

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 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,

Assignee

Division L

**LASERSCOPIC SPINAL CENTERS
OF AMERICA, INC., LASERSCOPIC MEDICAL
CLINIC, LLC AND LASERSCOPIC SPINE CENTERS
OF AMERICA, INC.'S RESPONSE IN OPPOSITION
TO ASSIGNEE'S MOTION FOR ORDER AUTHORIZING
COMPROMISE OF CONTROVERSY WITH TEXAS CAPITAL
BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

Laserscopic Spinal Centers Of America, Inc. ("LSCA"), Laserscopic Medical Clinic, LLC ("LMC") and Laserscopic Spine Centers of America, Inc. ("Spine") (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file their Response in Opposition to the "*Assignee's Motion for Order Authorizing Compromise of Controversy*

with Texas Capital Bank, N.A. as Administrative Agent for Lender Group” (the “Motion”). In support, the Laserscopic Claimants allege and state as follows:

SUMMARY

The Laserscopic Claimants represent the largest claimants against the Laser Spine Institute, LLC (“LSI”) Assignment for the Benefit of Creditors estate (the “LSI Estate”). The Laserscopic Claimants filed Proofs of Claim totaling over \$372,000,000.00. By this Response, the Laserscopic Claimants object to the Motion because insufficient evidence, information, or justification was provided to the creditors of the LSI Estate to be able to determine the reasonableness of the proposed definitions of expenses of the Estate, or the basis for the proposed allocation between Texas Capital Bank and the unsecured creditors of the Estate.

STATEMENT OF THE CASE

1. LSCA and LMC have actual damage claims of \$264,000,000 plus interest in the amount of \$87,976,680, for a total compensatory damages award of \$351,976,680; LSCA and LMC were also awarded punitive damages in the amount of \$5,000,000 plus interest of \$1,666,225, for a total award of \$6,666,225 in punitive damages against the LSI Estate. These amounts are currently accruing post-judgment interest at Florida’s statutory rate.

2. Spine holds a claim for \$6,831.172 plus interest of \$2,266,066 or \$9,097,238 total against the LSI Estate, which is likewise accruing post-judgment interest. The Laserscopic Claimants’ claims are based upon the Opinion entered by the Second District Court of Appeals. The Laserscopic Claimants are aware of no opposition to their Proofs of Claim filed against the LSI Estate.

3. Under the decision of the Second DCA, the Mandate, and the Second Amended Final Judgment (the “Final Judgment”), the Laserscopic Claimants have varying claims against the following Defendants, which includes Laser Spine Institute, LLC:

- a. James S. St. Louis, D.O.;
- b. EFO Holdings, L.P.;
- c. EFO Genpar, Inc.;
- d. EFO Laser Spine Institute, Ltd;
- e. Laser Spine Institute, LLC;
- f. Laser Spine Medical Clinic, LLC;
- g. Laser Spine Physical Therapy, LLC; and
- h. Laser Spine Surgical Center, LLC
(collectively for these purposes the “Bailey Defendants”).

4. The Second DCA granted the Laserscopic Claimants disgorgement awards in an amount “...based on the total value of LSI in 2009 combined with the total of the distribution to the owners of LSI between 2005 and 2009” (according to Footnote No. 4, the proper amount to be between \$264,000,000 and \$265,000,000).

5. On September 23, 2019, this Court entered its Order Denying Motion as Premature: 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 (Doc. 142) (the “Order”).

6. In the Order, this Court granted Assignee’s request for authority to use funds that Texas Capital Bank (“TCB”) had released to the Assignee for administrative purposes, but denied the Assignee’s request to grant TCB a lien against assets of the Estate that were otherwise unencumbered and, further, denied the Assignee’s request to set a bar date after which TCB’s lien claims could not be challenged.

7. This Court recognized in its Order that in the prior motion TCB’s existing lien as of the time of the Assignment did not attach to “. . . the proceeds of any claims by the estate against directors or officers of the corporations. The order the motion seeks would grant TCB a lien on all future non-receivables collected from lawsuits or insurance policies.”

