

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.

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

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

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

### **Jurisdiction and Venue**

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

### **Background**

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

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

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

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

5. The Agent has 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**”).<sup>2</sup> Pursuant to the Credit Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time (the “**Loan Documents**”), the Lenders and the Agent provided revolving and term loan credit and other financial accommodations to, and issued letters of credit for the account of, the Assignors as Borrowers pursuant to the Loan Documents (the “**Loan Facility**”).

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

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

<sup>3</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.

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

#### **Abandonment of Lenders' Intellectual Property Collateral**

8. The remaining items of Collateral are intangible assets that include patents, trademarks and domain names (the "**Intellectual Property Collateral**"). The Intellectual Property Collateral is encumbered by TCB's lien.

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

10. 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 (the "**Compromise Motion**").

11. On October 22, 2020, the Court entered the order granting the Compromise Motion and approving the Stipulation between the Lenders and the Assignee, with certain conditions. Pursuant to the Stipulation that was approved by the Court, it was agreed that "the Assignee shall move to abandon the assignment estates' intellectual property." See Stipulation of Settlement Between Assignee and Texas Capital Bank, N.A. as Administrative Agent for Lender Group, (the "**Stipulation**") attached as **Exhibit A**.

12. Pursuant to this Motion, the Assignee seeks to abandon the Intellectual Property Collateral, as required by the Stipulation approved by the Court.

13. After due investigation, the Assignee has concluded that the Assignment Estates have no equity in the Intellectual Property Collateral. Therefore, the Assignee moves to abandon the Intellectual Property Collateral for the benefit of the Lenders.

WHEREFORE, the Assignee respectfully requests that this Court enter an order (i) granting this Motion, (ii) authorizing the abandonment of the Intellectual Property Collateral (iii) retaining jurisdiction to enforce any order on this Motion, and (iv) granting such other and further relief as is just and proper.

Dated: July 27, 2021

/s/ Edward J. Peterson

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: [epeterson@srbp.com](mailto:epeterson@srbp.com); [mhale@srbp.com](mailto:mhale@srbp.com)

Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Assignee's Motion to Abandon Intellectual Property to Texas Capital Bank, N.A. as Administrative Agent for Lender Group* has been furnished on this 27<sup>th</sup> day of July, 2021 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

**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](mailto: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](mailto:pbattista@gjb-law.com), [ggarno@gjb-law.com](mailto:ggarno@gjb-law.com)

Soneet Kapila  
c/o Roche, McLean & Sbar, P.A.  
Attn: Robert Roche, Jonathan Sbar, Andrea Holder  
2309 S. MacDill Avenue  
Tampa, FL 33629  
Email: [roche@rmslegal.com](mailto:roche@rmslegal.com), [aholder@rmslegal.com](mailto:aholder@rmslegal.com), [jsbar@rmslegal.com](mailto: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](mailto: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 16<sup>th</sup> Street North  
St. Petersburg, FL 33703-2611  
Email: [ludin@tuckerludin.com](mailto:ludin@tuckerludin.com); [erin@ludinlaw.com](mailto: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](mailto:JGilbert@TheFloridaFirm.com); [RGilbert@TheFloridaFirm.com](mailto:RGilbert@TheFloridaFirm.com);  
[CertificateofService@TheFloridaFirm.com](mailto: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; and Tim Langford  
c/o Gunster, Yoakley & Stewart, P.A.  
401 E. Jackson Street, Ste 2500  
Tampa, FL 33602  
Email: [wschifino@gunster.com](mailto:wschifino@gunster.com) (primary)  
[kmather@gunster.com](mailto:kmather@gunster.com) (primary)  
[jbennett@gunster.com](mailto:jbennett@gunster.com) (primary)  
[cwarder@gunster.com](mailto:cwarder@gunster.com) (secondary)  
[tkennedy@gunster.com](mailto:tkennedy@gunster.com) (secondary)

