

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

In re:

Laser Spine Institute, LLC <sup>1</sup>	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.

**UPDATED STATUS REPORT AS OF FEBRUARY 15, 2021**

In advance of the status conference scheduled for February 18, 2021, Soneet Kapila as the Assignee in these Assignment Cases (the “Assignee”) hereby provides the following summary of events that have occurred in the Assignment Cases and pending matters:

---

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases (collectively, the “Assignment Cases” or the “Assignment Estates”) 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 “Assignors”).

## **BACKGROUND**

1. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors (the “**Assignment**”) 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**”).

2. 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 (collectively, the “**Assignors**”).

3. In the years leading up to the Assignment Cases, the Assignors were among the nation’s leaders in minimally invasive spine surgery, operating state-of-the-art outpatient surgery centers in several major cities throughout the country. Immediately prior to executing the Assignment, the Assignors operated outpatient surgery centers in Tampa, Florida; Cincinnati, Ohio; Scottsdale, Arizona; and St. Louis, Missouri. Three other surgery centers (in Ohio, Oklahoma, and Pennsylvania) were closed in the Fall of 2018.

4. The Assignors filed the Assignment Cases to provide for the orderly liquidation of their assets for the benefit of their creditors.

## EARLY ACTIONS BY THE ASSIGNEE

5. At a hearing held on March 22, 2019, the Assignee requested that this Court, among other things, approve a bond amount of \$25,000 for each Assignment Estate and also approve the payment of employee wages who were being retained to help with the wind-down process. The Court entered orders approving both motions. The Assignee secured the bonds.

6. The Assignee has retained a number of professionals. The Assignee hired Stichter Riedel Blain & Postler, P.A., as its general counsel and KapilaMukamal, LLP as its financial advisor. The Assignee hired FisherBroyles, LLP as health care counsel and Wagner Law Group as ERISA counsel. The Assignee hired Genovese Joblove & Battista (“**Genovese Joblove**”), and Roche, McLean & Sbar (“**Roche McLean**”), Pillsbury Winthrop Shaw Pittman LLP (“**Pillsbury Winthrop**”); and Buell & Elligett, P.A. (“**Buell & Elligett**”) as special litigation counsel to investigate and pursue claims and causes of action.

7. The Assignee established a dedicated website that includes detailed information about the Assignment Cases, including responses to “Frequently Asked Questions” (FAQs) regarding malpractice lawsuits, the transfer of medical records to patients, issues surrounding the Assignors’ Flexible Spending Account Plan and several other issues. All creditors were provided notice of this website. The website domain address is [www.LSI-assignee.com](http://www.LSI-assignee.com).

8. The Assignee retained a select group of critical LSI employees (“**LSI Staff**”) to assist in the wind down of the company and maximize the value of the assets, including critical departments such as accounts receivable recovery, medical record administration, IT, and accounting. One of the primary goals of the Assignee was to organize and preserve the massive amounts of information generated by the Assignors’ extensive business operations.

9. The Assignee sent demand letters to patients who received insurance checks for services provided by the Assignors and who had not remitted such checks to the Assignors. In

addition, the Assignee engaged Accordias Healthcare Services, LLC (“**Accordias**”) as a third-party collection agent to continue collection of accounts receivable.

10. The Assignee negotiated with landlords with respect to the disposition of the assets located at each facility. Of particular significance, the Assignee executed a standstill agreement with the landlord at the Tampa location and negotiated a standstill agreement at the St. Louis location. Pursuant to such agreements, the Assignee and the landlords pursued a collaborative “turn-key” sale approach with prospective purchasers who might pay a premium over liquidation value in order to gain access to a high quality surgery center. At those locations, rent did not accrue as an administrative expense claim while the Assignee explored options for the sale of the assets and the landlords explored similar options to re-lease the premises. The Assignee negotiated a sale of the assets at the Wayne, Pennsylvania location for \$435,000 and the lease at that location was terminated.

11. The Assignee negotiated with the insurance broker in order to try to save costs on insurance, while maintaining the necessary insurance coverage. To this end, the Assignee hired a risk management professional to assist with these efforts.

12. Because the Assignment Estates contained no liquid assets that were unencumbered, the Assignee negotiated the interim use of cash collateral with the primary secured creditor, Texas Capital Bank, as administrative agent (the “**Agent**” or “**TCB**”) for certain lenders (the “**Lenders**”). Cash Collateral was used to pay vital ongoing expenses related to the Assignment Estates. Continued use of cash collateral was a critical component of an orderly wind-down and the maximization of assets of the Assignment Estates.

