

IN THE 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 Surgery 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, 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
Division L

To:

Soneet Kapila,

Assignee.

**MOTION TO COMPEL DISCOVERY RESPONSES FROM TEXAS CAPITAL BANK,
N.A. AS ADMINISTRATIVE AGENT TO THE LENDER GROUP**

Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Spine Centers of America, Inc., and Laserscopic Medical Clinic, LLC (collectively, the “Judgment Creditors”), by and through their counsel of record, move to compel production in response to the First Request for Production served on Texas Capital Bank, N.A., as administrative agent to the senior secured lenders (the “Agent”), in the above-captioned Laser Spine Institute, LLC, *et al.*

assignment cases (the “Assignment Cases”), (the “Request”).¹ As more fully detailed below, pursuant to Florida law, the Agent fails to establish any basis for its outright refusal to produce its loan file and collateral file, among other documents. The boilerplate objection evince the lack of good faith exercised by the Agent in connection with its responses and objections. The Court should require compliance with the applicable Florida Rules of Civil Procedure and order production of the loan file, collateral file, meeting minutes, and other requested information as outlined below.

INTRODUCTION

Banks maintain a “loan file” and a “collateral file” and also keep minutes of meetings of the board as well as the loan committee and collateral committee. Here, the Agent withheld the Loan File, the Collateral File, and refused to produce minute meetings claiming that the word “meeting” was not defined and was otherwise confusing. The Agent loaned the insiders (*i.e.*, Judgment Debtor LSI)² approximately \$150 million; ultimately, LSI defaulted on the loan because, frankly, none of the funds were retained or used for working capital. Rather, virtually all of the amounts were paid out to interest holders as distributions. Because there were no funds retained to help the company pay its vendors, employees and otherwise keep the business afloat, in short order LSI defaulted, and continue to default on the loan requiring multiple amendments between July of 2015 and 2019. Indeed, after one of the many defaults post-July of 2015, rather than taking action

¹ Subject to the objections of certain definitions in the Request contained herein, capitalized terms not otherwise defined in these Responses and Objections maintain the meanings ascribed to them in the Request.

² Judgment Debtor LSI then immediately distributed the majority of those funds to its interest holders (all but what was returned to the Agent as repayment on a revolving line of credit).

against the wrongdoers who created the circumstances of default by their self-dealing, the Agent inexplicably provided each of the insiders with a covenant not to sue that effectively relieved them of liability without any consideration whatsoever. This is highly unusual and irregular, to say the least.

To fully understand the underlying transaction, the relationship with the insiders, the diligence performed and other relevant information so that the Judgment Creditors can fully evaluate the Proof of Claim submitted by the Agent and syndicate banks, the Judgment Creditors served their Request seeking, among other things, the Loan File, the Collateral File, and the minutes of the Agent. The Court is asked to overrule the Agent's boilerplate objections and compel the Agent to comply with the discovery requests, all of which are narrowly tailored to evaluating the Proof of Claim that was submitted on behalf of the banks.

ARGUMENT

The Judgment Creditors comprise the largest unsecured claim in the Assignment Cases, with their claims expected to total 75% percent or more of the claims, assuming the Agent's claims are not deemed invalid, unenforceable, and subject to setoff. Much more if the Agent's claims are disallowed. The Judgment Creditors successfully opposed the Agent's attempt to obtain a lien on cash collateral and continues to seek to investigate the claims of the Agent by reviewing the loan and collateral files of the Agent. The Agent has no right or entitlement to any litigation proceeds including, without limitation, any proceeds resulting from litigation of any directors' and officers' or fraudulent conveyance claims. Further, the Agents' lien does not attach to commercial tort claims under the UCC or related documents because the lenders did not, in the security agreement, specifically identify the commercial tort claim.

