

IN THE 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 REPLY TO LASERSCOPIC SPINAL CENTERS
OF AMERICA, INC., LASERSCOPIC MEDICAL
CLINIC, LLC AND LASERSCOPIC SPINE CENTERS OF
AMERICA, INC.'S RESPONSE TO DECLARATION OF SONEET
KAPILA SUPPORTING ASSIGNEE'S MOTION FOR ORDER
AUTHORIZING COMPROMISE OF CONTROVERSY WITH 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 (collectively, the "Assignment Cases").

SONEET KAPILA, as Assignee in the Assignment Cases, by and through his undersigned counsel, files this Reply (the “Reply”) to Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc.’s Response to Declaration of Soneet Kapila Supporting Assignee’s Motion for Order Authorizing Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group (the “Response”), on the following grounds:

1. On September 4, 2020, the Assignee’s Motion for Order Authorizing Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group (“Motion”) was filed with this Court. The Motion requested that the Court enter an order approving a settlement (the “Settlement”) between the Assignee and Texas Capital Bank, N.A., as administrative agent for the Lender Group (the “Bank”) that would resolve various issues, including the Bank’s administrative expense claim. As discussed in greater detail in the Motion, the Bank funded certain expenses that would have otherwise been borne by the estates (collectively, the “Assignment Estates”) as “expenses incurred during the administration of the estate.” Such expenses would have been accorded first priority administrative status in the Assignment Cases. F.S. § 727.114(1)(a). To be clear, if the Bank had not funded these expenses, the Assignment Estates would have been required to fund them out of unencumbered assets, including the litigation proceeds received from claims against directors and officers. Since the Assignment Estates did not have unencumbered cash during the early stages of the Assignment cases, the Bank conferred a material benefit to Assignment Estates as a result of its willingness to fund certain expenses throughout these Assignment cases.

2. Prior to the hearing on the Motion, Assignee’s counsel worked with the Laserscopic Claimants’ counsel to discuss the allocation of expenses, including at least three telephone calls

and the exchange of backup documentation for the calculations.

3. At the hearing on the Motion, the Assignee agreed to provide the evidentiary basis for the calculations of the allocation of expenses and the Bank's administrative expense claim. The Laserscopic Claimants (as defined in the Motion) were given fourteen days from the Assignee's filing to assert an objection.

4. On September 9, 2020, the 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 (the "Declaration") was filed with this Court. The calculations attached to the Declaration were consistent with the calculations previously provided to the Laserscopic Claimants' counsel.

5. On October 3, 2020, the Laserscopic Claimants filed the Response. Despite the numerous discussions regarding the allocation and the prior receipt of documents, the Laserscopic Claimants filed a general objection vaguely asserting that they need more information to ascertain the fairness² of the allocation between the surchargeable and non-surchargeable items notwithstanding the considerable amount of time they spent with the Assignee and his professionals prior to the hearing on the Motion as well as subsequent discussions following the hearing and the filing of the Declaration. In addition, the Laserscopic Claimants argue (without providing any authority for their position) that any expenses that are not directly related to litigation must not be included in the Bank's administrative claim.

6. The Response appears to be premised on the mistaken belief that an assignee in an

² For the avoidance of doubt, the Assignee categorically rejects the Laserscopic Claimants' insinuation that the proposed allocation and Settlement is unfair in any respect; to the contrary, the Assignee submits that the proposed allocation and Settlement is in the best interests of the Assignment Estates and constitutes a fundamental component of the Assignee's wind down efforts.

assignment for benefit of creditors does not have any duties other than administering unencumbered assets. While the Assignee has been focused on maximizing the value of the Assignment Estates' assets, § 727.108 imposes various duties on an assignee, which are broader than merely performing acts which predominantly benefit the Laserscopic Claimants.

7. As set forth in the Declaration, expenses which solely benefitted the Bank were allocated to the Bank.³ In the Declaration, the Assignee (in a prudent exercise of his business judgment) has fairly divided costs incurred as a condition of complying with applicable law with respect to the administration of the Assignment Cases. The Laserscopic Claimants and all creditors have benefitted from a process that provides for the orderly liquidation of assets and cannot assert that they should not be burdened by any expenses of the Assignment Cases beyond those directly attributable to litigation claims.

8. Because it is indisputable that the Assignee has met his burden for approval of the Motion, the Laserscopic Claimants conveniently do not address the relevant factors for approving a compromise in the Response. By any objective measure, the Settlement set forth in the Motion satisfies the factors this Court is to consider in approving a compromise.

9. Although the assignment statutes provide for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving settlements. The Assignee submits that analogous bankruptcy principles should guide this Court's evaluation of the Settlement. "State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors." *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

³ The Bank is solely responsible for expenses related to Asset Disposition and Business Interruption Claims.

10. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some bankruptcy courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- (i) The probability of success in the litigation;
- (ii) The difficulties, if any, to be encountered in the matter of collection;
- (iii) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (iv) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

11. The terms of the Settlement with the Bank satisfy the above *Justice Oaks* factors. The first factor—the probability of success in litigation—weighs in favor of approval of the compromise. The Assignee believes that the allocation, which has been extensively negotiated with the Bank and vetted by their respective professionals, is fair. However, if the Assignee and the Bank were required to litigate the amount of the Bank’s administrative expense claim, it is possible the Court could conclude the Bank is entitled to receive a higher amount. The second factor is inapplicable. The third factor—expense of litigation—weighs heavily in favor of approval. If the Assignee were required to expend significant time litigating the amount of the Bank’s administrative expense claim, the Assignment Estates’ resources that the Laserscopic Claimants seek to protect would be siphoned towards fact-intensive litigation that, in all likelihood,

would require a trial. Lastly, the Settlement is in the best interest of creditors, as it preserves the Assignment Estates' resources and avoids costly, protracted litigation over allocating the Overlap Expenses between the Assignee and the Bank.

12. The Assignee is prepared to testify to: (i) all the facts set forth in the Declaration, which sets forth the rationale for the allocation of expenses and the calculations of administrative expense claim that is subject to the Settlement; and (ii) that, based on the Assignee's business judgment, the Settlement is clearly in the best interest of the Assignment Estates.

13. In short, the Motion should be approved because it satisfies the *Justice Oaks* factors, is a reasonable exercise of the Assignee's business judgment, and is fair and equitable to all the creditors.

WHEREFORE, the Assignee respectfully requests entry of an order granting the Motion, setting an evidentiary hearing on the Motion, and granting such other and further relief as is just and proper.

Dated: October 20, 2020

/s/ Edward J. Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 20th day of October, 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

October 1, 2020

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