8. In denying this requested relief, this Court stated that it “is not yet convinced that TCB’s lien applies to the assignee’s expenses. On the record so far, they appear to be

secured-creditor-specific administrative expenses (“expenses of preserving or disposing of such collateral”) under § 727.114(1)(a) which are excluded from the lien. Of course, general administrative expenses that benefit all creditors would be in second position under § 727.114(1)(b), but the motion has made no effort to show that any of the assignee’s expenses fall into that category.” Further, this Court stated that it “would not be inclined to extend TCB’s lien without some showing that the funds would be expended for the benefit of any other classes of creditors, and that has not been established on this record.”

9. Therefore, the issue in the prior motion, which is essentially raised again in this Motion, is the extent to which “the assignee’s expenses are general expenses under § 727.114(1)(b), rather than TCB-lien specific expenses under § 727.114(1)(a) . . .”. Based upon the inadequate proof provided by the Assignee and TCB in the prior motion, this Court concluded that TCB’s security interest is adequately protected without extension of its lien to contingent assets and the same remains true today.

10. During the course of this ABC proceeding, the Assignee’s professionals have filed various applications for approval of fees and costs. In such applications, the Assignee and his professionals disclosed the amount, if any, that TCB had agreed to accept responsibility for paying. This allocation was disclosed by the Assignee and his professionals and TCB, but such allocation was not presented to the Court for adjudication or approval. The allocation was a mere accommodation between those parties. In other words, the creditors of this Estate were not part and parcel of, nor bound by these allocations of convenience between the Assignee, his professionals and TCB.

11. The current Motion provides no further evidence than the prior motion did, other than the fact that the Assignee, his professionals and the TCB have had a course of agreement between them as to the allocations up to this point. They identify the total “Overlap

Expenses” as being \$1,707,691, of which \$939,823 is being allocated to TCB and \$964,465 [\$767,868 + \$196,597 (see Footnote 4 to the Stipulation for an explanation of the allocation of \$196,597 to the GUCs)] is being allocated to the general unsecured creditors (the “GUC”). This allocation is simply an agreement of convenience between the Assignee, his professionals and TCB, but has never been adjudicated before this Court or otherwise supported. This allocation certainly appears to be contrary to the Court’s statement in the Order that “[L]ooking only at the assets and liabilities existing at the time of the Assignment, the TCB parties’ secured claim appears to be at least four times larger than the assets in their best-case scenario. That would mean the secured creditors would be the only beneficiaries of the actions of the assignee.”

12. The allocation being sought in the Motion lacks any supporting evidence. The only calculation as to the proposed allocation was provided in the exhibit to the Stipulation attached to the Motion. The exhibit is a one-page summary showing percentage allocations between TCB and the GUCs on a month by month basis. This exhibit is wholly insufficient to establish an evidentiary basis for an allocation of approximately slightly less than 50% to TCB and slightly more than 50% to the GUCs of the category of expenses that they have self-designated as “Overlap Expenses.”

13. The evidentiary burden is on the Assignee and TCB to establish the appropriateness and applicability of the definitions that they have attributed to the expenses of the estate, being “Lender Expenses” and “Overlap Expenses” and then justifying the allocation between TCB and the GUCs as to true Overlap Expenses, if any.

14. If granted, the proposed Motion would have the effect of taking away any ability to challenge the definitions proposed for “Lenders Expenses” and “Overlap Expenses,

as well as the proposed allocation between TCB and the GUCs as to the actual Overlap Expenses.

15. The proposed Motion is unnecessary and remains untimely. At this stage of the proceedings it is impossible to know with any degree of certainty the expected amount of the recoveries from the unencumbered assets, including the pending litigation claims. Without knowledge as to such recoveries, any benefit that may be conferred upon the GUCs, if any, cannot be predicted. In the normal course of an ABC proceeding, the reasonableness issues as to the amount of benefit to be conferred upon unsecured creditors is determined at a time when the amount of distribution, if any, to the unsecured creditors is known with more certainty. The consequence of this Motion parallels the prior motion in that it would effectively disenfranchise the GUCs from this proceeding.