Deanna Ali  
c/o Jessica Crane, Esq.  
Crane Law, P.A.  
13555 Automobile Blvd., Ste 560  
Clearwater, FL 33762  
Email: [Jessica@CraneLaw.com](mailto:Jessica@CraneLaw.com)

Heather Emby  
c/o Jessica Crane, Esq.  
Crane Law, P.A.  
13555 Automobile Blvd., Ste 560  
Clearwater, FL 33762  
Email: [Jessica@CraneLaw.com](mailto:Jessica@CraneLaw.com)

Deanna Ali  
c/o Kwall Barack Nadeau PLLC  
304 S. Belcher Rd. Ste C  
Clearwater, FL 33765  
Email: [rbarack@employeeights.com](mailto:rbarack@employeeights.com)  
[mnadeau@employeeights.com](mailto:mnadeau@employeeights.com)  
[Jackie@employeeights.com](mailto:Jackie@employeeights.com)

Heather Emby  
c/o Kwall Barack Nadeau PLLC  
304 S. Belcher Rd. Ste C  
Clearwater, FL 33765  
Email: [rbarack@employeeerights.com](mailto:rbarack@employeeerights.com)  
[mnadeau@employeeerights.com](mailto:mnadeau@employeeerights.com)  
[Jackie@employeeerights.com](mailto:Jackie@employeeerights.com)

Texas Capital Bank, N.A.  
c/o Trenam Kemker  
101 E. Kennedy Blvd., Ste 2700  
Tampa, FL 33602  
Primary Email: [slieb@trenam.com](mailto:slieb@trenam.com)  
Secondary Email: [mmosbach@trenam.com](mailto:mmosbach@trenam.com)  
Tertiary Email: [dmedina@trenam.com](mailto: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](mailto:mikem@jpfirm.com); [minervag@jpfirm.com](mailto:minervag@jpfirm.com)

Shirley and John Langston  
c/o Donald J. Schutz, Esq.  
535 Central Avenue  
St. Petersburg, Florida 33701  
Email: [donschutz@netscape.net](mailto:donschutz@netscape.net); [don@lawus.com](mailto: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](mailto:kennedyteam@searcylaw.com); [cmk@searcylaw.com](mailto: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](mailto:bhill@wfclaw.com); [twells@wfclaw.com](mailto: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](mailto:jwarren@bushross.com); [aalpert@bushross.com](mailto:aalpert@bushross.com);  
[mlinares@bushross.com](mailto:mlinares@bushross.com); [ksprehn@bushross.com](mailto:ksprehn@bushross.com)

Cosgrove Enterprises, Inc.  
c/o Walters Levine Lozano & Degrave  
601 Bayshore Blvd., Ste 720  
Tampa, Florida 33606  
Email: [hdegrave@walterslevine.com](mailto:hdegrave@walterslevine.com); [jduncan@walterslevine.com](mailto: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](mailto:hbarnes@yerridlaw.com); [evento@yerridlaw.com](mailto: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](mailto:hbarnes@yerridlaw.com); [evento@yerridlaw.com](mailto: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](mailto:keith.fendrick@hkclaw.com); [andrea.olson@hkclaw.com](mailto:andrea.olson@hkclaw.com)

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

Ray Monteleone  
c/o Hill, Ward & Henderson, P.A.  
101 East Kennedy Boulevard  
Bank of America Plaza, Suite 3700  
Tampa, Florida 33601-2231  
[dennis.waggoner@hwhlaw.com](mailto:dennis.waggoner@hwhlaw.com); [julie.mcdaniel@hwhlaw.com](mailto:julie.mcdaniel@hwhlaw.com); [patrick.mosley@hwhlaw.com](mailto:patrick.mosley@hwhlaw.com);  
[tricia.elam@hwhlaw.com](mailto:tricia.elam@hwhlaw.com); [ghill@hwhlaw.com](mailto:ghill@hwhlaw.com); [jessica.simpson@hwhlaw.com](mailto:jessica.simpson@hwhlaw.com)

