

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

**In re:**

<b>Laser Spine Institute, LLC</b>	<b>Case No. 2019-CA-2762</b>
<b>CLM Aviation, LLC</b>	<b>Case No. 2019-CA-2764</b>
<b>LSI HoldCo, LLC</b>	<b>Case No. 2019-CA-2765</b>
<b>LSI Management Company, LLC</b>	<b>Case No. 2019-CA-2766</b>
<b>Laser Spine Surgery Center of Arizona, LLC</b>	<b>Case No. 2019-CA-2767</b>
<b>Laser Spine Surgery Center of Cincinnati, LLC</b>	<b>Case No. 2019-CA-2768</b>
<b>Laser Spine Surgery Center of Cleveland, LLC</b>	<b>Case No. 2019-CA-276</b>
<b>Laser Spine Surgical Center, LLC</b>	<b>Case No. 2019-CA-2770</b>
<b>Laser Spine Surgery Center of Pennsylvania, LLC</b>	<b>Case No. 2019-CA-2771</b>
<b>Laser Spine Surgery Center of St. Louis, LLC</b>	<b>Case No. 2019-CA-2772</b>
<b>Laser Spine Surgery Center of Warwick, LLC</b>	<b>Case No. 2019-CA-2773</b>
<b>Medical Care Management Services, LLC</b>	<b>Case No. 2019-CA-2774</b>
<b>Spine DME Solutions, LLC</b>	<b>Case No. 2019-CA-2775</b>
<b>Total Spine Care, LLC</b>	<b>Case No. 2019-CA-2776</b>
<b>Laser Spine Institute Consulting, LLC</b>	<b>Case No. 2019-CA-2777</b>
<b>Laser Spine Surgery Center of Oklahoma, LLC</b>	<b>Case No. 2019-CA-2780</b>

**Assignors,**

**Consolidated Case No.  
2019-CA-2762**

**to:**

**Soneet R. Kapila,**

**Division L**

**Assignee.**

**JOINT AGREED MOTION FOR PAYMENT AND ADVANCEMENT OF DEFENSE  
COSTS FROM PROCEEDS OF EMPLOYMENT PRACTICES INSURANCE POLICY**

Soneet R. Kapila, in his capacity as the assignee for the benefit of creditors (the "Assignee") of LSI Holdco, LLC ("LSI Holdco") and each of its affiliated entities<sup>1</sup> (collectively, the "Companies"), and Starr Liability & Indemnity Company ("Starr") (collectively, the "Movants"), move for entry of an agreed

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<sup>1</sup> The Assignee also acts as statutory assignee for the benefit of creditors for CLM Aviation, LLC, Laser Spine Institute, LLC, LSI Management Company, LLC ("LSI Management"), 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.

order authorizing Starr to advance defense costs from the proceeds of the insurance policy issued by Starr to LSI to pay for the legal fees and costs of counsel representing the following former managers of LSI against claims asserted by the Assignee: Robert P. Grammen, Dr. Michael W. Perry, William P. Esping, Alan Campbell, Peter N. Wilson, William E. Horne, Raymond Monteleone, Robert Basham, Mark Andrezejski, Chris Sullivan, Geza Henni, Edward DeBartolo, Jonathan Lewis, Shawn Dempsey, Frederic Brace, Darren Keller, Phil Picchietti, Robert Mayo and James St. Louis III (collectively, the “Managers”), subject to the terms and conditions of such insurance policy issued by Starr. In support thereof, the Movants represent as follows:

### **Preliminary Statement**

1. On March 14, 2019, Laser Spine Institute, LLC executed and delivered an assignment for the benefit of creditors to the Assignee, which assignment included any and all claims and causes of action against the Managers, among others. That same day, the Assignee filed a Petition with the Court, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes under Case No. 2019-CA-2762. On March 14, 2019, the Assignee filed fifteen other petitions commencing an assignment for the benefit of creditors for each of the other Companies.
2. The Assignee, on behalf of the Companies, has asserted claims and causes of action in several pending lawsuits that have been and may be filed against the Managers for, among other things, breach of fiduciary duty, in connection with their respective acts and omissions while acting as managers of the Companies (the “Assignee Claims”).
3. LSI Holdco had an Employment Practices Insurance Policy with Starr, Policy Number 1000620748181, for “claims-made and reported” between March 1, 2018 to March 1, 2019 (the “Policy”), which Policy had its “Discovery Period” extended for a period of one year.

