

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.

**NOTICE OF FILING DECLARATION OF SONEET KAPILA
IN SUPPORT OF ASSIGNEE'S MOTION FOR ORDER
AUTHORIZING COMPROMISE OF CONTROVERSY WITH
TEXAS CAPITAL BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

Assignee, Soneet Kapila, by and through his undersigned counsel, hereby gives notice of filing the attached Declaration in Support of Assignee's Motion for Order Authorizing

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.

Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group.

Dated: September 29, 2020

/s/ Edward J. Peterson

Edward J. Peterson (FBN 0014612)
Stichter, Riedel, Blain & Postler, P.A.
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Tampa, Florida 33602
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Email: epeterson@srbp.com
Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Notice has been furnished on this 29th day of September, 2020, by the Court's electronic noticing system to all parties receiving electronic service.

/s/ Edward J. Peterson

Edward J. Peterson

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
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In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
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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.

**DECLARATION OF SONEET KAPILA IN SUPPORT OF ASSIGNEE'S MOTION
FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY WITH
TEXAS CAPITAL BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

I, Soneet Kapila, hereby declare under penalty of perjury the following:

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.

1. My name is Soneet Kapila (the “Assignee”), I am over the age of 18, *sui juris*, and have personal knowledge of the facts and matters set forth in this declaration and, in this case. I submit this declaration in support of the Motion for Order Authorizing Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group.

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. Simultaneous with the filing of the LSI Assignment Case, 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, the “Assignors”).

4. Texas Capital Bank, N.A., as administrative agent (the “Agent” or “TCB”) for the Lenders (as defined in the Motion) asserts properly 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”). 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 Borrowers pursuant to the Loan Documents (the “Loan Facility”).

5. According to its Proof of Claim filed with the Assignee, TCB asserts that the amount of the “Loans” outstanding under the Loan Facility totals \$154,984,093.95. This amount dwarfs the estimated value of the Lenders’ Collateral, and the Assignee expects that TCB will be left with a substantial deficiency claim. Accordingly, substantially all of the Assignors’ assets, including accounts receivable and any cash proceeds generated by accounts receivable, are fully encumbered by TCB’s liens. The only unencumbered assets of the estates created upon the commencement of the Assignment Cases (the “Assignment Estates”) appear to be litigation claims, certain vehicles, rights to insurance premium refunds, and rights to a business interruption insurance claim arising from Hurricane Irma.

6. In the early stages of the Assignment Cases, the Assignee was faced with the difficult task of securing funding for the wind-down. Because all cash and cash proceeds of accounts receivable, inventory, and disposition of any encumbered personal property constituted the Lenders’ collateral (the “Cash Collateral”), the Assignee had no unencumbered funds with which to pay critical and necessary expenses of the Assignment Estates for the securing and preservation of the assets. Thus, the Assignee discussed with TCB the ability of

the Assignee to use the Cash Collateral, with the Agent's consent, to fund the expenses of the Assignment Estates as discussed below.

7. The first category of expenses are those of the Assignment Estates that directly benefit the Lenders. For example, the Assignee was required to fund expenses related to the administration and liquidation of the Lenders' Collateral, including furniture, fixtures, and equipment located in Tampa and other remote locations, accounts receivable recoveries, and interaction with and tracking of prospects for asset sales. In addition, the Assignee was required to fund personal property taxes, rent, utilities, insurance, and storage costs. These expenses are generally those that the Assignee maintains would clearly be subject to surcharge against the Lenders' Collateral. See Fla. Stat. § 727.114(1)(a) (providing secured creditors shall receive the proceeds from the disposition of their collateral, "less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors"). This first category of expenses will be referred to as "Lender Related Expenses." The Assignee and the Agent have agreed that Lender Related Expenses will be paid by the Lender.

8. The second category of expenses are 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). This category of expenses will be referred to as "Overlap Expenses." Examples of Overlap Expenses include claims administration, tax compliance and 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, such as those related to identifying and pursuing sources of recovery, particularly litigation claims, that will benefit all creditors, not just the Lenders.