Separately, the Agent appears to have acted in concert with the Judgment Debtors to impair claims against insiders by signing a covenant not to sue in November of 2016 – after the initial judgment was rendered and while LSI was in default on the Loan. Thus, the Agent may not strong-arm additional funds from the Assignment Cases under an involuntary lien on cash collateral. And accordingly, the Judgment Creditors have a right to determine whether an objection to the Agent’s proof of claim is appropriate. Although these facts are evident, the requested documents will enable the Judgment Creditors to further analyze the issue including the negotiations and discussions surrounding the unusual covenant not to sue provided to the LSI insiders while LSI was in default of the Loan.

Instead of complying with the tailored discovery requests, the Judgment Creditors have been on the receiving end of the Agent’s heavy-handed efforts. The Judgment Creditors served targeted discovery requests to establish the nature of the Agent’s claim and determine the circumstances surrounding the alleged debt, which enabled the insiders to pay dividends to themselves of over \$100 million dollars in the midst of litigation with the Judgment Creditors and while LSI was experiencing significant cash flow issues and a decline in revenues. The underwriting of the Loan and the circumstances surrounding the negotiations with the insiders is important evidence to evaluate the validity of the Proof of Claim including whether there are legal or equitable defenses to the same.

Notwithstanding the broad right to discovery—particularly post-judgment—the Agent is objecting to producing the vast majority of the information sought by asserting boilerplate objections. Even after a meet-and-confer, the Agent has refused to produce the loan file, collateral

file, minutes of the respective committees, and much of the other requested documents and information.

I. Discovery Standard.

In Florida, “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter...” Fla. R. Civ. P. 1.280(b)(1). Relevancy is understood broadly, and discovery is permitted into any matter reasonably related to any actual or potential issue in the case. Because the discovery at issue here is relevant and within the scope of permissible, there is no basis for the Agent to deny the requested discovery.

II. The Agent’s Boilerplate Objections Cannot Bar Discovery of Relevant Evidence.

The Agent asserts a slew of boilerplate objections, none of which are sufficient to prevent the requested discovery. In Florida, “the burden of proving the validity of objections is upon the objecting party.” *Carson v. Ft. Lauderdale*, 173 So. 2d 743, 744 (Fla. 2d DCA 1965). A “blanket objection” to a discovery request is improper. *Twaddell v. Twaddell*, 199 So. 2d 501 (Fla. 4th DCA 1967). A boilerplate “general objection” to a discovery request which references burdensomeness, relevance, and privilege in a conclusory fashion constitutes an inadequate objection. *Athridge v. Aetna Cas. and Sur. Co.*, 184 F.R.D. 181, 190-91 (D.D.C. 1998), *St. Paul Reinsurance Co., Ltd. v. Commercial Financial Corp.*, 198 F.R.D. 508 (N.D. Iowa 2000), and *Josephs v. Harris Corp.*, 677 F. 2d 985, 992 (3d Cir. 1982). When a party asserts an objection to a discovery demand and then

proceeds to answer same “subject to” or “without waiving” its objection thereto, the objection is a nullity. *Thermoset Corp. v. Building Materials Corp. of America*, 2014 WL 6473232 (S.D. Fla. Nov. 18, 2014). That is particularly true where, as here, the Agent has excised from each category many responsive materials, producing only the Loan Documents and any perfecting documents.

The Agent’s non-specific objections are set forth below verbatim, along with the Judgement Creditors’ analysis of the patent invalidity of the objection.

(1) The General Objections Should Be Overruled.

A. The Agent objects to the Request as premature and/or not permissible under applicable law. First, pursuant to Florida Statute 727.108(a), only the Assignee may “conduct discovery as provided under the Florida Rules of Civil Procedure” and such discovery is for purposes of determining whether to prosecute the estate’s claims and causes of action. Additionally, while a party in interest may engage in discovery pursuant to the Florida Rules of Civil Procedure after filing an objection to a proof of claim pursuant to Florida Statute 727.113(1) and (5), no such claim objection has been filed by the Movants. Accordingly, the Request should be denied on this basis alone, as the Movants lack standing to request discovery from the Agent at this point in time in the Assignment Cases.

