

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**RESPONSE TO SHIRLEY AND JOHN LANGSTON'S OPPOSITION TO
ASSIGNEE'S AMENDED MOTION FOR PRELIMINARY AND PERMANENT
INJUNCTION AGAINST JOHN AND SHIRLEY LANGSTONS' CLAIMS
AGAINST THE FORMER MANAGERS OF THE ASSIGNORS**

SONEET KAPILA, as Assignee in the Assignment Cases¹, by and through his undersigned counsel, files this Response (the "**Response**") to Shirley and John Langston's Opposition to Assignee's

¹ Capitalized terms not defined herein shall have the meanings set forth in the Assignee's Amended Motion for Preliminary and Permanent Injunction Against John and Shirley Langston's Claims Against the Former Managers of the Assignors (the "**Amended Injunction Motion**").

Amended Motion for Preliminary and Permanent Injunction Against John and Shirley Langstons' Claims against the Former Managers of the Assignors (the "**Opposition**"), and states:

The Amended Injunction Motion seeks to enjoin the Langstons from pursuing portions of the relief in the Langston Complaints. The Assignee reiterates that he is not seeking to enjoin the Langstons' prosecution of their medical malpractice claim. The Assignee is only seeking to enjoin the Langstons from prosecuting claims against the Managers that are the exclusive property of the Assignment Estates and constitute an important source of recoveries for parties who have filed claims in the Assignment Cases.

The parties have filed lengthy pleadings in support of their respective positions. The Assignee submits that a significant portion of the Langstons' pleadings raise claims that are not relevant to the issues raised by the Amended Injunction Motion or misstate the applicable law. By this Response, the Assignee will attempt to focus the Court's attention on the narrow issues of law and fact that support the Assignee's entitlement to injunctive relief.

The Langstons assert they are entitled to damages for alleged malpractice and initially asserted claims against LSI and the doctor performing the surgery. After the filing of the Assignee's Complaints, the Langstons sought to amend their state court complaints to assert claims that the Managers are liable for any damages as a result of any medical malpractice. The Langstons copy over forty counts of the Assignee's Complaint and assert that such allegations establish recklessness or acts committed in bad faith to allow the Langstons to assert claims against the Managers. Despite the state court rejecting the viability of claims against the Managers, the Langstons continue to pursue such

claims by filing a petition for writ of certiorari to the Second District Court of Appeals² and filing a separate lawsuit without seeking leave of the state court.

Contrary to the Langstons' repeated assertion, the case law establishes that the Assignee is the proper and only party to pursue claims to pierce the veil or impose alter ego liability or general claims. *See Bailee Lumber Co., LP v. Thompson*, 413 F.2d 1293, 1295 (11th Cir. 2005).³ The Assignee's exclusive standing to pursue such claims is appropriate and supported by public policy since he is seeking to recover damages against the Managers for the benefit of all creditors. *See, In re Xenegra, Inc.*, 449 B.R. 594, 599 (Bankr. M.D. Fla. 2011) (finding that a bankruptcy trustee is the appropriate claimant to bring an action to pierce the corporate veil and "assert claims against abusive insiders who have harmed the general creditor body as a whole"); *In re Sigma-Tech Sales, Inc.*, No. 14-11366-JKO, 2016 WL at *3 (Bankr. S.D. Fla. Aug. 1, 2016) (holding that the bankruptcy trustee had standing to pursue alter ego claim on behalf of the estate).

The Langstons argue that they are asserting "direct" claims against the Managers since the Assignee cannot assert each and every element of their malpractice claims. Such an argument misconstrues the relief requested in the Amended Injunction Motion. In the event that the Langstons prevail in their medical malpractice action, the Langstons will try to recover such damages from various parties.⁴ It is the attempt to collect on their potential damages awards by asserting veil piercing claims or other theories against the Managers that violate the assignment statute.

² The Langstons have sought leave to appeal Judge Stoddard's order denying the Langstons' Motion to Amend as to the counts against the Managers.

³ The Assignee is not seeking to use bankruptcy law to create substantive rights as alleged by the Langstons. (Opposition, p.4.) "In assignment cases, state courts often look to federal bankruptcy laws for guidance as to legal issues arising in proceedings involving assignment for benefit of creditors." *Moecker v. Antoine*, 845 So.2d 904, 912 n.10 (Fla. 1st DCA 2003).