9. The Assignee and the Agent agreed that some portion of Overlap Expenses should be paid by the Lenders, but some portion of Overlap Expenses should be treated as general administrative expenses payable by the Assignment Estates from any unencumbered funds pursuant to Section 727.114(1)(b) of the Florida Statutes. However, the process of allocating such Overlap Expenses proved difficult, particularly in the early stages of these Assignment Cases when future expenses were unknown.

10. Initially, the Assignee sought to obtain Court approval of a Cash Collateral arrangement between the Assignee and the Agent 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"). In the Cash Collateral Motion, the Assignee sought Court approval of an arrangement whereby (i) the Agent would allow the Assignee to use its Cash Collateral to fund both Lender Related Expenses and Overlap Expenses; and (ii) as adequate protection for the depletion of the Agent's Cash Collateral caused by the Assignee's use of its Cash Collateral to fund Overlap Expenses, the Agent would be granted additional replacement liens on the only unencumbered assets of the Assignment

Estates—primarily litigation claims—to secure repayment of a portion of the Cash Collateral used to fund Overlap Expenses. As an additional inducement for the Agent to allow the Assignee to use its Cash Collateral to fund Overlap Expenses (effectively providing the Assignee with an interest-free loan), the Assignee also asked the Court to establish a deadline for parties to file objections to the validity of Agent’s liens.

11. On September 23, 2019, the Court entered its 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.

12. 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.

13. As the Assignment Cases progressed, the Lenders continued to fund certain Overlap Expenses with a reservation of rights to seek allowance of an administrative expense claim in the Assignment Cases for a portion of funded Overlap Expenses that benefitted the Assignment Estates as a whole. Recently, in an effort to avoid litigation over a potential

administrative expense claim asserted by the Lenders, the Assignee and the Agent have engaged in discussions in an attempt to resolve the issue of allocating the Overlap Expenses incurred from March 14, 2019 (the "Petition Date") through July 31, 2020, subject to this Court's approval.

14. This process involved allocating Overlap Expenses for each month between (a) the portion of Overlap Expenses the Lenders would assume responsibility to pay without seeking reimbursement through an administrative expense claim (the "Lenders' Portion of Overlap Expenses"), and (b) the portion of Overlap Expenses the Assignment Estates should be responsible to pay (the "Estates' Portion of Overlap Expenses"). Thus, in advancing funds to pay all Overlap Expenses, the Lenders advanced funds to pay not only the Lenders' Portion of Overlap Expenses, but also the Estates' Portion of Overlap Expenses, i.e., the latter portion of Overlap Expenses for which the parties have agreed that the Assignment Estates should otherwise bear responsibility.

15. The Assignee and the Agent have also entered into a Stipulation of Settlement (the "Stipulation"), attached hereto as Exhibit A, which acknowledges the validity and enforceability of the Agent and Lenders' liens and sets forth the agreement between the Agent and the Assignee on the amount of the administrative expense claim to be provided to the Agent on account of funded Estates' Portion of Overlap Expenses. Attached to the Stipulation is a detailed chart summarizing the allocation of expenses between the Lenders' Portion of Overlap Expenses and the Estates' Portion of Overlap Expenses.

16. As set forth in the Stipulation, the total amount of Overlap Expenses for the period from the Petition Date through July 31, 2020 equals \$1,707,691.00. Of this total amount, the parties have agreed that the Lenders' Portion of Overlap Expenses totals \$939,823.00. The Agent has

already paid the Assignment Estates the Lenders' Portion of Overlap Expenses. The parties have agreed that the amount of the Estates' Portion of Overlap Expenses totals \$767,868.00. This amount has already been funded by the Agent, and pursuant to this proposed settlement, shall serve as the benchmark for establishing the amount of the Agent's administrative expense claim.