William Horne and WH, LLC  
c/o Hill, Ward & Henderson, P.A.  
101 East Kennedy Boulevard  
Bank of America Plaza, Suite 3700  
Tampa, Florida 33601-2231  
[dennis.waggoner@hwhlaw.com](mailto:dennis.waggoner@hwhlaw.com); [julie.mcdaniel@hwhlaw.com](mailto:julie.mcdaniel@hwhlaw.com); [patrick.mosley@hwhlaw.com](mailto:patrick.mosley@hwhlaw.com);  
[tricia.elam@hwhlaw.com](mailto:tricia.elam@hwhlaw.com); [ghill@hwhlaw.com](mailto:ghill@hwhlaw.com); [jessica.simpson@hwhlaw.com](mailto:jessica.simpson@hwhlaw.com)

Jonna Lemeiux  
Law Offices of Scott M. Miller  
Cambridge Square  
1920 Boothe Circle, Suite 100  
Longwood, Florida 32750  
[service@scottmillerlawoffice.com](mailto:service@scottmillerlawoffice.com); [amy@scottmillerlawoffice.com](mailto: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  
Primary Email: [lmmonfort@gbmmlaw.com](mailto:lmmonfort@gbmmlaw.com); [litigation@gbmmlaw.com](mailto:litigation@gbmmlaw.com)

Weiss Family Management, LLLP  
c/o V. Stephen Cohen, Esq.  
100 North Tampa Street, Suite 1900  
Tampa, FL 33602  
Primary: [scohen@bajocuva.com](mailto:scohen@bajocuva.com); [lheckman@bajocuva.com](mailto:lheckman@bajocuva.com)

Michael C. Weiss, D.O.  
Independent Orthopedics, P.A.,  
c/o Weiss Family Management, LLLP  
3948 Third Street South, STE 36  
Jacksonville, FL 32250  
Cell: (954) 494-7995  
Cell: (954) 328-9441  
Email: [spinedoc@me.com](mailto:spinedoc@me.com); [partyplans2@aol.com](mailto: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.  
BERGER SINGERMAN LLP  
350 East Las Olas Boulevard, Suite 1000  
Fort Lauderdale, Florida 33301  
Email: [drt@bergersingerman.com](mailto:drt@bergersingerman.com); [jwertman@bergersingerman.com](mailto:jwertman@bergersingerman.com);  
[guso@bergersingerman.com](mailto:guso@bergersingerman.com); [fsellers@bergersingerman.com](mailto:fsellers@bergersingerman.com)

Cystal and Leonard Tinelli  
c/o Donald J. Schutz, Esq.  
535 Central Avenue  
St. Petersburg, Florida 33701  
Email: [donschutz@netscape.net](mailto:donschutz@netscape.net); [don@lawus.com](mailto: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](mailto: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](mailto: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 SINGERMANN LLP  
1450 Brickell Avenue, Suite 1900  
Miami, FL 33131  
Email: Primary: [drt@bergersingerman.com](mailto:drt@bergersingerman.com); [scapuano@bergersingerman.com](mailto:scapuano@bergersingerman.com);  
[fsellers@bergersingerman.com](mailto:fsellers@bergersingerman.com)

Robert P. Grammen  
William P. Esping  
Michael W. Perry, M.D.  
MMPerry Holdings, LLLP  
EFO Holdings, L.P.,  
EFO Genpar, Inc.  
EFO Laser Spine Institute, Ltd.  
c/o/ Kenneth W. Waterway  
BERGER SINGERMANN LLP  
350 East Las Olas Blvd., Suite 1000  
Fort Lauderdale, FL 33301  
Email: [kwaterway@bergersingerman.com](mailto:kwaterway@bergersingerman.com)

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
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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,

**STIPULATION OF SETTLEMENT BETWEEN ASSIGNEE AND TEXAS  
CAPITAL BANK, N.A., AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

This stipulation of settlement (the “Stipulation”) is entered into by and among Texas Capital Bank, N.A., administrative agent (the “Agent”) on behalf of the lender group (the “Lenders”), and the Assignee, Soneet Kapila (the Agent and the Assignee, collectively, the

<sup>1</sup> 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.