4. On July 29, 2019, the Assignee, through his counsel, served a “Notice of Claim & Assertion of Claims under Policies” on several insurance companies in respect of the Assignee Claims, including to Starr.

5. The Policy had a Directors and Officers Section, which, in Insuring Agreement 1.A, requires Starr to “pay on behalf of any Insured Person, the Loss arising from a Claim. . . against such Insured Person for any Wrongful Act. . . except if the Company has indemnified the Insured Person for such Loss.”

6. The Policy also requires Starr to pay “Defense Costs,” which includes, among other things, “the reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a Claim.” The Managers have asserted that the Assignee Claims constitute a “Claim” under the Policy and therefore the Managers are entitled to have Starr pay their Defense Costs in connection therewith.

7. The Policy had an aggregate Limit of Liability of \$3 million for all Loss (inclusive of Defense Costs), subject to a nil self-insured retention for Claims under Insuring Agreement A.

8. The Managers have incurred, and are expected to continue incurring, certain legal fees and related expenses in the defense of the Assignee Claims (the “Manager Defense Costs”), which Starr has agreed to pay from the Policy — subject in all events to a reservation of rights and all Policy conditions, exclusions, and provisions—pursuant to Insuring Agreement 1.A of the Directors and Officers Section of the Policy.

#### **Relief Requested and Reasons Therefor**

9. Starr asserts that the insurance proceeds under the Policy are for the benefit of the individual insureds (ie. the Managers) and not the Companies or Assignee. *See, e.g. In re Taylor Bean Whitaker Mortg. Corp.*, 2011 WL 6014089 (M.D. Fla. Oct. 11, 2011) (“The Policy proceeds which are being used to advance defense costs...are from the Policy's Coverage A. The Debtors have no property

interest in the proceeds available under Coverage A, the coverage for claims against TBW's directors and officers.”). The Assignee contests the assertion by Starr and asserts that the Companies have an interest in the proceeds from the Policy. In connection therewith, the Assignee asserts that as a general rule insurance policies (including D&O policies) that provide protection for the debtor are property of the estate. See, e.g., *Minoco Group of Companies, Ltd. v. First State Underwriters Agency of New England Reinsurance Corp. (In re Minoco Group of Companies, Ltd.)*, 799 F.2d 517, 520 (9th Cir. 1986) (holding that the debtor’s D&O policy which protected the debtor against indemnity claims by its directors and officers is property of the estate subject to the automatic stay); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 92 (2d Cir. 1988), cert denied, 109 S.Ct. 176 (1988) (a debtor’s insurance policies are property of the estate). As the Ninth Circuit noted, the fundamental test of whether insurance policies are property of the estate is whether “the debtor’s estate is worth more with them than without them.” *Minoco Group*, 799 F.2d at 520.

10. Notwithstanding the above, the Assignee recognizes that bankruptcy courts commonly allow for the advancement of insurance proceeds for the purpose of paying defense costs with certain limitations and restrictions. To that end, the Assignee and Starr have agreed to the payment of Defense Costs related to the Assigned Claims pursuant to the following terms and conditions, subject in all events to the approval of this Court:

- a. Starr may advance up to a maximum aggregate amount equal to \$800,000 in Defense Costs under the Policy in respect of the Assignee Claims for those Assignee Claims that are insured under the Policy (and subject in all events to a reservation of rights by Starr and all Policy conditions, exclusions, and provisions related thereto), provided that once such maximum is expended, then Starr may seek further relief from the Court for the payment of additional Defense Costs, which may be done on an agreed basis with the Assignee.