16. It is worth reminding the Court that the relief now sought by TCB, ie, a lien against unencumbered assets of the Estate, including litigation proceeds, was waived by TCB in its prior loan documents and agreements. TCB waived its rights under various agreements including those executed in or around November 18, 2016. On or around that date, TCB executed a Limited Waiver and First Amendment to Credit Agreement and a Release Agreement, the combined effect of which was a waiver or release by TCB of any right that it may have had to make claims against fraudulent transferees. In Section 2 of the Release, TCB granted the LSI investors, as defined in the Release, a covenant not to commence litigation.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court denying the Motion for the reasons set forth herein and for such other relief as this Court may equitably grant the Laserscopic Claimants.

Dated: September 14, 2020.

/s/ Jennifer G. Altman

/s/ Kenneth G. M. Mather

Jennifer G. Altman, Esq.
Florida Bar No. 881384
Pillsbury Winthrop Shaw Pittman LLP
600 Brickell Avenue
Suite 3100
Miami, FL 33131
(786) 913-4880
jennifer.altman@pillsburylaw.com

William J. Schifino, Jr., Esq.
Florida Bar Number 564338
Kenneth G.M. Mather, Esq.
Florida Bar Number 619647
Justin P. Bennett, Esq.
Florida Bar Number 112833
Gunster, Yoakley & Stewart P.A.
401 E. Jackson Street, Suite 2500
Tampa, Florida 33602
(813) 228-9080; Fax: (813) 228-6739
Email- wschifino@gunster.com
Email- kmather@gunster.com
Email- jbennett@gunster.com

Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

CERTIFICATE OF SERVICE

I CERTIFY that on September 14, 2020, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record or electronic mail to the parties listed on the Limited Notice Parties attached.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

Assignors and Assignor's Counsel: (via the Court's electronic servicing system)

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
Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
Laser Spine Institute, LLC
Medical Care Management Services, LLC
Spine DME Solutions, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC
c/o Nicole Greensblatt, Esq.
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022
Email: ngreenblatt@kirkland.com

Assignee and Assignee's Counsel (via the Court's electronic servicing system)

Soneet Kapila
c/o Stichter Riedel, Blain & Postler, P.A. Attn: Edward J. Peterson, Esq.
110 E. Madison Street, Suite 200
Tampa, Florida 33602

Soneet Kapila
c/o Genovese Joblove & Battista, P.A.
Attn: Greg Garno, Esq. and Paul Battista, Esq. 100 Southeast Second Street, Suite 4400
Miami, Florida 33131
Email: pbattista@gjb-law.com
ggarno@gjb-law.com

Soneet Kapila
c/o Rocke, McLean & Sbar, P.A.
Attn: Robert Rocke, Jonathan Sbar, Andrea Holder 2309 S. MacDill Avenue
Tampa, FL 33629
Email: rocke@rmslegal.com
aholder@rmslegal.com
jsbar@rmslegal.com

Secured Creditors:

CarePayment, LLC (MAIL RETURNED)
5300 Meadow Rd., #400
Lake Oswego, OR 97035

Steris Corporation
5960 Heisley Rd.
Mentor, OH 44060

CIT Bank, N.A.
10201 Centurion Pkwy., #400
Jacksonville, FL 32256

Medport Billing, LLC (MAIL RETURNED)
6352 S. Jones Blvd., #400
Las Vegas, NV 89118

U.S. Bank Equipment Finance
1310 Madrid St.
Marshall, MN 56258

Maricopa County Treasurer
c/o Peter Muthig, Esq.
222 N. Central Ave., #1100
Phoenix, AZ 85004
Email: muthigk@maco.maricopa.gov

Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)

Highwoods Realty Limited Partnership c/o Eric E. Ludin, Esq.
Tucker & Ludin, P.A.
5235 16th Street North
St. Petersburg, FL 33703-2611
Email: ludin@tuckerludin.com
erin@ludinlaw.com