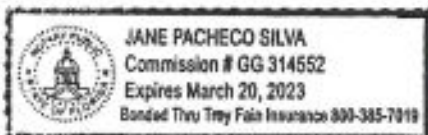
17. The allocation of the Overlap Expenses was based upon the allocation of the time entries for the professional fees for the Assignee, KapilaMukamal LLP and Stichter, Riedel, Blain & Postler, P.A. The most logical and reasonable way to allocate the Overlap Expenses between the Lenders' Portion of Overlap Expenses and the Estates' Portion of Overlap Expenses was based on the same level of allocation of the services of the professionals. The attached chart illustrates how the professional fees were allocated among various services on a month by month basis and how that corresponds to allocation of the Overlap Expenses all on a month by month basis. In my experience this was the most reasonable way to allocate the expenses, and the Agent consents to this formula. This is a reasonable and conservative way to allocate the Overlap Expenses and is in the best interest of the Assignment Estates and creditors.

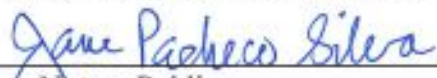

Soneet Kapila, as Assignee

STATE OF FLORIDA
COUNTY OF Broward

I HEREBY CERTIFY that on this 20th day of September, 2020, before me, a Notary Public for the state aforesaid, personally appeared Soneet Kapila who is personally known to me, who produced _____ and who did take an oath, acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.




Notary Public

My Commission Expires: 03/20/2023

Assignee and Professional Fee Allocation Analysis (Note 1)

For the Period through July 31, 2020

PERI-MARY GRANT as of September 3, 2020.

This is a preliminary draft. It has been prepared based on preliminary information and assumptions. No one may rely on this draft. It is subject to change as additional information becomes available or is clarified.

Source: Monthly Invoices for the Assignee, KapitalMukamal and Stichter, Redel, Blain & Peatler, P.A.