⁴ The Langstons' arguments that they must assert veil piercing claims in their initial action in order to prevent such claims from being time barred is not supported by applicable law. *See Turner Murphy Co. v. Specialty Contractors, Inc.*, 695 So.2d 1242 (1st DCA 1994) (applying "action on a judgment" statute of limitations to creditor's efforts to pursue veil piercing in collection on a judgment).

The Langstons' attempts to avoid the consequences of the assignment statute should not be condoned. Case law supports the imposition of an injunction against creditors' claims against third parties where the trustee has filed claims against the same third parties in two scenarios. One scenario is where the creditor's claims and the trustee's claims overlap. The second scenario is where the claims asserted by the creditor are general claims that could be awarded against the defendant by any creditor.

As explained in the Amended Injunction Motion, both tests are met. The case law establishes that veil piercing claims or other actions to impose liability on corporate officers are general claims. *Baille Lumber*, 413 F.2d at 1295; *In re Icarus Holdings, Inc.*, 391 F.3d 131, 132 (11th Cir. 2004); *Sigma-Tech Sales*, 2016 WL at *3. The Langstons cannot transform general claims into a direct claims through creative drafting. *See In re Madoff*, 848 F. Supp 2d 469, 475 (S.D.N.Y. 2012). The Langstons are pursuing the Managers to recover damages for a subset of the Wrongful Acts, which are the basis for the claims against the Managers in the Assignee's Complaint. Any party asserting medical malpractice claims could seek to assert the same claims raised in the Langton Complaints. In addition, any creditor could copy the same forty paragraphs and assert that such actions constitute a basis to sue the Managers.

In addition, there is considerable overlap between the claims raised in the Assignee's Complaints and the Langston Complaints. The Assignee is seeking to recover damages from the Managers based on the Wrongful Acts first alleged by the Assignee. The Langstons copied those allegations and rely upon such allegations in framing their claims against the Managers for wrongful conduct.

The Langstons also assert that the relief requested is procedurally improper. Section 727.110(1) of the Florida Statutes requires that, other than specifically enumerated actions, "all matters

requiring court authorization be brought by motion.” The statute does not state that requests for injunctive relief be brought by supplementary proceedings.

The Langstons’ claim that the Court lacks subject matter jurisdiction over the Amended Injunction Motion is also unavailing. The assignment statutes confer broad jurisdiction to circuit courts: “All proceedings under this chapter shall be subject to the order and supervision of the circuit court for the county where the petition is filed in accordance with s. 727.104(2).” Fla. Stat. § 727.102. The relief requested in the Amended Injunction Motion falls within the Court’s jurisdiction over these Assignment Cases. As for personal jurisdiction, the Langstons’ Filed Complaint states that they are Florida residents. (*See* Ex. B to Amended Injunction Motion, at ¶ 1.) *See Patten v. Mokher*, 184 So. 29, 30 (Fla. 1938) (holding Florida circuit courts have personal jurisdiction over Florida residents). Additionally, the Langsonts sought affirmative relief from this Court by submitting their Proof of Claim in the Assignment Cases. *See Babcock v. Whatmore*, 707 So. 2d 702, 704 (Fla. 1998) (“[A] defendant waives a challenge to personal jurisdiction by seeking affirmative relief.”).

In sum, the law clearly provides that the Assignee has the obligation to pursue claims for the benefit of all creditors. The Langstons’ attempt to pursue claims for their own benefit cannot be permitted under the statute. To their credit, the Langstons acknowledge the reason that they are pursuing these claims. They worry that allowing the Assignee to exclusively pursue claims for the benefit of all creditor will not allow the Langstons to maximize their recovery. However, a creditor’s motivation to jump ahead of all other creditors has been cited by courts as a basis to enjoin lawsuits by creditors to pursue claims which overlap claims being asserted by a bankruptcy trustee or an assignee.

The circumstances here warrant imposition of an injunction against the Langstons' claims against the Managers so the Assignee can be free to pursue his claims for the benefit of all creditors.

Dated: June 5, 2020

/s/ Scott A. Stichter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Response to Shirley and John Langston's Opposition to Assignee's Amended Motion for Preliminary and Permanent Injunction Against John and Shirley Langstons' Claims Against the Former Managers of the Assignors* has been furnished on this 5th day of June, 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 Limited Notice Parties list attached.

/s/ Scott A. Stichter

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MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

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