13. The Assignee reviewed and investigated financial records and contractual agreements, enabling the filing of motions to reject leases in order to reduce the administrative burdens on the Assignment Estates.

14. The Assignee, his professional team, and the LSI Staff continued to communicate with patients regarding the release of records to the patients. The Assignee reached an agreement with the Florida Department of Health (“**FL DOH**”) in December 2019, to assume custody and control of the patient medical records and all record requests since have been directed to and handled by the FL DOH.

15. As the operators of active surgery centers, the Assignors were subject to occasional claims for professional malpractice or negligence. The Assignors’ decision to maintain a substantial self-insured retention as to those malpractice claims required a significant amount of attention in the early stages of the case as the Assignee and his general counsel deal with pending law suits and negotiated transition coverage over to the excess insurance carriers. Many of those actions have been resolved; others remain pending.

#### **CAUSES OF ACTION AND LITIGATION**

16. After reviewing the Assignors’ books and record and after interviewing former employees, the Assignee identified transfers that might be recoverable as fraudulent transfers pursuant to Chapter 726 of the Florida Statutes. The Assignor then sent demand letters to the recipients of those transfers. With the assistance of his general counsel, Stichter, Riedel, the Assignee recovered approximately \$1.6 million in pre-suit settlements. This Court entered orders approving these settlements.

17. As to the remaining transfers, the Assignee, through Genovese Joblove and Rocke McLean, filed lawsuits that remain pending. The Assignee intends to pursue the remaining fraudulent conveyance actions that have not been settled to date.

18. In addition, the Assignee, through Genovese Joblove and Rocke McLean, filed actions against former directors and officers of the Assignors for acts and omissions. The Assignee has recently reached settlements of certain claims against former officers and directors, and the

Assignee will seek approval of the compromise after the mediated settlement documents are finalized.

19. Other litigation targets have executed tolling agreements.

20. The Assignee continues to review and provide support to Buell & Elligett in an effort to resolve the business interruption claim filed as a result of Hurricane Irma.

21. The Assignee has retained Pillsbury Winthrop to evaluate claims against certain professionals. Pillsbury Winthrop's efforts and investigation are on-going.

22. The Assignee expended considerable efforts with Accordias, the third-party accounts receivable collection company whose retention was approved by this Court on June 11, 2019, to maximize the recovery of the outstanding accounts receivable. Effective April 1, 2020, Accordias transferred all the billing and collection data from the Laser Spine servers that are warehoused at a co-location facility in Tampa, FL (the "**LSI Servers**") to their in-house platform, thereby reducing the Assignment Estates' burden to maintain the costs and expenses associated with IT connectivity and co-location lease expense to warehouse the LSI Servers.

### **CREDITORS**

23. The Agent 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 have been 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**”).

24. The Proof of Claim<sup>2</sup> that TCB filed with the Assignee 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 Assignee has liquidated, abandoned, or otherwise monetized all of TCB’s collateral. The only unencumbered assets of the estates created upon the commencement of the Assignment Cases appear to be litigation claims, certain vehicles, rights to insurance premium refunds, and rights to a business interruption insurance claim arising from Hurricane Irma.

25. Certain former employees filed a class proof of claim asserting claims under the WARN Act. In addition, a number of former employees have filed individual claims asserting violations of the WARN Act.

26. Laserscopic Spinal Centers of America, Inc. (“**LSCA**”), and Laserscopic Medical Clinic, LLC (“**LMC**”) have filed claims asserting damage of \$264,000,000 plus interest in the amount of \$87,976,680 for total compensatory damages awarded \$351,976,680. LSCA and LMC were also awarded punitive damages in the amount of \$5,000,000 plus interest of \$1,667,225 for a total award of \$6,667,225 in punitive damages against the Estates. These claims arise from litigation (“**Bailey Litigation**”) commenced in 2006 alleging breach of fiduciary duty, defamation, slander per se, FDUP violations conspiracy and tortious interference. Such claims proceeded to trial and then on appeal to the Second District Court of Appeal.

---

<sup>2</sup> 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.

27. In addition, other creditors have filed unsecured claims, including some of the plaintiffs in malpractice claims.

28. The Assignee continues to review claims and reserves the right to object to claims, and nothing in this Status Report shall be construed as a waiver of the Assignee's ability to object to claims.

