

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

In re:

Laser Spine Institute, LLC ¹	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.

**ASSIGNEE'S MOTION TO ABANDON CERTAIN COLLATERAL OF TEXAS
CAPITAL BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

¹ On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

Soneet Kapila, as assignee (“**Assignee**”) for the entities listed in footnote one above, by and through his undersigned attorneys, pursuant to Fla. Stat. §§ 727.108(11) and 727.114, files this motion seeking the entry of an order abandoning the collateral of secured creditor Texas Capital Bank, N.A., as Administrative Agent (“**TCB**” or “**Agent**”) on behalf of the lender group (“**Lenders**”), after deducting an agreed-upon surcharge. In support of this motion (the “**Motion**”), the Assignee states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Motion, and venue is appropriate in this Court pursuant to Fla. Stat. § 727.102, because the Petition for the Assignment for the Benefit of Creditors (the “**Assignment**”) was filed with this Court. The statutory predicates for the relief requested herein are Fla. Stat. §§ 727.114 and 727.108(11).

Background

2. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the “**LSI Assignment Case**”).

3. Also on March 14, 2019, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC;

Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (each, an “**Assignor**” and collectively with LSI, the “**Assignors**”).

4. By accepting the Assignment, the Assignee undertook the statutory duties set forth in Fla. Stat. § 727.108.

5. The Agent asserts perfected liens on substantially all personal property of the Assignors (the “**Collateral**”), including but not limited to accounts receivable and any proceeds generated from accounts receivable, under a Credit Agreement (or any related documents or agreements) dated as of July 2, 2015 by and between certain of the Assignors, as borrowers and/or guarantors, and TCB, as lender (as amended, the “**Credit Agreement**”).² Pursuant to the Credit Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time (the “**Loan Documents**”), the Lenders and the Agent provided revolving and term loan credit and other financial accommodations to, and issued letters of credit for the account of, the Assignors as Borrowers pursuant to the Loan Documents (the “**Loan Facility**”).

6. In its Proof of Claim,³ TCB asserted that the amount of the “Loans” outstanding under the Loan Facility totaled \$154,984,093.95. This amount has been reduced by distributions and other recoveries made during the case as the Assignee has sold, disposed of, abandoned, or collected items of Collateral.

² Capitalized terms not otherwise defined herein maintain the same meanings ascribed to them in the Credit Agreement.

³ TCB filed its Proof of Claim (the “**Lenders’ Claim**”) with the Court along with an Affidavit of Bruce Shilcutt Authenticating Business Records, on June 24, 2019.

7. The Assignee's efforts to liquidate the Collateral are now substantially complete. The Assignee has also settled certain litigation claims. In addition to the relatively minor remaining items of Collateral, the Assignee is administering additional litigation claims. The litigation claims, and the proceeds of the settled litigation claims along with insurance refunds and proceeds from the business interruption claim, are unencumbered.

8. The proceeds from the collection and disposition of Collateral, together with cash in the Assignors' accounts at the time of the Assignment, have been used to fund some, but not all, of the Assignee's costs of accomplishing the liquidation. A substantial amount has also gone to reduce the Lenders' claims.

9. The Assignee and TCB have spent significant time in reviewing and then categorizing the expenditures of the Assignment Estates into:

- A. those that directly benefited the Lenders (the "**Lender Related Expenses**");
- B. those that overlap between expenses that benefit the Lenders and also confer general benefit to the Assignment Estates and the creditor body as a whole, which would otherwise be afforded priority as "[e]xpenses incurred during the administration of the estate," *see* Fla. Stat. § 727.114(1)(b) (the "**Overlap Expenses**");⁴
- C. those that relate solely to pursuing the unencumbered litigation claims that benefit all unsecured creditors, including the Lenders' deficiency claim ("**Non-Surcharge Expenses**").

10. The Assignee and TCB have agreed that the Collateral shall be surcharged by the amount of \$995,007 (the "**Surcharge Claim**"), comprised of the following:

⁴ Examples of Overlap Expenses include claims administration, tax issues, services related to the wind-down of the Assignors' 401K plan and other employee benefits, expenses related to wind-down of the Assignors' operations, payment of critical employee wages, management, retention and maintenance of the Assignors' information technology systems, preservation of patient records including electronic health and medical records, and responding to records requests. Additionally, Overlap Expenses include professional fees incurred by attorneys and accountants employed by the Assignee. Such professionals' invoices invariably include services provided that directly benefit the Lenders, but also services rendered for the general benefit of the Assignment Estates and general unsecured creditors,

- i. \$745,007 for the Assignee and his professionals' fees due, including actual fees incurred through May 31, 2020, and estimated amounts for June and July 2020; and
- ii. \$250,000 in estimated trailing costs for Lender Related Expenses⁵.

Abandonment of Lenders' Remaining Collateral

11. The remaining items of Collateral are summarized as follows:
 - i. Cash estimated to be \$312,916, after payment of the Surcharge Claim;
 - ii. Accounts receivable; and
 - iii. Intangible assets that include patents, trademarks and domain names.