- b. On a monthly basis by the 10<sup>th</sup> day of each month commencing July 10, 2020 and continuing each month thereafter, Starr shall provide to the Assignee, through his counsel, a summary of the Defense Costs expended through the end of the previous month, which summary shall include the amounts paid each month and the recipients of such amounts.

**WHEREFORE**, the Movants respectfully move this Honorable Court for the entry of an agreed order permitting the payment and advancement of Defense Costs from the proceeds of LSI's Employment Practices Insurance Policy in respect of the Assignee Claims pursuant to the terms and conditions herein.

A proposed order is attached hereto as Exhibit A.

Dated this 9<sup>th</sup> day of June, 2020.

Respectfully submitted,

By: s/ Daniel G. Enriquez

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# EXHIBIT A

- Proposed Order -

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

**In re:**

<b>Laser Spine Institute, LLC</b>	<b>Case No. 2019-CA-2762</b>
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<b>Laser Spine Surgery Center of Oklahoma, LLC</b>	<b>Case No. 2019-CA-2780</b>

**Assignors,**

**Consolidated Case No.  
2019-CA-2762**

**to:**

**Soneet Kapila,**

**Division L**

**Assignee.**

**[PROPOSED] ORDER ON JOINT MOTION FOR PERMISSION TO  
MAKE PAYMENT AND ADVANCEMENT OF INSURANCE PROCEEDS**

This cause came before the Court upon the Joint Agreed Motion for Permission to Make Payment and Advancement of Defense Costs from the Proceeds of Employment Practices Liability Insurance Policy (“Motion”) by Soneet R. Kapila, in his capacity as the assignee for the benefit of creditors (the “Assignee”) of LSI Holdco, LLC (“LSI Holdco”) and each of its affiliated entities<sup>2</sup> (collectively, the “Companies”), and Starr Liability & Indemnity Company

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<sup>2</sup> The Assignee also acts as statutory assignee for the benefit of creditors for CLM Aviation, LLC, Laser Spine Institute, LLC, LSI Management Company, LLC (“LSI Management”), Laser Spine Surgery Center of Arizona, LLC, Laser Spine Surgery Center of Cincinnati, LLC, Laser Spine Surgery Center Of Cleveland, LLC, Laser 122629017.1



(“Starr”) (collectively, the “Movants”). After reviewing the Motion, considering the case file, and being otherwise fully advised, it is **ORDERED** that:

1. The Motion is **GRANTED**.
2. There is good cause for the relief requested in the Motion.
3. Starr is authorized to advance, pay, and reimburse Defense Costs, as defined in the Policy, for Robert P. Grammen, Dr. Michael W. Perry, William P. Esping, Alan Campbell, Peter N. Wilson, William E. Horne, Raymond Monteleone, Robert Basham, Mark Andrezejski, Chris Sullivan, Geza Henni, Edward DeBartolo, Jonathan Lewis, Shawn Dempsey, Frederic Brace, Darren Keller, Phil Picchietti, Robert Mayo and James St. Louis III up to a maximum aggregate amount equal to \$800,000 in Defense Costs in respect of the Assignee Claims for those Assignee Claims that are insured under the Policy (and subject in all events to a reservation of rights by Starr and all Policy conditions, exclusions, and provisions related thereto), provided that once such maximum is expended, then Starr may seek further relief from the Court for the payment of additional Defense Costs, which may be done on an agreed basis with the Assignee.
4. On a monthly basis by the 10<sup>th</sup> day of each month commencing July 10, 2020 and continuing each month thereafter, Starr shall provide to the Assignee, through his counsel, a summary of the Defense Costs expended through the end of the previous month, which summary shall include the amounts paid each month and the recipients of such amounts.
5. The Clerk shall mail a copy of this order to all parties served with the Motion.

**DONE** and **ORDERED** in Chambers at Tampa, Florida, this \_\_ day of June, 2020.

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Judge Steven Scott Stephens  
Thirteenth Judicial Circuit in and for Hillsborough County

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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.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 9, 2020, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal system which will send a Notice of Electronic Filing to all counsel of record.

/s/ Daniel G. Enriquez