Judgment Creditors’ Response: The Agent makes self-contradictory and meaningless objections, first arguing that only the Assignee can engage in discovery, and next arguing that a party in interest may do so, but contends that it may only do so after filing an objection to a proof of claim. But the Agent conflates subsection (1) of Section 727.113(1) (which allows a party to object) with subsection (5) (which provides for discovery). Although subsection (5) notes that the Florida Rules of Civil Procedure applies to objections to claims, it does not state that *only* an objecting party may obtain discovery. On the contrary, the Agent’s position turns the burden of proof and the purpose of taking discovery on its head. According to the Agent, a party in interest must first object before it has an opportunity to seek evidence. But the discovery here is aimed at

determining if an objection is proper; it makes no intuitive sense to file an objection that, by example, may otherwise prove to be unsupported if discovery were permitted.

The more reasoned approach is for a real party in interest—which the Judgment Creditors undeniably are—to conduct discovery to determine whether they have a good faith basis for objection, not simply file an objection without having reviewed the relevant information. There is no prohibition in Fla. Sec.727, *et al.* for a real party interest from conducting discovery to determine whether it has a basis for the objection; notably, other than the statutory reference, the Agent cites no authority for its position.

Further, given the ABC Proceeding was modeled after the bankruptcy rules, under the bankruptcy code, Rule 2004 examinations are broad-based “fishing expeditions” used against “any entity” to find out about potential assets and claims, including claims of creditors. This broad stance comports with the text of the statute and public policy. As this Court is aware, discovery itself is broad and liberally provided. The specific requests highlight the fact that the Judgment Creditors served narrowly tailored discovery in an effort to ferret out the Agent’s Proof of Claim and to determine whether they should properly object to the same. Allowing discovery will also conserve judicial resources and time in not having to address an objection that is not fully vetted.

B. Privileged Documents — Insofar as the Request purports to require production of materials that are protected under the attorney-client privilege, Florida Evidence Code Section 90.408, the joint defense and common interest privileges and/or subject to any other applicable privileges or constitute work product or were prepared in anticipation of litigation, the Agent will not produce such materials. To the extent that any such protected documents are produced inadvertently by the Agent in response to the Request, the production of such documents shall not constitute a waiver of the Agent’s right to assert the applicability of any privilege, protection, or immunity to the information or documents, and any such information or documents shall be

returned to counsel for the Agent upon Movants and/or the Agent's discovery thereof.

Judgment Creditors' Response: Again, a general objection is insufficient to create a bar to discovery or secure the protection of a privilege. If there are privileged documents, the Agent is required to identify them on a privilege log, which it has failed to do. Objecting generally does not preserve the objection. Fla. R. Civ. P. 1.280(6) ("When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection."). Here, the Agent has failed to provide a privilege log, but includes this general objection and, in each specific request, likewise objects based on privilege, but has failed to provide a privilege log so that the Judgment Creditors can determine whether the privilege is validly asserted.

C. Proprietary/Confidential Information — Insofar as materials sought to be produced constitute, contain, or their production would result in disclosure of (i) information that would violate the privacy rights of individuals, (ii) trade secrets of the Agent, or third parties or (iii) other confidential research, development or commercial information of the Agent, or third parties, the Agent objects to the production of such proprietary or confidential information. To the extent that the Agent responds to the Request by stating that it will provide information which it deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure, the Agent will do so only in accordance with an appropriate confidentiality order.

Judgment Creditors' Response: The Agent has not identified any document or information that falls within this category, or that is otherwise entitled to any trade secret or

proprietary protection. Further, the documents sought are not proprietary or trade secret in any way. Rather, the documents sought include some of those already produced in the ABC proceedings and that they attached to their Proof of Claim. In addition, as noted above, the Judgment Creditors have sought the loan committee meeting minutes, loan file, and collateral file, by example, all of which relate specifically to LSI and/or the Judgment Debtors or their principals. The Judgment Creditors are not seeking documents directed towards anything that is unrelated to the circumstances that would enable the Judgment Creditors to assess whether they should object to the Proof of Claim at issue and/or the circumstances surrounding the Loan and the enforcement of the same, or Agent's efforts to collect proceeds relating to the unsecured creditors. Notably, the Agent fails to identify any reason or rationale as to why any of these materials would be protected by a trade secret or are otherwise proprietary. On the contrary, these documents are specific to this transaction, not to the business performance overall. To the extent that the Agent truly believed anything was proprietary, a protective order could assuage that concern, although, again, there is nothing protected about the information sought by the Judgment Creditors. This is a blanket objection that must be overruled.