Terry and Sherry Legg
c/o Colling Gilbert Wright & Carter, LLC
801 N. Orange Avenue, Ste. 830
Orlando, FL 32801
Email: JGilbert@TheFloridaFirm.com
RGilbert@TheFloridaFirm.com
CertificateofService@TheFloridaFirm.com

Joe Bailey; Mark Miller; Ted Suhl
Laserscopic Spinal Centers of America, Inc.
Laserscopic Medical Clinic, LLC
Laserscopic Surgery Center of Florida, LLC
Laserscopic Diagnostic Imaging
Laserscopic Spinal Center of Florida, LLC
Tim Langford
c/o Gunster, Yoakley & Stewart, P.A.
401 E. Jackson Street, Suite 2500
Tampa, FL 33602
Email: wschifino@gunster.com (primary)
kmather@gunster.com (primary)
jbennett@gunster.com (primary)
kkovich@gunster.com (secondary)
tkennedy@gunster.com (secondary)

Deanna Ali
c/o Jessica Crane, Esq. Crane Law, P.A.
13555 Automobile Blvd., Suite 560
Clearwater, FL 33762
Email: essica@CraneLaw.com

Heather Emby
c/o Jessica Crane, Esq. Crane Law, P.A.
13555 Automobile Blvd., Suite 560
Clearwater, FL 33762
Email: Jessica@CraneLaw.com

Deanna Ali
c/o Kwall Barack Nadeau PLLC
304 S. Belcher Rd., Suite C
Clearwater, FL 33765
Email: rbarack@employeerights.com
mnadeau@employeerights.com
Jackie@employeerights.com

Heather Emby
c/o Kwall Barack Nadeau PLLC
304 S. Belcher Rd., Suite C
Clearwater, FL 33765
Email: rbarack@employeeights.com
mnadeau@employeeights.com
Jackie@employeeights.com

Texas Capital Bank, N.A.
c/o Trenam Kemker
101 E. Kennedy Blvd., Suite 2700
Tampa, FL 33602
Email: slieb@trenam.com
mmosbach@trenam.com
dmedina@trenam.com

DBF-LSI, LLC
c/o Michael C. Markham, Esq.
401 E. Jackson Street, Suite 3100
Tampa, Florida 33602
Email: mikem@jpfirm.com
minervag@jpfirm.com

Shirley and John Langston
c/o Donald J. Schutz, Esq.
535 Central Avenue
St. Petersburg, Florida 33701
Email: donschutz@netscape.net
don@lawus.com

Jared W. Headley
c/o Cameron M. Kennedy, Esq.
Searcy Denney Scarola, et al
517 North Calhoun Street
Tallahassee, Florida 32301
Email: kennedyteam@searcylaw.com
cmk@searcylaw.com

Deanna E. Ali
c/o Brandon J. Hill, Esq. Wenzel Fenton Cabassa P.A.
1110 N. Florida Avenue, Suite 300
Tampa, Florida 33602
Email: bhill@wfclaw.com
twells@wfclaw.com

MedPro Group
c/o Jeffery Warren, Esq. and Adam Alpert, Esq.
Bush Ross, P.A.
P.O. Box 3913
Tampa, FL 33601-3913
Email: jwarren@bushross.com
aalpert@bushross.com
mlinares@bushross.com
ksprehn@bushross.com

Cosgrove Enterprises, Inc.
c/o Walters Levine Lozano & Degrave
601 Bayshore Boulevard., Suite 720
Tampa, Florida 33606
Email: hdegrave@walterslevine.com
jduncan@walterslevine.com

Cherish Collins
c/o Heather N. Barnes, Esq.
The Yerrid Law Firm
101 E. Kennedy Boulevard, Suite 3910
Tampa, FL 33602
Email: hbarnes@yerridlaw.com
evento@yerridlaw.com

