

29. In addition, shortly after the Dividend Distributions were made, the Companies were unable to meet their obligations under the Dividend Loan.

30. By at least the middle of 2016, the Companies had committed several defaults under the Dividend Loan, requiring it to be amended together with a waiver of such defaults from the Lender. On May 26, 2016 and June 9, 2016, the Lender issued notices of default to the Borrowers.

31. In addition, in June 2016, the Companies' deteriorating financial condition caused them to lay off 70 employees, which was about 6% of their workforce.

32. Thereafter, on November 18, 2016, the Borrowers entered into a Limited Waiver and First Amendment to Dividend Loan with the Lender (the "First Amendment"). Pursuant to the terms of the First Amendment, the Lender listed a total of twenty (20) different defaults that had occurred and were continuing under the Dividend Loan, which defaults the Lender agreed to waive pursuant to certain terms and conditions contained therein.

33. By at least November 2016, the Defendant, among others, was aware that certain claims and causes of action existed in favor of the Companies and others in respect of and to recover the Dividend Distributions from the recipients thereof. In fact, several of the members of the Board of Managers were recipients of the Dividend Distributions and as a result were hopelessly conflicted in respect of pursuing claims against themselves. As a result, in addition to the First Amendment, the Borrowers and the Lender entered into a certain Release Agreement, dated November 18, 2016 (the "Release Agreement"). Pursuant to the terms of the Release Agreement, among other things, the Lender agreed that it "shall not commence, or directly or indirectly cause or instruct others to commence any Action against any one or more of the Investors with respect to any claims arising out of or related to the [Dividend Distributions]."

34. In addition, on the same date as the First Amendment and Release, the Defendant, among others, caused certain amendments to be made to the governing corporate documents of Holdco attempting, among things, to specifically exonerate and release himself from any liability related to the Dividend Distributions.

35. The Defendant knew or should have known that the Dividend Distributions violated applicable law, and that the recipients thereof would be liable for the Dividend Distributions as a result.

36. Not only did the Defendant fail to pursue the Companies' claims against the recipients of the Dividend Distributions in 2016, the Defendant instead knowingly sought to protect and insulate himself from any claims related thereto.

37. Despite the First Amendment, the Companies' financial condition continued to worsen and deteriorate. In fact, in 2016, the Companies failed to make approximately $7.7 million in payments due to the landlord for the Companies' Tampa facility. In addition, the

Companies were facing new competition and declining medical reimbursements, all of which further contributed to financial deterioration of the Companies, facts which were well known to the Defendant.

38. Despite these financial challenges, in 2015-2016, the Companies greatly increased their fixed expenses by adding 3 operational facilities and a multimillion-dollar buildout of its corporate headquarters in Tampa.

39. Less than one year after the First Amendment, the Borrowers were again in default of the Dividend Loan. Consequently, on September 29, 2017, the Borrowers and the Lender entered into a Limited Waiver and Second Amendment (the "Second Amendment"), which Second Amendment listed seven (7) additional defaults under the Dividend Loan. Pursuant to the terms of the Second Amendment, the Lender agreed to waive such additional defaults on the conditions contained therein.

40. From and after 2015, the Defendant continued to mismanage the Companies' operations and finances, causing further financial deterioration and driving the Companies deeper into insolvency.

41. Moreover, the Companies implemented in 2014, and continued thereafter, self-insurance programs for employees, doctors, and patients. As a result and after the Companies became insolvent, the Companies were unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice coverage when the Companies closed, resulting in substantial claims against the Companies that should have been covered by insurance.

**D. Failure to Seek Protection**.

42. Despite being woefully insolvent, and being in default of the Dividend Loan from and after mid-2016, the Companies failed to engage restructuring professionals in order to assist them in evaluating various restructuring alternatives that the Companies should have investigated and pursued as far back as 2016.