D. Electronically Stored Information — Insofar as the Request purports to require the Agent to produce electronically stored information (“ESI”) that is not reasonably accessible because of undue burden or cost, the Agent will not produce such ESI. To the extent reasonably accessible ESI responsive to the Request exists, the Agent will not produce any such ESI until the Movants and the Agent mutually agree to a protocol for retrieval and production of ESI, including, but not limited to, procedures for identification of requested and discoverable ESI, procedures for loading and delivering media, and provisions appropriate for cost reimbursement. Given the broad and often non-specific nature of the Request and the vast amount of the Agent's ESI possibly subject to the Request, it is not reasonably possible to process the Request as-is for ESI.

Judgment Creditors' Response: Here, the Agent has not identified any ESI that is not “reasonably accessible because of undue burden or cost” and, accordingly, the general objection must be overruled. Not only has the Agent failed to demonstrate the veracity of this boilerplate objection, this generic objection is insufficient to overcome the requirement to produce ESI. Indeed, because this is information that is only accessible through the Agent, as no other party or non-party would have access to these documents, i.e., meeting minutes, loan and collateral files. The prejudice to the Judgment Creditors far outweighs any burden on the Agent. For this reason, there can be no legitimate basis to bar the narrowly tailored information solely within the purview of the Agent. Demonstrating that the Agent has no intention of actually producing any records beyond the Loan Documents, the Agent has not even provided a draft ESI protocol or even proposed search terms that it would like the Judgment Creditors to consider. This objection too should be overruled.

E. Privilege Log — The Agent objects to the provision of a privilege log for privileged communications, correspondence and/or documents and ESI that occurred or were prepared after the commencement of the Assignment Cases.

Judgment Creditors' Response: As noted above, if there are privileged documents, the Agent is required to identify them on a privilege log, which it has failed to do. Objecting generally does not preserve the objection as a privilege log is required. *See* FLA. R. CIV. P. 1.280(b)(6); *American Funding, Ltd. v. Hill*, 402 So. 2d 1369 (Fla. 1st DCA 1981). And the blanket objection relating to the timeframe is likewise insufficient to establish the privilege, if any, would even apply.

F. The Agent further objects to the Request as unduly burdensome and harassing to the extent they do not provide the Agent with reasonable time for compliance. Furthermore, the material Loan Documents together with the supporting perfection documents in support of its Proof of Claim are publicly

available to all parties in interest. Indeed, copies of the Proof of Claim as well as an affidavit of Bruce Shilcutt, Executive Vice President of Texas Capital Bank, N.A., were filed on the docket of the Court in the Assignment Cases on June 25, 2019. Specifically, attached to Mr. Shilcutt's affidavit, the Agent affixed copies of the Loan Documents and perfection documents. These documents (over seven hundred pages in total) were directly served via email on opposing counsel through its paralegal on June 25, 2019. Consistent with Florida Rule of Civil Procedure 1.350(b), the Agent will produce responsive, non-privileged, non-objectionable documents, if any exist and are within the Agent's possession, custody, or control, as they are kept in the ordinary course of business or, with respect to electronically stored information, in a reasonably usable format and based on reasonable search terms and custodian parameters.