### **FUNDING OF THE ASSIGNMENT CASES AND SETTLEMENT WITH TCB**

29. Generally, funding of the Assignment Cases to date has been provided by (a) use of the Agent's cash-collateral, (b) use of the \$1.6 million in litigation proceeds recovered to date, and (c) proceeds from the collection or liquidation of relatively small items to which the Agent's liens did not attach.

30. Specifically, 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**"),<sup>3</sup> 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 the Agent the Assignee's ability to use the Cash Collateral, with the Agent's consent, to fund the expenses of the Assignment Estates discussed below.

31. The first category of expenses consists of those 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 locations, accounts receivable recoveries, and interaction with and tracking of

---

<sup>3</sup> In bankruptcy proceedings, cash collateral is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents," 11 U.S.C. § 363(a), on which a creditor has a lien.

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 (and has been) paid by the Lenders.

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

33. The Assignee and the Agent agreed that some portion of Overlap Expenses should be (and has been) 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 in the early stages of these Assignment Cases.

34. 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**”) (Document Index 142). 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 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.

35. On September 23, 2019, the Court entered its order denying the Cash Collateral Motion, without prejudice, as having been filed prematurely (Document Index 459). 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. 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.

36. 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. In an effort to avoid litigation over a potential administrative expense claim asserted by the Lenders, the Assignee and the Agent 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.

37. 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.

38. The Assignee and the Agent entered into a Stipulation of Settlement (the "**Stipulation**"), which, among other things, 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 was a detailed chart summarizing the allocation of expenses between the Lenders' Portion of Overlap Expenses and the Estates' Portion of Overlap Expenses.

39. 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 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 the settlement, shall serve as the benchmark for establishing the amount of the Agent's administrative expense claim.

40. As settlement of the Agent's administrative expense claim for funding the Estates' Portion of Overlap Expenses, the Assignee and the Agent reached an agreement, as further set forth in the Stipulation (the "**Settlement**").

41. The key terms of the Settlement are summarized below:<sup>4</sup>

- A. **Administrative Expense Claim.** In return for funding the Estates' Portion of Overlap Expenses, the Agent shall receive an administrative expense claim in the amount of \$964,465 (the "**Agent's Administrative Expense Claim**"), subject to the Waterfall (defined below), which represents the Estates' Portion of Overlap Expenses funded by the Agent.<sup>5</sup>
- B. **Release by Lender for Lender Related Expenses and Lenders' Portion of Overlap Expenses.** The Agent shall not be entitled to an administrative expense claim for the Lenders' Portion of Overlap Expenses or the Lender Related Expenses. The Agent shall not have any further obligation to the Assignee or the Assignment Estates for any expenses other than those set forth in the Stipulation and the Assignee and the Assignment Estates hereby waive any further recovery or right to reimbursement from the Agent or the Lenders. The Agent, upon payment of the Agent's Administrative Expense Claim in full, shall be deemed to have released the Assignee and the Assignment Estates from any and all liability for or any claim for repayment of the Lenders' Portion of Overlap Expenses set forth in Recital L of the

---

<sup>4</sup> The foregoing is a summary only of the terms of the Stipulation. The terms of the Stipulation shall control in the event of any inconsistencies.

<sup>5</sup> In addition to the \$767,868 in fees attributable to the Estates' Portion of the Expenses, the Agent and Lenders are entitled to an additional \$196,597 administrative claim on account of the Assignment Estates' use of the Agent and Lenders' cash collateral to fund the Assignee and Assignee professional fees for services rendered to general unsecured creditors. Hence, the total amount of the Agent's Administrative Expense Claim is \$767,868 plus \$196,597, which equals \$964,465. The foregoing numbers are being reconciled and therefore are subject to change.

Stipulation or the Lender Related Expenses. The Assignee on behalf of himself and the Assignment Estates, as of the Effective Date, shall be deemed to have released the Agent and the Lenders from any and all liability for any claim for payment or right to reimbursement of the Lenders Expenses. Notwithstanding the foregoing, nothing herein shall prohibit the Agent, on behalf of itself and the Lenders, from timely seeking allowance and payment of additional administrative claims and expenses if the Agent hereafter expends money which confers a benefit to the estate in accordance with applicable legal principles, without prejudice to the right of the Assignee or any other party in interest to object to such additional administrative claims and expenses, it being agreed that nothing in this sentence shall either expand or diminish the respective rights that the Agent, the Assignee, or third parties would have with respect to such future administrative claim in the absence of this Stipulation.