43. The Companies did not engage restructuring counsel until May 2018. Despite engaging such counsel in May 2018, the Companies then failed to institute any formal bankruptcy or insolvency proceedings for almost one year, all the while the Companies continued to incur debts, which in turn further deepened and increased their insolvency.

**E. The Fraudulent Transfers**.

44. In July 2015, the Companies, through the Defendant and others, engaged in a series of fraudulent transfers in respect of the Dividend Distributions of in excess of $110 million that are all avoidable and recoverable by Plaintiff under Chapter 726 of the Florida Statutes or under other applicable law, which transfers caused the Companies to become insolvent.

45. Pursuant to and as a result of the Dividend Distributions, the Defendant received the Transfers set forth on Exhibit A attached hereto on the dates and in the amounts set forth thereon. The Transfers constituted property of the Companies.

46. The Companies did not receive any value, let alone any reasonably equivalent value, in exchange for the Transfers.

47. At all relevant times herein, as a direct result of the Dividend Loan and Dividend Distributions, the Companies were insolvent, and at a minimum became insolvent as a result of the Dividend Loan and Dividend Distributions.

48. At all relevant times herein, including at the time the Transfers were made, the Companies were engaged in or were about to engage in a business or a transaction for which the remaining assets of the Companies were unreasonably small in relation to such business or transaction.

49. At all relevant times herein, including at the time the Transfers were made, the Companies intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

**F. <u>The Wrongful Acts and the Breaches.</u>**

50. The Defendant owed the Companies fiduciary duties, including fiduciary duties of loyalty and care. These fiduciary duties required the Defendant to place the interests of the Companies and the Companies' creditors above his own personal interests, and required him to avoid self-dealing for personal gain, and conflicts of interest. The Defendant was required to engage in proper oversight of the Companies, their employees and operations, to act diligently in the exercise of his responsibilities, to gather and become informed about material facts and information related to any decisions and to otherwise use that amount of care which an ordinarily careful and prudent person would use in similar circumstances.

51. The claims against the Defendant arise out of and relate to breaches of his fiduciary duties based upon, among other acts and omissions, the Wrongful Acts. Specifically, the Defendant failed to properly discharge his duties in good faith, acted with gross negligence and/or with reckless disregard of his respective duties, acted in bad faith and/or engaged in willful misconduct, and breached his implied covenant of good faith and fair dealing, all as detailed herein. Defendant was also required to avoid decisions on behalf of the Companies that

were uninformed, that were irrational, unintelligent or unadvised; that were grossly negligent or reckless, or that exhibited an indifference to the risk of loss, damage or harm to the Companies.

**G. Damages.**

52. As a result of various Wrongful Acts described herein, as well as other acts and omissions, of the Defendant, the value of the Companies' assets and the Companies' enterprise value, significantly decreased to the point that the Companies became woefully insolvent by tens of millions of dollars. As a result of the Wrongful Acts of the Defendant discussed above, the Companies were forced to file the Assignment Cases and liquidate their assets without the ability to even remotely pay their obligations in full. As a direct and proximate result of the Wrongful Acts committed by the Defendant, the Companies have suffered substantial damages that include, without limitation: (i) the loss or reduction of assets and the value of assets of the Companies, specifically an amount equal to approximately $110 million by and through the Dividend Distributions; (ii) the decrease in the asset values and enterprise value of the Companies; including as a result of the delay in the Companies' filing of the Assignment Cases; (iii) the increased insolvency of the Companies by tens of millions of dollars; (iv) administrative fees and expenses incurred and to be incurred by the Companies in the Assignment Cases; (v) the value of all avoidable Transfers and the Dividend Distributions made by the Companies pursuant to Chapter 726 of the Florida Statutes and other applicable law; and (vi) other damages as may be ascertained though discovery.

53. All conditions precedent to the filing of this action have been performed, waived, satisfied or have occurred.

## COUNT I
## BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT

54. The Plaintiff realleges paragraphs 1 through 53 above.

55. This is a claim for breach of fiduciary duty by the Plaintiff against the Defendant based upon his acts and omissions as a manager, officer and/or director of the Companies, including specifically the Wrongful Acts.