12. Fla. Stat. § 727.108(11) provides that an assignee has a duty to “abandon assets to duly perfected secured or lien creditors where, after due investigation, he or she determines that the estate has no equity in such assets or such assets are burdensome to the estate or are of inconsequential value and benefit to the estate.”

13. On May 24, 2019, with the support of the Lenders, the Assignee sought to obtain Court approval of a cash collateral arrangement between the Assignee and TCB by filing a *Motion for Entry of an Order Pursuant to Fla. Stat. § 727.109(15): (I) Authorizing the Use of Cash Collateral; (II) Providing Adequate Protection to Lenders; (III) Establishing a Lien Challenge Deadline; and (IV) Granting Related Relief* (the “**Cash Collateral Motion**”).

such as those related to identifying and pursuing sources of recovery, particularly litigation claims, that will benefit all creditors, not just the Lenders.

⁵ The estimated trailing costs for Lender Related Expenses include expenses incurred in March and April pending final invoices from vendors (e.g. NextGen, Cyxtera, IT connectivity), TCB bank fees for as long as the accounts remain open (approx. \$4k per month) and Accordias fixed fees (\$20K per month for 4 months) and any other contingency costs associated with Lender Related Expenses. This represents purely an estimate and will depend on the final invoices a vendor may submit.

14. In the Cash Collateral Motion, the Assignee sought Court approval of an arrangement whereby the Assignee would use the liquid portion of the Collateral to fund expenses of liquidating the Collateral and of administering the Assignment Estates. The Assignee and TCB have always recognized that the Lender Related Costs would be borne by the Lenders and would be subject to surcharge to the extent not paid. They also recognized that the Assignee was required to comply with other mandatory duties of administering the Assignment Cases in order to complete the liquidation of the Collateral. See Fla. Stat. 727.108. (E.g., “The assignee shall collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale, including, but not limited to, prosecuting any tort claims or causes of action that were previously held by the assignor.”).

15. In the Cash Collateral Motion, the Assignee also proposed to grant to the Lenders additional replacement liens on the unencumbered assets of the Assignment Estates—primarily litigation claims—to secure repayment of the portion of the cash collateral used to fund Overlap Expenses or Non-Surcharge Expenses that benefitted the Lenders only in their capacity as unsecured creditors.

16. At the hearing on the Cash Collateral Motion, counsel for the Assignee and for TCB argued in support, and the Court took the matter under advisement.

17. On September 23, 2019, the Court entered an Order denying the Cash Collateral Motion, without prejudice, as having been filed prematurely. The Court’s primary concern was that the Cash Collateral Motion did not illustrate or establish which expenses incurred by the Assignee constitute general administrative expenses. Until the Assignee could establish that cash collateral was used to fund general administrative expenses, the Court would not permit a lien on litigation recoveries to secure repayment of that cash collateral. The Court was also concerned

that the request to fix a deadline to object to the Lenders' Claim was premature, as the Assignee had not yet completed his investigation of the Lenders' Claim.

18. At the time the Assignee filed the Cash Collateral Motion, the Assignee and TCB had not reached an agreement on the allocation of expenses among the Overlap Expenses. Put differently, they had not agreed on how Overlap Expenses would fall into each "bucket." The Assignee's intent in filing the Cash Collateral Motion without such agreement in place was to defer that issue to a later date, when the universe of such expenses was known with greater certainty, with all parties reserving their rights to object to such allocation.

19. The Assignee and his advisors and TCB and its advisors have spent significant time in reviewing the expenses, which are now largely historical. In fact, once this abandonment motion is granted, the only ongoing expenses will be to maintain the Assignment Estates and pursue the litigation and causes of action.

20. After payment of the Surcharge Claim pursuant to this Motion, the Lenders' remaining Collateral consists of the following assets of the Assignors: (i) uncollected accounts receivable, (2) intangible assets, and (3) cash remaining after payment of the Surcharge Claim, estimated to be \$312,916 (the "**Remaining Collateral**").

21. After due investigation, the Assignee has concluded that the Assignment Estates have no equity in the Remaining Collateral. Therefore, the Assignee moves to abandon the Remaining Collateral for the benefit of the Lenders, after paying the Surcharge Claim.

WHEREFORE, the Assignee respectfully requests that this Court enter an order (i) granting this Motion, (ii) authorizing that the Surcharge Claim be paid from the Lenders' cash collateral, (iii)

abandoning the Remaining Collateral after payment of the Surcharge Claim, (iv) retaining jurisdiction to enforce any order on this Motion, and (v) granting such other and further relief as is just and proper.

Dated: July 10, 2020

/s/ Edward J. Peterson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Assignee's Motion to Abandon Certain Collateral of Texas Capital Bank, N.A. as Administrative Agent for Lender Group* has been furnished on this 10th day of July, 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/ Edward J. Peterson
Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

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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
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