“Parties”) (i) acknowledging the validity and enforceability of the Agent and Lenders’ liens; (ii) compromising the allocation of Overlap Expenses (as defined below) between the Agent and the Assignment Estates (as defined below); and (iii) providing relief to the Agent on account of its prior payment of the Estates’ Portion of Overlap Expenses (as defined below).

A. On March 14, 2019 (the “Petition Date”), 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 the Petition Date, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “LSI Assignment Case”).

B. 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”). Upon the filing of the Assignment Cases, estates were established for each of the Assignors comprising all assets of each Assignor (the “Assignment Estates”).

C. The Agent and Lenders have properly perfected liens on substantially all personal property of the Assignors, 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 the Agent and Lenders (as amended, the "Credit Agreement").<sup>2</sup> 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").

D. The Loan Facility provided the borrowers with, among other things, (i) \$15,000,000 in Revolving Loan Commitments, and (ii) \$131,250,000 in Term Loan Commitments. As of the filing of the LSI Assignment Case, the principal amount of "Loans" outstanding under the Loan Facility was not less than \$154,000,000 (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Loan Parties' obligations pursuant to the Loan Documents, including all "Obligations" as defined in the Credit Agreement.

E. As more fully set forth in the Loan Documents, prior to the filing of the Assignment Cases, the Loan Parties granted to the Agent and the Lenders a security interest in and continuing lien on (the "Liens") substantially all of their assets and property, including, without limitation, each category of collateral set forth in the Loan Documents (which, for the avoidance of doubt,

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<sup>2</sup> Capitalized terms not otherwise defined herein maintain the same meanings ascribed to them in the Credit Agreement.  
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includes Cash Collateral, as defined below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the "Collateral").

F. Immediately prior to the filing of the Assignment Cases, the Assignors maintained their funds in sixteen different bank accounts at Texas Capital Bank, N.A. (the "TCB Accounts"). Most of the TCB Accounts were created to allow the appropriate Assignor to receive payments on accounts receivable payable to the specific Assignor, primarily insurance and Medicare reimbursements (the "Accounts Receivable"). All receipts flowed into the TCB Accounts. The Credit Agreement provides that the Agent holds a security interest in all funds held in the TCB Accounts.

G. After the filing of the Assignment Cases, the Assignee set up separate accounts with Signature Bank (the "Signature Accounts"). All receipts on account of the Accounts Receivable have continued to flow directly to the appropriate TCB Accounts, which remain subject to the liens of the Lenders. The proceeds from the sale of the FF&E and medical equipment, that was part of the Agent's Collateral, were deposited into a Signature Account segregated specifically for asset sales ("Signature Account – Asset Sales"). The Agent also authorized certain transfers from the TCB Accounts to a Signature Account segregated to fund and pay approved costs of the Assignment Cases on an as-needed basis ("Signature Account – Operating"). The funds transferred from the TCB Accounts to the Signature Account – Operating and the Signature Account – Asset Sales constituted "Cash Collateral".<sup>3</sup> of the Lenders.

H. With the Agent's consent, the Assignee used Cash Collateral to fund expenses that fall under two categories. The first category of expenses are those that directly benefitted the

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<sup>3</sup> In bankruptcy, cash collateral is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents," 11 U.S.C. § 363(a), in which a creditor has a lien.  
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Lenders. These expenses include those 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. 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 borne by the Lender, and the Lender shall not be entitled to repayment of Lender Related Expenses from the Assignment Estates.

I. 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. 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 benefitted 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.

J. The Assignee and the Agent agree 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.

K. Accordingly, the Assignee and the Agent have agreed to an allocation of the Overlap Expenses incurred from the Petition Date through May 31, 2020. The Assignee and the Agent have agreed to allocate the Overlap Expenses 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”).