Judgment Creditors' Response: The Judgment Creditors are not limited in their discovery to the "Loan Documents and perfection documents." On the contrary, they are entitled to any information that will enable them to fully evaluate the veracity and entitlement to the amounts sought in the Agent's Proof of Claim. The documents needed are outlined in the Request for Production. The Judgment Creditors are not required to "take the Agent's word for it," as the available information thus far suggests that there is no entitlement to any portion of the unsecured proceeds or any litigation proceeds. In an effort to fully evaluate whether an objection should be filed and if so, the contours of the same, the Judgment Creditors seek an opportunity to review relevant material information to ensure that their objection is well placed. This is something that the Agent should want as well. There is nothing overbroad or unduly burdensome about the requests, which are narrowly tailored to the information related to LSI, the Judgment Debtors, and the principals of LSI that were found to have acted illegally in the Bailey Litigation.

(2) The Remaining Boilerplate General Objections Should Likewise be Overruled.

The law in Florida is clear: there is no place for boilerplate objections. See Fla. R. Civ. P. 1.350(b) ("[T]he reasons for the objection shall be stated."). The additional garden

variety objections asserted by the Agent should be summarily overruled as well. The Federal Rules provide that any objection that is not specific to the request is otherwise waived.³ Florida courts frequently look to the interpretation of the Federal Rules when interpreting its own rules.⁴ As shown below, the general objections copied below are without merit.

G. The Agent further objects to each Instruction, Definition, and Request to the extent that it imposes obligations different than the requirements set forth in the Florida Rules of Civil Procedure or any applicable local rule.

H. The Agent further objects to each Instruction, Definition, and Request to the extent that it seeks information beyond the scope of discovery allowed pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure.

I. The Agent further objects to each Instruction, Definition, and Request to the extent that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

J. The Agent further objects to each Instruction, Definition, and Request to the extent that it is vague and ambiguous and requires the Agent to speculate as to what documents are being requested.

K. The Agent further objects to conducting unreasonable and/or unduly burdensome searches for documents. To the extent that the Movants demand a search that is unreasonable or unduly burdensome, the Agent reserves the right to make application to the Court to shift the costs of such search to Movants.

³ See Memorandum Opinion and Order Regarding the Court's Order to Show Cause Why Counsel for Both Parties Should Not be Sanctioned for Discovery Abuses rendered March 13, 2017, *Liguria Foods, Inc. v. Griffith Laboratories, Inc.*, Case No. C 14-3041-MWB, United States District Court Northern District of Iowa; see also Opinion & Order rendered February 28, 2017, *Fischer v. Forrest, et al.*, Case No. 14 Civ. 1304, United States District Court Southern District of New York.

⁴ *TGI Ins. Corp. v. Am. v. Johnson*, 799 So. 2d 339, 341–42 (Fla. 4th DCA 2001).

L. The Agent further objects to each Instruction, Definition, and Request to the extent that the time period covered is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

M. The Agent further objects to each Instruction, Definition, and Request to the extent that it seeks information or documents that (1) are not within the Agent's possession, custody, or control, or (2) are within the Agent's possession, custody, or control, but are more appropriately sought from third parties, including Soneet Kapila, the Assignee, or are publicly available. In addition, the Agent objects to the Request to the extent it seeks documents that already have been provided to Movants pursuant to any pleading filed in the above-captioned proceedings, action, or any subpoena and/or document request issued by Movants to another party.

N. The Agent further objects to each Instruction, Definition, and Request to the extent that it seeks information or documents located outside of the United States. To the extent that Movants seek information or documents in the possession, custody or control of foreign entities or affiliates located outside of the United States, Movants must effect service of a Request or subpoena, as applicable, on such entities in accordance with applicable law, including but not limited to Florida Statute § 48.194.

O. The Agent further objects to each Instruction, Definition, and Request to the extent that it is argumentative and contains any explicit or implicit characterizations or mischaracterizations of facts, events, circumstances, issues, legal standards, or burdens of proof. Any response by the Agent contained herein does not indicate that the Agent agrees with any argument or explicit or implicit characterizations or mischaracterizations of facts, events, circumstances, issues, legal standards, or burdens of proof in the Request, or that such implications or characterizations or mischaracterizations are relevant to the Assignment Cases.