56. As officers and/or directors and/or managers of the Companies, the Defendant owed the Companies fiduciary duties of loyalty and care under the common law and otherwise, including but not limited to, Fla. Stat. §605.04091.

57. The duty of loyalty and care required the Defendant to put the interests of the Companies above his own interests and to refrain from engaging in willful, grossly negligent and/or reckless misconduct, or conduct which violates the implied covenant of good faith and fair dealing.

58. In addition, in discharging his fiduciary duties, including of loyalty and care, the Defendant was required to act in good faith. The Defendant breached his fiduciary duties, including the duty of loyalty, care and good faith, (i) by acting with a purpose other than that of advancing the best interests of the Companies and the creditors, and by acting in violation of applicable law, and/or (ii) by failing to act in the face of a known duty to act, thereby demonstrating a conscious disregard for his fiduciary obligations. Defendant's conduct displayed a lack of diligence that was substantially more culpable than simple inattention or failure to be informed of all facts material to his decisions.

59. Without limitation, Defendant breached his fiduciary duties, including the duty of loyalty, care and good faith, by committing the Wrongful Acts as detailed above and by (i) failing to implement or follow, or to otherwise cause the implementation and following of, adequate safeguards or controls in regard to financial reporting; (ii) failing to implement or follow, or to otherwise cause the implementation and following of adequate safeguards and

controls in regard to material business, operational, and regulatory functions; (iii) while the Companies were insolvent or not paying their debts as they became due, failing to undertake sufficient and adequate measures to ensure that payments to third parties did not constitute preferential or fraudulent transfers which could result in a loss of assets of the Companies; (iv) while the Companies were insolvent or not paying its debts as they became due, causing or otherwise abdicate his duties by allowing the Companies' assets and enterprise value to continue to decrease in value; (v) while the Companies were insolvent or not paying their debts as they became due, failing to cause the Companies to file insolvency proceedings as soon as reasonably practical, necessary or appropriate; and (vi) failing to ensure that the Companies were not engaging in or otherwise permitting corporate waste. (vii) permitting the Companies to engage in corporate waste; (viii) permitting the Companies to engage in certain preferential or fraudulent transfers, which resulted in a loss of assets of the Companies; (ix) permitting the Companies' assets and enterprise value to decrease in value; (x) failing to fully or adequately inform himself in regard to material business, operational, regulatory or financial decisions affecting the Companies; (xi) failing to cause to implement or follow adequate safeguards and controls, including WARN Act compliance; (xii) the continuation or implementation of self-insurance programs for employees, doctors, and patients at a time that the Companies were insolvent knowing that the Companies were unable to cover their self-insured retention amounts or pay medical bills, leaving those individuals without any health or malpractice coverage when the Companies closed, resulting in claims against the Companies that should have been covered by insurance; (xiii) failing to pursue claims and causes of action to recover the Dividend Distributions, which constituted not only fraudulent transfers but also a violation of applicable

law at the time; and (xiv) other breaches and proximately caused damages as may be ascertained through discovery.

60. As a direct and proximate result of Defendant's breaches, the Companies have been damaged.

WHEREFORE, Plaintiff demands the entry of judgment against Defendant for compensatory damages, consequential damages and special damages, and reserves the right to seek punitive damages, plus pre-judgment and post-judgment interest, costs and for any other relief the Court deems appropriate.

**COUNT II**
**AVOIDANCE AND RECOVERY OF TRANSFERS**
**UNDER FLA. STAT. §§726.105(1)(B) 726.108 AND 726.109**

61. The Plaintiff re-alleges paragraphs 1 through 53 as if fully set forth herein.

62. The Plaintiff sues the Defendant to avoid and recover the Transfers pursuant to Chapter 726, *et. seq.*, Florida Statutes.