- C. **Allocation of Sharing Amounts of Litigation Recoveries.** Recoveries of litigation shall be allocated as follows (the “**Waterfall**”): (i) to costs of litigation, including court-allowed fees and expenses of Assignee’s contingency fee counsel; (ii) to court-allowed fees and expenses of Assignee and Assignee’s professionals up to the amount of \$950,571<sup>6</sup>; (iii) then to the Agent’s Administrative Expense Claim until paid in full; (iv) then pro rata to any other administrative expenses until paid in full; and (v) then *pro rata* to general unsecured creditors.
- D. **Granting of Liens as Security for Agent’s Administrative Expense Claim.** The Assignee shall grant security to the Agent and Lenders in the form of adequate protection, to the extent of any diminution in value of their Collateral, and replacement liens. These liens shall constitute a lien on all claims and causes of action of each Assignor or its respective Assignment Estate (including, without limitation, all commercial tort claims of every kind and description) and any and all proceeds therefrom, and any and all proceeds arising from insurance policies. The liens described herein shall be referred to as the “**Agent’s Adequate Protection and Replacement Liens.**” The Agent’s Adequate Protection and Replacement Liens shall be subject to the Waterfall.
- E. **Lien Challenge Deadline.** Upon considering the Assignee’s statements as to the validity of the Agent’s liens as set forth in the Stipulation, the Court shall establish a lien challenge deadline of no later than October 15, 2020, upon expiration of which, the claims, liens, and security interests of the Agent and Lenders granted in accordance with the Loan Documents shall be deemed valid, perfected, and enforceable as to all creditors and parties-

---

<sup>6</sup> Pursuant to the Stipulation, the Agent and Assignee agreed that the Assignee’s incurred professional fees shall be paid in full (subject to Court approval) through the fourth interim application period in an amount not to exceed \$1,695,578.00. Of this total amount, the Agent and Lenders have consented to the payment of \$745,007 from Cash Collateral, while the remaining amount, \$950,571, will be satisfied from unencumbered funds in accordance with the Waterfall.

in-interest, and shall be subject to no further challenge, unless a party in interest with standing: (x) shall have commenced a supplemental proceeding against the Agent for the purpose of challenging the validity, extent, priority, perfection, and enforceability of the Credit Agreement or Agent's claims, mortgages, and security interests or otherwise asserting any claims or causes of action against the Agent, on or before October 15, 2020 (the "**Lien Challenge Review Period**"), and (y) the Court rules in favor of the plaintiff in any such timely filed supplemental proceeding. Any person or entity that fails to commence such a supplementary proceeding within the Lien Challenge Review Period shall be forever barred from doing so. For the avoidance of doubt, the Agent does not consent to the use of its Cash Collateral for any party to challenge in a supplemental proceeding or other litigation the Lenders' claims or liens or to assert any claims against the Lenders in a supplemental proceeding or other litigation.

42. On September 4, 2020, the Assignee filed the Motion for Order Authorizing Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group (Document Index 664) (the "**Settlement Motion**"), which sought approval of the Settlement. The Bailey Group filed an objection to the proposed allocation of expenses (Document Index 672) (the "**Bailey Group Objection**"). In addition, Shirley and John Langston and Crystal and Leonard Tinelli filed the Opposition in Part of Shirley and John Langston and Crystal and Leonard Tinelli to Assignee's Settlement Motion (Document Index 669) (the "**Langston Objection**").

43. On October 22, 2020, the Court entered an order granting the Settlement (Document Index 684) (the "**Settlement Order**"), as follows:

1. The Motion was granted and the Settlement was approved, as set forth in the Stipulation, subject to and specifically conditioned upon the terms and conditions set forth in the Settlement Order.

2. November 15, 2020 was established as the lien challenge deadline (the "**Lien Challenge Deadline**") for any party in interest (excluding the Assignee) to challenge the Agent and Lenders' liens. Upon expiration of the Lien Challenge Deadline, absent a timely filed action by a party in interest (excluding the Assignee), the liens claims and security interests of the Agent and Lenders granted in accordance with the Loan Documents shall be deemed valid, perfected, and enforceable as to all creditors and parties in interest.