P. The Agent further objects to each Instruction, Definition, and Request to the extent that it is inconsistent with or barred by any order entered by the Court in the Assignment Cases.

Q. The Agent's responses to the Request are made to the best of its current present knowledge, information, and belief based upon reasonable investigation and inquiry. The responses are at all times subject to such additional or different information that discovery or further investigation may disclose, and are subject to such refreshing of recollection and such additional knowledge of facts as may result from further discovery or investigation. The Agent reserves the right to make any use of, or to introduce at any hearing and

at trial, information and documents responsive to the Request but discovered subsequent to the date of this response, including without limitation any such information or documents obtained in discovery herein.

R. A response to a production request herein stating that responsive documents or things will be produced should not be understood as confirmation that any such documents exist. Such a response merely indicates the Agent's willingness to produce such documents and things if they exist and are within the Agent's possession, custody, or control.

Judgment Creditors' Response: For each of the above objections, they are impermissible under the rules. The Agent is required to identify with specificity any objection that they have with each request; the Agent cannot hide behind generalized or blanket objections. Nor can they respond to a request that documents will be produced, and later claim none exist. If none exist, the Agent is required to so identify in their response so that the Judgment Creditors do not spend time and resources moving to compel if there are no responsive materials. To do otherwise requires the Judgment Creditors to engage in needless motion practice, wasting the resources of this Court and the parties. Each of the above general objections should be overruled as they are contrary to well-established Florida law including that cited herein.

As for generic objections claiming the requests are unduly burdensome and oppressive, the Agent does not provide any specific information on how or why the discovery is unduly burdensome and oppressive. *See Carson*, 173 So. 2d at 744-5 (noting that objections must be "sufficiently specific" and thus "general objections" that the discovery is "unreasonably burdensome, oppressive and vexatious, or that they seek information which is easily available to the interrogating party as to the objecting party, or that they would cause annoyance, expense, and oppression to the objecting party without serving any relevant purpose to the issue, are insufficient."); *see also Christie v. Hixson*, 358 So. 2d 859, 860 (Fla. 4th DCA 1978) (reversing

trial court for “sustaining objections to interrogatories ... as the objections were non-specific and insufficient”). The objections should be overruled and the Agent required to produce responsive information.

III. The Agent has No Basis to Object to Discovery Relating to the Underlying Loan Transaction or Relationship Between the Agents and LSI, the Judgment Debtors, and/or the Principals of the same.

The Agent has refused to produce documents other than the underlying Loan Documents and documents “perfecting” the same. In short, the Agent has refused to produce any documents or information underlying the negotiations for the Loan, what concessions were made upon default, what the intent and purpose of the covenant not to sue is given that the Agent is taking the position that it does not bar the Agent from participating in the unsecured recovery or any other information that would allow the Judgment Creditors to evaluate what factual, legal and equitable objections exist to the Proof of Claim.

Information is discoverable “where materials sought by a party ‘would appear to be relevant to the subject matter of the pending action,’ the information is fully discoverable.” *Bd. of Trs. of the Internal Improvement Trust Fund v. Am. Educ. Enters., LLC*, 99 So.3d 450, 458 (Fla.2012) (citations omitted). “The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial.” *Id.*⁵ The Requests of the

⁵ This even extends to financial information. *Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1263 (Fla. 4th DCA 2013):

A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party....A trial court has broad discretion in controlling discovery

Judgment Creditors are relevant and were tailored to gather information to allow the Judgment Creditors to evaluate the Proof of Claim. This notwithstanding, the Agent made the following blanket objection to the Requests, which were carbon copies other than changing the terms that it claimed were undefined, which changed depending on the terms used in the Request:

RESPONSE:

- *Objection.* This request seeks confidential information that will not be produced absent an appropriate confidentiality order.
- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and the term “loan files” is not a defined term.
- *Objection.* This request seeks documents that may be protected by the attorney-client privilege, common-interest privilege, and/or work product doctrine and the Agent objects to the production of a privilege log as unduly burdensome given the scope of the documents requested.
- Subject to and without waiving its General and Specific Objections above, the Agent is willing to work with the Movants in a good faith effort to resolve the Agent’s

and in balancing...the right to privacy and the right to know...The trial court's discretion in this regard is not limited by specific rules or formulas.