63. In connection with the Dividend Loan, the Defendant received payment of dividends as a distribution on its equity interest in the Companies in the amount of the Transfer. Upon information and belief, the Defendant also received additional unlawful distributions.

64. Pursuant to Chapter 726, the Plaintiff may avoid any transfer of an interest of the Companies in property or any obligation incurred by the Companies that is voidable under applicable law by a creditor holding an unsecured claim.

65. Section 726.105(1)(b), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> * * *

> (b) without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> > (1) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
> >
> > (2) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

66. Further, under Chapter 726 of the Florida Statutes, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from – (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

67. The Transfers constituted a transfer made by the Companies for which the Companies did not receive reasonably equivalent value in exchange for the same.

68. At the time of the Transfers, the Companies had creditors holding unsecured claims and were engaged or were about to engage in a business or a transaction for which the remaining assets of the Companies were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that they would incur, debts beyond its ability to pay as they became due.

69. As a result of the Transfers, the Companies have been damaged and pursuant to Fla. Stat., §§726.105(1)(b), 726.108 and 726,109Plaintiff may avoid and recover the total value of such Transfers from the Defendant.

70. Defendant was either the first or subsequent transferee of the Transfers and was otherwise a beneficiary of the Transfers as described herein, or for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable.

**WHEREFORE,** the Plaintiff demands judgment against Defendant: (i) avoiding the Transfers and recovering the amount of those Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

**COUNT III**
**AVOIDANCE AND RECOVERY OF TRANSFERS**
**UNDER FLA. STAT. §§726.106(1), 726.108 AND 726.109**

71. The Plaintiff re-alleges paragraphs 1 through 53 as if fully set forth herein.

72. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to Chapter 726, *et. seq*., Florida Statutes.

73. In connection with the Dividend Loan, the Defendant received payment of dividends as a distribution on its equity interest in the Companies in the amount of the Transfer. Upon information and belief, the Defendant also received additional unlawful distributions.

74. Pursuant to Chapter 726, the Plaintiff may avoid any transfer of an interest of the Companies in property or any obligation incurred by the Companies that is voidable under applicable law by a creditor holding an unsecured claim.

75. Section 726.106(1), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent in value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

76. Further, under Chapter 726 of the Florida Statutes, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from – (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

77. The Transfers constitute a transfer made by the Companies for which the Companies did not receive reasonably equivalent value in exchange.

78. At the time of the Transfers, the Companies had creditors holding unsecured claims and were insolvent, had their insolvency deepened, or became insolvent as a result of such Transfers, including the Dividend Distributions.

79. As a result of the Transfers described herein, the Companies have been damaged and pursuant to Fla. Stat., §§726.106(1), 726.108 and 726.109, may avoid and recover the total value of such Transfers from the Defendant.

80. The Defendant was either the first or subsequent transferee of the Transfers and was otherwise a beneficiary of the Transfers as described herein, for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable.

**WHEREFORE**, the Plaintiff demands judgment against Defendant: (i) avoiding the Transfers and recovering the amount of those transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

## COUNT IV
## AVOIDANCE AND RECOVERY OF TRANSFERS UNDER FLA. STAT. §§726.105(1)(a), 726.108 AND 726.109

81. The Plaintiff re-alleges paragraphs 1 through 53 as if fully set forth herein.

82. The Plaintiff sues the Defendant to avoid and recover avoidable transfers pursuant to Chapter 726, *et. seq*., Florida Statutes.

83. In connection with the Dividend Loan, the Defendant received payment of dividends as a distribution on its equity interest in the Companies in the amount of the Transfer. Upon information and belief, the Defendant also received additional unlawful distributions.

84. Pursuant to Chapter 726, the Plaintiff may avoid any transfer of an interest of the Companies in property or any obligation incurred by the Companies that is voidable under applicable law by a creditor holding an unsecured claim.