L. Attached as **Exhibit 1** to this Stipulation is a detailed chart summarizing the agreed allocation of expenses between the Lenders’ Portion of Overlap Expenses and the Estates’ Portion of Overlap Expenses (the “Allocation Summary”). As set forth in the Allocation Summary, the Assignee and the Agent have agreed to the following allocation of Overlap Expenses:

<b>Lenders’ Portion of Overlap Expenses</b>	\$939,823.00
<b>Estates’ Portion of Overlap Expenses</b>	\$767,868.00
<b><i>Total Overlap Expenses:</i></b>	<b>\$1,707,691.00</b>

M. As set forth in more detail below, the Assignee and the Agent have agreed, subject to Court approval, to a settlement that will provide the Agent with an administrative expense claim (subject to the Carveout, as defined below), equal to the Estates’ Portion of Overlap Expenses funded by the Agent, in addition to other relief.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Stipulation and with the intent to be legally bound, the Parties do hereby stipulate and agree as follows:

1. This Stipulation shall become effective upon the date (the "Effective Date") on which each of the following conditions to the effectiveness of this Stipulation has been satisfied: (a) this Stipulation has been fully executed by the Parties; and (b) the entry of an order by the Court, which has not been stayed, approving this Stipulation (the "Approval Order"). The Parties shall use their commercially reasonable efforts to obtain entry of the Approval Order as soon as reasonably practicable, on such notice and hearing as the Court may require. In the event that the Court enters an order denying approval of this Stipulation, this Stipulation shall be void and of no force or effect.

2. The recitals stated above constitute and form an integral part of this Stipulation and are incorporated by reference as if set forth herein in full.

3. The undersigned are duly authorized and empowered to execute this Stipulation on behalf of the respective Parties, subject to Court approval as to the Assignee.

4. The Parties have participated in and jointly consented to the drafting of this Stipulation, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

5. This Stipulation and all of its terms shall be binding upon and shall inure to the benefit of the Parties and each of their respective permitted successors and assigns and all persons and entities claiming by or through the Parties.

6. The Assignee stipulates that the Liens created by the Credit Agreement and any other Loan Documents are valid, binding, enforceable, properly perfected, non-avoidable, first



priority liens on the Collateral with priority over any and all other liens, security interests or other interests and are not subject to any challenge or defense and that the Agent and the Lenders hold a valid, enforceable, and allowable claim against the Assignors, as of the Petition Date, in an aggregate amount equal to at least \$154,984,093.95 (the “Lenders’ Pre-Petition Claim”) of unpaid principal, plus any and all interest, fees, costs, expenses, charges and other claims, debts or obligations of the Assignors to the Agent and Lenders that has accrued as of the Petition Date under the Loan Documents and applicable law.

7. The Assignee stipulates that the Lenders’ Pre-Petition Claim is not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination (whether equitable, contractual, or otherwise) pursuant to Section 727 of the Florida Statutes or any other applicable law and that the Assignee, on behalf of the Assignors and their estates, does not possess and shall not assert any claim, counterclaim, setoff, or defense of any kind, nature, or description which would in any way affect the validity, enforceability, allowance, and non-avoidability of the Lenders’ Pre-Petition Claim.

8. In return for funding the Estates’ Portion of Overlap Expenses, Agent shall receive an allowed administrative expense claim with the priority set forth in Fla. Stat. § 727.114(1)(b), subject and subordinate to the Carveout (defined below), in the amount of \$898,537 (the “Agent’s Administrative Expense Claim”)<sup>4</sup>, which represents the Estates’ Portion of Overlap Expenses funded by the Agent.

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<sup>4</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.  
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9. 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 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.

10. The Agent's Administrative Expense Claim and the Agent's Replacement Liens (as defined below) shall be subject to the Waterfall (defined below).