Id. (internal citations omitted). As the Court in *Elsner* also noted, “The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial.” *Id.* To prevent the discovery of this information, the objection party must meet the heavy burden to demonstrate that the “financial information is irrelevant to any issue in the litigation and not likely to lead to the discovery of admissible evidence.” *Id.* (“Where the petitioner fails to clearly establish that the financial information is wholly irrelevant to any issue in the litigation, certiorari is inappropriate.”).

objections to this request, establish a reasonable ESI protocol, and to produce any relevant, responsive, non-privileged documents.

The above identical objections—the only changes being the terms in each Request that were deemed vague changed-- were made to each of the following Requests identified below.

1. Your loan files relating to the Debtors.
2. Your collateral files relating to the Debtors.
3. Your loan files relating to the Loan.⁶
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.⁷

⁶ Certain requests also contained the following:

- Subject to and without waiving its General and Specific Objections above, the Agent is willing to work with the Movants in a good faith effort to resolve the Agent's objections to this request, establish a reasonable ESI protocol, and to produce any relevant, responsive, non-privileged documents.

But the Agent has nonetheless taken the position that the Judgment Creditors are only entitled to the Loan Documents and the documents perfecting the loan.

⁷ This response includes the following:

- *Objection.* This request seeks confidential information that will not be produced absent an appropriate confidentiality order.

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

8. All Documents Concerning the perfection of liens created by the Loan Documents (as the term “Loan Documents” [is] defined within the Loan).⁹

-
- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and the terms “agency,” “trust,” “syndication,” “inter-creditor,” and “agreements” are not defined terms.

⁸ This response includes the following generic objection:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and the term “deposit account control agreements” is not a defined term.

⁹ As with the others, the Agent merely changes the word that allegedly is not defined. Ironically, the Agent objects to the phrase of “perfection of liens” but itself uses the perfection language in its General Objections:

- *Objection.* This request seeks information that can be accessed on the docket of the Court in the Assignment Cases.
- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “perfection of liens” is not a defined term.

9. All Documents Concerning unencumbered assets of the Debtors or assets not subject to valid, perfected liens.¹⁰

10. All Documents and Communications Concerning the Loan among, within, or between the Lenders.¹¹

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.

¹⁰ Again, consistent with each of the other copycat objections, this response includes the following:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “unencumbered,” “assets,” and “valid, perfected liens” are not defined terms.

The speciousness of the objections is best illustrated by the Agent’s claim that basic banking and lending terms or unknown or vague including “assets,” “valid and perfected liens” and “unencumbered.” These are terms that banks use in virtually every transaction are indeed included in the Agent’s Loan Documents. As such, the Agent can hardly argue that these terms are vague.

¹¹ This response contains the following baseless objection:

- *Objection.* This request is overbroad because it is not limited to any specific time frame.

They raised this same objection in connection with several Requests that followed this one as well. But the Loan and the Lenders are defined terms in the Requests and, thus, by definition has an implicit time period, to wit: the period of time in which the Loan was being negotiated and executed as any amendments thereto. That time-period appears to be between 2015 and 2019, prior to the filing of this action. The objection is circular and illustrates that the Agent is playing discovery games. There is nothing overbroad about this Request as it is narrowly tailored to the specific Loan.

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.¹²

14. 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.

15. 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.¹³

¹² As with the others, the Agent questions the following terms suggesting that they are vague:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “title opinion,” “original title opinions,” “division order title opinions,” “supplemental title opinions,” “lending title opinions,” and “acquisition title opinions” are not defined terms.