Description	Secured Lender Allocation %	Month												Total Fees & Expenses Through 07/31/20				
		Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20		Apr-20	May-20	Jun-20	Jul-20
Assignee & KapitalMukamal LLP																		
(KM) by Category																		
Asset Disposition		\$ 208,263	\$ 118,544	\$ 92,324	\$ 65,239	\$ 29,102	\$ 38,461	\$ 68,295	\$ 26,098	\$ 17,675	\$ 34,199	\$ 16,793	\$ 24,976	\$ 26,074	\$ 21,333	\$ 17,725	\$ 15,495	\$ 820,595
Business Interruption Claim		190,019	59,647	22,878	27,815	23,876	23,002	16,256	14,677	15,692	2,288	5,666	2,260	9,942	8,391	5,633	5,271	18,483
Operational Management		21,216	9,898	10,137	2,427	890	1,509	1,956	863	500	2,868	10,438	10,912	2,682	2,618	9,942	298	459,385
Employee Benefits/Pensions		7,894	2,686	3,937	2,427	3,683	3,765	3,279	889	597	619	235	2,691	3,672	801	315	1,368	37,088
Tax Issues		1,792	10,279	11,370	6,975	4,929	6,266	7,155	715	228	430	332	417	368	315	7,739	315	30,588
Claims Administration		7,189	4,741	3,088	11,684	24,665	15,330	10,387	10,387	596	4,164	46,586	48,318	23,018	25,429	53,827	180	83,203
Forensic Investigation		103,953	49,944	93,832	54,968	28,497	22,113	28,598	56,281	12,529	34,237	12,529	6,460	13,056	24,689	18,113	6,812	699,911
D&O Litigation		1,815	9,691	6,041	4,200	7,633	3,564	3,674	3,674	4,200	510	12,496	8,400	103,670	78,355	80,938	133,144	133,144
Expenses		\$41,120	\$261,619	\$241,046	\$181,733	\$128,924	\$105,286	\$124,340	\$113,554	\$49,303	\$92,007	\$8,901	\$103,670	\$78,355	\$80,938	\$103,532	\$4,150	\$2,348,059
Total Assignee and KM Fees and Expenses		\$74,627	\$271,950	\$246,052	\$189,131	\$128,710	\$109,271	\$129,356	\$115,979	\$52,254	\$94,558	\$9,509	\$103,987	\$78,928	\$81,128	\$104,054	\$4,328	\$2,418,823
Stichter, Redel, Blain & Peatler, P.A. ("SRBP")																		
Non-Litigation fees		309,254	59,169	59,243	82,825	62,618	37,013	43,727	32,405	28,053	38,287	25,033	24,468	16,204	12,784	24,459	11,440	895,981
Litigation fees		77,314	116,382	90,229	44,471	43,401	22,140	34,756	30,013	21,625	15,832	25,366	31,711	34,089	24,651	24,140	8,160	644,276
Expenses		3,181	13,330	3,111	1,632	156	377	186	165	137	1,372	178	2,130	537	683	187	23	20,394
Total SRBP Fees and Expenses		\$389,748	\$188,881	\$152,582	\$128,928	\$96,175	\$59,530	\$78,667	\$62,582	\$50,814	\$55,991	\$50,577	\$58,309	\$50,830	\$38,117	\$48,786	\$19,622	\$1,529,640
Total		\$ 964,376	\$ 460,832	\$ 398,634	\$ 317,059	\$ 222,885	\$ 168,800	\$ 208,023	\$ 178,561	\$ 103,068	\$ 150,048	\$ 140,087	\$ 162,296	\$ 127,758	\$ 119,245	\$ 152,840	\$ 73,950	\$ 3,948,464
KM Expenses																		
Asset Disposition	100%	\$ 208,263	\$ 118,544	\$ 92,324	\$ 65,239	\$ 29,102	\$ 38,461	\$ 68,295	\$ 26,098	\$ 17,675	\$ 34,199	\$ 16,793	\$ 24,976	\$ 26,074	\$ 21,333	\$ 17,725	\$ 15,495	\$ 820,595
Business Interruption Claim	100%	1,010	520	1,010	4,279	2,629	-	774	-	1,127	288	5,506	2,260	90	-	-	-	18,483
Operational Management	50%	95,009	29,823	11,439	13,907	11,938	11,501	8,128	7,289	4,791	7,538	5,217	5,496	4,971	4,195	2,816	2,635	229,693
Document Management	50%	10,608	4,799	5,069	1,213	465	755	978	476	470	1,133	128	214	-	-	-	-	26,457
Employee Benefits/Pensions	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tax Issues	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Claims Administration	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Forensic Investigation	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
D&O Litigation	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Expenses	100%	27,507	10,331	5,006	6,398	786	4,005	5,016	2,425	2,951	2,551	1,008	317	573	190	522	178	69,764
SRBP Expenses																		
Non-Litigation fees	100%	309,254	59,169	59,243	82,825	62,618	37,013	43,727	32,405	28,053	38,287	25,033	24,468	16,204	12,784	24,459	11,440	865,981
Litigation fees	100%	3,181	13,330	3,111	1,632	156	377	186	165	137	1,372	178	2,130	537	683	187	23	28,384
Expenses	100%	\$ 653,823	\$ 236,517	\$ 177,201	\$ 175,494	\$ 97,695	\$ 92,111	\$ 127,102	\$ 68,857	\$ 59,203	\$ 85,367	\$ 53,863	\$ 59,860	\$ 48,449	\$ 39,184	\$ 45,710	\$ 29,921	\$ 2,050,356
Total Allocation of Expenses																		
Percentage Allocated to Secured Lender		67.8%	51.3%	44.5%	55.4%	43.3%	54.5%	61.1%	38.6%	57.4%	56.9%	38.4%	36.9%	37.9%	32.9%	29.9%	40.5%	51.9%
Percentage Allocated to GUC		32.2%	48.7%	55.5%	44.6%	56.2%	45.4%	38.9%	61.4%	42.6%	43.1%	61.6%	63.1%	62.1%	67.1%	70.1%	59.5%	48.1%

1) KM calculated the monthly percentage of professional fees and expenses for the Assignee, KM and SRBP allocated between the Secured Lenders and the general unsecured creditors ("GUCs") to be applied to the wind down operating expenses that were incurred and paid for the benefit of both the Secured Lenders and the GUCs (the "Overlap Expenses") detailed in the Budget.