3. The Langston Objection was overruled subject to the following terms and conditions:

a. Discovery was to remain open on the Langston Objection until the Lien Challenge Deadline for the limited purpose of conducting discovery relating to actions to challenge the Agent's and Lenders' lien pursuant to the Lien Challenge Deadline;

b. The Lien Challenge Deadline could only be extended for the limited purpose of conducting additional discovery related to the Langston Objection on timely motion to be filed before November 15, 2020.

4. The Bailey Group Objection as to the allocation of expenses was addressed as follows:

a. The Assignee filed the declaration of Soneet Kapila in support of the Motion on September 29, 2020 (the "**Kapila Declaration**").

b. The deadline for the Bailey Group to file a written objection to the Declaration was October 13, 2020.

c. If the Bailey Group timely filed an objection to the Declaration, the Court was to schedule a final evidentiary hearing on the Declaration.

d. If the Bailey Group did not timely file an objection to the Declaration, the allocation of expenses as set forth in the Motion and the Settlement (as outlined in the Stipulation) was to be approved.

5. Nothing in the Order was to affect the priority or validity of claims of claimants who are not party to the Stipulation.

44. The Bailey Group timely filed an objection to the Kapila Declaration (Document Index 681) (the "**Bailey Group Objection**"). The Court initially scheduled an evidentiary hearing on the Baily Group Objection which was cancelled due to issues raised by the appeal discussed below. The final evidentiary hearing has not been rescheduled.

45. On November 25, 2020, Shirley and John Langston and Crystal and Leonard Tinelli (collectively, the "**Objecting Individual Creditors**") filed a motion to reconsider the Settlement Order (Document Index 691) (the "**Motion to Reconsider**")<sup>7</sup> and requested that the Settlement Order be modified to reflect that:

---

<sup>7</sup> The Objecting Individual Creditors also filed an appeal of the Settlement Order. The Second District Court has dismissed the appeal.

a. The Objecting Individual Creditors, who filed a timely lien challenge action by November 15, 2020, were assigned Assignee's rights pursuant to §727.108 and § 727.110 to challenge TCB's liens and secured claims that include, but are not limited to, the claims set forth in the lawsuits and supplemental proceedings filed by the Objecting Individual Creditors on November 15, 2020.

b. Any "release" or "agreement," or other language in the Stipulation between Assignee and TCB, approved by the Settlement Order, does not limit, abridge, or modify the right of the Objecting Individual Creditors to sue TCB and specifically does not release TCB from the obligation to fund the Cash Reserve Account for the benefit of the Objecting Individual Creditors.

c. The Objecting Individual Creditors are granted Assignee's standing to sue TCB for any and all claims raised by the Objecting Individual Creditors in the attached actions that would otherwise be property of the Assignment Estates.

46. The Motion to Reconsider has not yet been set for hearing.

47. The Assignee continues to review and prepare for the filing of the Assignment Estates' tax returns and respond to notices and other correspondence from various tax agencies.

#### **NEXT STEPS**

48. As will be further discussed at the status conference, the parties request that the Court schedule a trial on the Bailey Group Objection and a hearing on the Motion to Reconsider.

49. The remaining unresolved issues in this case primarily relate to litigation claims.

50. The Assignee will seek approval of the compromise of certain D & O claims when documented.

51. The pending fraudulent transfer claims and business interruption claim will continue to be litigated. If settled, those settlements will be submitted to this Court for approval.

52. Following the completion of Pillsbury Madison's investigation, as described above, it is expected that the claims being investigated that are determined to have merit will be either prosecuted or will be settled. If settled, those settlements will be submitted to this Court for approval.

53. Finally, once it is apparent that there will be distributions to unsecured creditors in this case, the Assignee, with the assistance of his general counsel, will begin a detailed review of the filed claims and will object to any claims that are not proper.

/s/ Edward J. Peterson  
Harley E. Riedel (FBN 183628)  
Edward J. Peterson (FBN 0014612)  
Matthew B. Hale (FBN 0110600)  
Stichter, Riedel, Blain & Postler, P.A.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602  
Telephone: (813) 229-0144  
Facsimile: (813) 229-1811  
Email: [hriedel@srbp.com](mailto:hriedel@srbp.com); [epeterson@srbp.com](mailto:epeterson@srbp.com)  
[mhale@srbp.com](mailto:mhale@srbp.com)  
Counsel for Assignee

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing *Updated Status Report as of February 15, 2021* has been furnished on this 15th day of February 2021 by the Court's electronic system to all parties receiving electronic service.

/s/ Edward J. Peterson  
Edward J. Peterson