When the parties met and conferred, however, the Agent’s position and continued refusal to produce the responsive information was not tied to any real objection or concern about terms used above, but rather, its position that it was not producing any of this information, period. The Agent had no desire to produce the information or to engage in a meaningful meet and confer, which the undersigned and Ken Mather participated in after the Response was filed in 2019. The Agent raised the same objection to the Request that followed.

¹³ As the Agent consistently does, it consistently objects to words that have common usage:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “capacity,” “authority,” “person,” “act,” and “agent” are not defined terms.

16. All Document[s] evidencing an opinion on the validity or enforceability of the Loan, Loan Documents, or any portion thereof.

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

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

19. All Documents and Communications concerning any default or waiver of any default under the Loan Documents.

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

21. All Suspicious Activity Reports relating to the Loan.

22. All minutes of any meeting relating to the Loan.¹⁴

23. 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.

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

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

¹⁴ The Agent makes the following additional objection here, which the Judgement Creditors want the Court to note seems beyond cavil, an Agent on a \$120 million facility who supposedly cannot understand the word “meeting”:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “meeting” is not a defined term.

26. 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.

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

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

29. 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.

30. 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.

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

32. 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.

33. All Documents and Communications Concerning the use of the proceeds of the Loan.¹⁵

Judgment Creditors' Response: While the Agent claimed that it would be producing responsive documents, in truth the only documents that were produced were the Loan Documents themselves and the “perfecting” documents. The Agent withheld, based on these boilerplate copycat objections, the Loan File, the Collateral File, and the meeting minutes, among other requested materials. The Agent did not produce any minutes or notes, or any communications whatsoever including emails; it failed to produce any diligence that was performed, nor did it produce the loan file. The Judgment Creditors have a direct and specific interest in this information if they are going to properly analyze the entitlement to any unsecured proceeds. Indeed, some would argue that it is this Loan—which the Agents issued for the sole purpose of allowing certain interest holders to cash out of LSI to the tune of \$120 million dollars—was the straw that broke the proverbial camel’s back resulting in the demise of this once flourishing company. The Judgment Creditors are entitled to understand whether this conduct, standing alone, provides an equitable basis (in addition to other bases) to object to the Proof of Claim filed by the Agents. This point was made clear to counsel for the Agent both before and during the meet and

¹⁵ The Agent claims not to know or understand the terms “use” or “proceeds,” again evidencing the lack of good faith in responding to discovery as these terms have customary usage in the English language that are not exceptionable:

- *Objection.* This request is overbroad and vague because it is not limited to any specific time frame and “use” and “proceeds” are not defined terms.

confer, but it has nonetheless interposed a myriad of objections that, frankly, have no basis in law or fact.

As can be seen from the specific requests, they are narrowly tailored to information that is necessary for the Judgment Creditors to evaluate the Agents' Claim and the Debtors' potential assets. The goal of discovery is to prevent surprise, allow for a full and fair trial, and ensure that relevant information is produced. *Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1118 (Fla. 2014). Thus, gamesmanship to prevent the Judgment Creditors from obtaining information violates the letter and spirit of the ABC statutes. In this case, not only has the Agent removed significant cash and security premised on an old secured claim, he simultaneously claimed additional new rights to new cash collateral (including litigation proceeds). The Agent has no legal right to that new collateral under the Loan Documents, which did not identify litigation proceeds from particular claims as collateral. The Agent's covenant-not-to-sue with LSI and its insiders deserves to be investigated. The Agent has no valid claim unless he can participate in the ABC process fairly and explain his interactions with insiders. The Agent can have its claim subordinated for inequitable conduct. With knowledge of the dealings with insiders, the Agent should not be permitted to refuse to produce the loan file, collateral file, and minutes of meetings relating to the Loan.

CERTIFICATE OF COMPLIANCE

Counsel for the Judgment Creditors conducted a meet and confer with counsel for the Agent after its responses and objections were served. The Agent was unwilling to alter or otherwise change its position regarding any of the Requests.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2020, the foregoing was electronically filed with the Florida Courts E-Filing Portal, which will serve it via electronic mail to counsel of record.

Respectfully submitted,

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