Timothy Farley and Marilyn Farley
c/o Heather N. Barnes, Esq.
The Yerrid Law Firm
101 E. Kennedy Boulevard, Suite 3910
Tampa, FL 33602
Email: hbarnes@yerridlaw.com
evento@yerridlaw.com

Holland & Knight, LLP
c/o W. Keith Fendrick, Esq.
Post Office Box 1288
Tampa, Florida 33601-1288
Email: keith.fendrick@hkclaw.com
andrea.olson@hkclaw.com

Kenneth Winkler
c/o William E. Hahn, Esq.
310 S. Fielding Ave.
Tampa, FL 33606
Email: bill@whahn-law.com
Kelly@whahn-law.com

Ray Monteleone
c/o Hill, Ward & Henderson, P.A.
101 East Kennedy Boulevard, Suite 3700
Tampa, Florida 33601-2231
Email: dennis.waggoner@hwhlaw.com
julie.mcdaniel@hwhlaw.com
patrick.mosley@hwhlaw.com
tricia.elam@hwhlaw.com
ghill@hwhlaw.com
jessica.simpson@hwhlaw.com

William Horne and WH, LLC
c/o Hill, Ward & Henderson, P.A.
101 East Kennedy Boulevard, Suite 3700
Tampa, Florida 33601-2231
Email: dennis.waggoner@hwhlaw.com
julie.mcdaniel@hwhlaw.com
patrick.mosley@hwhlaw.com
tricia.elam@hwhlaw.com
ghill@hwhlaw.com
jessica.simpson@hwhlaw.com

Jonna Lemeiux
Law Offices of Scott M. Miller
Cambridge Square
1920 Boothe Circle, Suite 100
Longwood, Florida 32750
Email: service@scottmillerlawoffice.com
amy@scottmillerlawoffice.com

Robert Kimble, Administrator and
Personal Rep of Estate of Sharon Kimble
c/o Luis Martinez – Monfort
400 North Ashely Drive, Suite 1100
Tampa Florida 33602
Email: lmmonfort@gbmmlaw.com
litigation@gbmmlaw.com

Weiss Family Management, LLLP
c/o V. Stephen Cohen, Esq.
100 North Tampa Street, Suite 1900
Tampa, FL 33602
Email: scohen@bajocuva.com
lheckman@bajocuva.com

Michael C. Weiss, D.O. (via USPS mail)
Independent Orthopedics, P.A.
3225 South Macdill Avenue STE 129-348
Tampa, FL 33629
Cell: (954) 494-7995; Cell: (954) 328-9441
Email: spinedoc@me.com
partyplans2@aol.com

Robert P. Grammen
William P. Esping
James S. St. Louis, D.O.
Michael W. Perry, M.D.
MMPerry Holdings, LLLC
EFO Holdings, L.P.,
EFO Genpar, Inc.
EFO Laser Spine Institute, Ltd.
c/o Berger Singerman LLP
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301
Email: drt@bergersingerman.com
jwertman@bergersingerman.com
guso@bergersingerman.com
fsellers@bergersingerman.com

Cystal and Leonard Tinelli
c/o Donald J. Schutz, Esq.
535 Central Avenue
St. Petersburg, Florida 33701
Email: donschutz@netscape.net
don@lawus.com

Dr. James St. Louis
c/o Herbert Donica, Esq.
Donica Law Firm, P.A.
307 South Boulevard, Suite D
Tampa, FL 33606
Email: herb@donicalaw.com

Jonathan Lewis
c/o Peter A. Siddiqui, Esq.
Katten Muchin Rosenman
525 West Monroe Street
Chicago, IL 60661-3693
Email: peter.siddiqui@kattenlaw.com

Robert P. Grammen
William P. Esping
Michael W. Perry, M.D.
MMPerry Holdings, LLLC
EFO Holdings, L.P.
EFO Genpar, Inc.
EFO Laser Spine Institute, Ltd.
c/o Samuel J. Capuano BERGER SINGERMAN LLP
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Email: drt@bergersingerman.com
scapuano@bergersingerman.com
fsellers@bergersingerman.com