85. Section 726.105(1)(a), Florida Statutes, provides:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

86. Further, under Chapter 726 of the Florida Statutes, the Plaintiff may recover, for the benefit of the estate, the value of the property transferred, from – (1) the first transferee of such transfer or the entity for whose benefit such transfer was made; and (2) any subsequent transferee of such first transferee.

87. The Transfers constitute a transfer made by the Companies with the actual intent to hinder or delay creditors of the Companies.

88. The Transfers were made to the Defendant.

89. Before the Transfers, various judgments had been entered against some of the Companies and there was a significant risk that the judgment entered in the Bailey Litigation would be significantly increased. The Dividend Loan, the Dividend Distributions and the Transfers reduced the available funds to satisfy that judgment which hindered and delayed those creditors and others. In addition, the Dividend Loan, the Dividend Distributions and the Transfers reduced the assets of the Companies to satisfy the outstanding judgment claims and other creditor claims.

90. The Transfers occurred shortly after the Companies took on a substantial debt (the Dividend Loan).

91. At the time of the Transfers, the Companies had unsecured claims and were insolvent, had their insolvency deepened, or they became insolvent as a result of the Transfers.

92. As a result of the Transfers, the Companies have been damaged and pursuant to Fla. Stat., §§726.105(1)(a), 726.108 and 726.109, may avoid and recover the total value of such Transfers from the Defendant.

93. The Defendant was either a first or subsequent transferee of the Transfers, and was otherwise a beneficiary of the Transfers as described herein, for whose benefit the Transfers were made and, as a result, the Plaintiff is entitled to avoid and recover the Transfers as voidable from the Defendant.

**WHEREFORE**, the Plaintiff demands judgment against Defendant: (i) avoiding the Transfers and recovering the amount of those Transfers from Defendant; (ii) pre-judgment and post-judgment interest as allowed by law; and (iii) such other and further legal and equitable relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL AS TO ALL COUNTS OF THE COMPLAINT**

Plaintiff hereby demands a trial by jury on all claims, issues, and Counts of the Complaint triable by such.

**RESERVATION OF RIGHTS**

The Plaintiff reserves the right to further amend this Complaint upon completion of his investigation and discovery in order to assert any additional claims for relief against the Defendant as may be warranted under the circumstances.

DATED this 17th day of November, 2019.

GENOVESE JOBLOVE & BATTISTA, P.A.
*Counsel for the Plaintiff/Assignee*
100 Southeast Second Street, Suite 4400
Miami, Florida 33131
Tel: (305) 349-2300
Fax: (305) 349-2310

By: /s/ Paul J. Battista, Esq.
Paul J. Battista, Esq., FBN 884162
pbattista@gjb-law.com
Gregory M. Garno, Esq., FBN 087505
ggarno@gjb-law.com
Robert F. Elgidely, Esq., FBN 111856
relgidely@gjb-law.com

ROCKE, McLEAN & SBAR, P.A.
*Co-Counsel for the Plaintiff/Assignee*
2309 S. MacDill Avenue
Tampa, Florida 33629
Tel: 813-769-5600
Fax: 813-769-5601

By: /s/ Robert L. Rocke, Esq.
Robert L. Rocke, Esq., FBN 710342
rrocke@rmslegal.com
Jonathan B. Sbar, Esq., FBN 131016
jsbar@rmslegal.com
Raul Valles, Jr., Esq., FBN 148105
rvalles@rmslegal.com
Andrea K. Holder, Esq., FBN 104756
aholder@rmslegal.com

**EXHIBIT A**

## Laser Spine Institute ("LSI")

## Robert P. Grammen Distributions Paid from TCB Account No. 1719 After July 2015 Recap

| | Distribution 07/06/15 | Distribution 10/23/15 | Distribution 10/23/15 | Total Paid After Recap |
|---|---|---|---|---|
| Robert P. Grammen | $ 1,915,435 | $ 22,341 | $ 4,024 | **$ 1,941,800** |