11. The Assignee's budgeted professional fees shall be paid in full (subject to Court approval) through the fourth interim application period.<sup>5</sup>

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<sup>5</sup> The Agent and Assignee have 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 101011079.2

12. The Assignee shall assign the Assignment Estates' accounts receivable to the Agent and Lenders *via* a credit bid.

13. The Assignee shall move to abandon the Assignment Estates' intellectual property.

14. To secure repayment of the Agent's Administrative Expense Claim, the Assignee shall grant security to the Agent and Lenders in the form of replacement liens, the extent of which shall be equal to Agent's Administrative Expense Claim. 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 Replacement Liens." The Agent's Replacement Liens shall be subject to the Waterfall.

15. Settlement proceeds from estate causes of action and proceeds of other unencumbered assets shall be distributed in the following order (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; (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.

16. Upon considering the Assignee's statements as to the validity of the Agent's Liens as set forth in this Stipulation, a lien challenge deadline shall be established, 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

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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.


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parties-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, no later than October 15, 2020, 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 by October 15, 2020 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.

**IN WITNESS WHEREOF**, the undersigned have made and entered into this Stipulation as of the respective dates set forth below.

**SONEET KAPILA,**  
**ASSIGNEE OF LASER SPINE INSTITUTE, LLC., *et al.***

By:   
Soneet Kapila, as Assignee

Dated: 12/1/2020

**TEXAS CAPITAL BANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

parties-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, no later than October 15, 2020, 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 by October 15, 2020 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.

**IN WITNESS WHEREOF**, the undersigned have made and entered into this Stipulation as of the respective dates set forth below.

**SONEET KAPILA,**  
**ASSIGNEE OF LASER SPINE INSTITUTE, LLC., *et al.***

By: \_\_\_\_\_  
Soneet Kapila, as Assignee

Dated: \_\_\_\_\_

**TEXAS CAPITAL BANK, N.A.**

By: \_\_\_\_\_  
Name: Bruce Shilcutt  
Title: E.V.P.  
Dated: 12-1-2020

**Laser Spine Institute ("LSI")**

**Allocation of Overlap Expenses Actually Paid by the Secured Lender  
For the Period 3/15/2019 - 7/31/2020**

Month Paid	Notes	A	B	C	D = A*B	E = A*C
		Overlap Expenses Paid	Secured Lender Allocation % (Note 1)	GUC Allocation % (Note 1)	Amount Paid by the Secured Lender FBO of the Secured Lender	Excess Amount Paid by the Secured Lender FBO of the GUCs
Apr-19		\$ 569,187	67.8%	32.2%	\$ 385,895	\$ 183,292
May-19		311,903	51.3%	48.7%	160,081	151,822
Jun-19		160,016	44.5%	55.5%	71,131	88,886
Jul-19		51,956	55.4%	44.6%	28,758	23,198
Aug-19		49,012	43.8%	56.2%	21,483	27,529
Sep-19		141,416	54.6%	45.4%	77,168	64,249
Oct-19		81,995	61.1%	38.9%	50,099	31,896
Nov-19		66,224	38.6%	61.4%	25,537	40,686
Dec-19		11,314	57.4%	42.6%	6,499	4,815
Jan-20		68,255	56.9%	43.1%	38,832	29,423
Feb-20		17,416	38.4%	61.6%	6,696	10,720
Mar-20		83,631	36.9%	63.1%	30,846	52,785
Apr-20		23,468	37.9%	62.1%	8,900	14,568
May-20		7,255	32.9%	67.1%	2,384	4,871
Jun-20		6,062	29.9%	70.1%	1,813	4,249
Jul-20		58,582	40.5%	59.5%	23,702	34,879
		<b>\$ 1,707,691</b>			<b>\$ 939,823</b>	<b>\$ 767,868</b>

**Notes:**

1) The Overlap Expense allocation percentages were based on the monthly fees for the Assignee, KapilaMukamal and Stichter, Riedel, Blain & Postler, P.A. ("SRBP") allocated between the Secured Lender and general administration of the estate or GUCs. The percentage allocation of fees were then applied to the Overlap Expenses to determine the Overlap Expenses paid by the Secured Lender for the benefit of the estate or GUCs.