

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.

**OBJECTION TO CLAIMS OF ROBERT KIMBLE, ADMINISTRATOR
AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE**

¹ 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**”).

**NOTICE OF OPPORTUNITY TO OBJECT
AND REQUEST A HEARING**

The Assignee seeks an order disallowing the Kimble Claims (defined below) filed by Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble. Responses must be filed and served on Assignee, Soneet R. Kapila, KapilaMukamal, LLP, 1000 South Federal Highway, Suite 200, Fort Lauderdale, FL 33616 and Scott Stichter, Stichter Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 within 21 days from the service of this Objection. If no responses are filed, the Court may grant the relief without further notice. In the event a response is timely filed and served, the Court will hold a hearing to consider any timely filed responses and to consider this Objection. Any such hearing will be separately noticed.

Soneet Kapila, as Assignee for the Assignment Estates, objects to the claims filed by Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble (“**Kimble**”), seeking to recover unsecured claims in the LSI bankruptcy case and, in support thereof, states:

BACKGROUND

1. 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**”).

2. On July 8, 2019, Kimble submitted two proof of claims (collectively the “**Kimble Claims**”), copies of which are attached as **Composite Exhibit 1**. The Kimble Claims were filed in the amount of \$10,500,273.97.

3. The Kimble Claims are based on a judgment, which was entered prior to the comment of the Assignment Cases.

4. The Kimble Claims have been settled and Kimble no longer has any claims in these Assignment Cases.

5. The Assignee requests that the Kimble Claims be disallowed.

WHEREFORE, the Assignee requests that the Court (i) enter an order substantially in the form attached as **Exhibit 2** disallowing the Kimble Claims, and (ii) grant such further relief to which he is entitled.

/s/ Scott A. Stichter
Scott A. Stichter (Florida Bar No. 0710679)
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Ste. 200
Tampa, Florida 33602-4718
Telephone: (813) 229-0144
Facsimile: (813) 229-1811
Email: sstichter@srbp.com
sstichter.ecf@srbp.com
Counsel for Soneet Kapila, Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the *Objection to Claims of Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble* has been furnished on February 20, 2024, via the Court's electronic filing portal to all counsel of record to and via U.S. Mail to:

Robert Kimble, Administrator and Personal Representative
of the Estate of Sharon Kimble
C/O Gardner Brewer Martinez-Monfort, P.A.
400 North Ashley Drive, Ste. 1100
Tampa, FL 33602

/s/ Scott A. Stichter
Scott Stichter

Composite Exhibit “1”

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
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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:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

**NOTICE OF PROOF OF CLAIM OF
ROBERT KIMBLE, ADMINISTRATOR AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE**

ROBERT KIMBLE, ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE, by and through his undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files (with supporting documents) and gives notice of its Proof of Claim against Assignor, LASER SPINE SURGERY CENTER OF PENNSYLVANNIA, LLC (Case No. 2019-2771), by delivering the Proof of Claim, attached hereto as Exhibit A, upon the Assignee, Soneet Kapila and Edward J. Peterson, Esquire of Stichter, Riedel, Blain & Postler, P.A.

DATE: July 9, 2019

/s/ Luis Martinez-Monfort
LUIS MARTINEZ-MONFORT, ESQ.
Florida Bar No. 0132713
AMANDA M. ULIANO, ESQ.
Florida Bar No. 0670340
Gardner Brewer Martinez-Monfort P.A.
400 North Ashley Drive, Ste. 1100
Tampa, Florida 33602
Telephone: (813) 221-9600
Facsimile: (813) 221-9611
Primary Email: lmmonfort@gbmmlaw.com
Secondary Email: litigation@gbmmlaw.com
*Attorneys for Robert Kimble, Administrator and
Personal Representative of the Estate of Sharon
Kimble*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing Notice of Proof of Claim of Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble with the Clerk of this Court by using the Florida Courts E-Filing Portal system which will send a Notice of Electronic Filing to all counsel of record.

/s/Luis Martinez-Monfort
Attorney

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
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Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

PROOF OF CLAIM

**TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES") YOU
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE
ASSIGNEE'S COUNSEL, NO LATER THAN:**

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:

**SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316**

**ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 260
TAMPA, FL 33602**

1. **PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:**
Laser Spine Surgery Center of Pennsylvania, LLC – Case No. 2019-CA-2771 .
2. **CREDITOR NAME** (Your name): Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble
 ADDRESS: c/o Luis Martinez-Monfort, Esq., Gardner Brewer Martinez-Monfort, P.A.
 ADDRESS: 400 North Ashley Drive, Suite 1100
 CITY, STATE, ZIP: Tampa, Florida 33602-4324
 TELEPHONE NUMBER: 813-221-9600
 EMAIL ADDRESS: lmmonfort@gbmmlaw.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: []

3. **BASIS FOR CLAIM:**

<input type="checkbox"/> Goods Sold	<input type="checkbox"/> Wages, Salaries and Compensations	<input checked="" type="checkbox"/> Secured Creditor
<input type="checkbox"/> Services Performed	<input type="checkbox"/> Taxes	
<input type="checkbox"/> Money Loaned	<input type="checkbox"/> Customer Deposit	
	<input checked="" type="checkbox"/> Other: <u>Final Judgment</u>	
4. **DATE DEBT WAS INCURRED:** January 17, 2019
5. **AMOUNT OF CLAIM:** \$10,500,273.97 – Secured by a \$11,970,312.33 Supersedeas Bond (See attached Appendix to Claim).
6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s): No, does not replace a prior claim.
7. **SUPPORTING DOCUMENTS:** Attach copies of supporting documents such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary. NOTE: Copies attached to Appendix to Claim
8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a “wrongful disclosure” under HIPPA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble

DATED: 7-8-2019

By: Robert Kimble
Signature of Claimant or Representative

Robert Kimble
Print Name and Title Here

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

In re:

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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:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

_____ /

APPENDIX TO CLAIM

1. Creditor, Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble (“Administrator”), hereby submits this appendix to its proof of claim in the above-captioned case and, more specifically, in the Laser Spine Surgery Center of Pennsylvania, LLC, Case No. 2019-CA-2771 (hereafter the “Debtor”).

2. This appendix supports Administrator’s timely filed claim.

3. Administrator secured a judgment against the Debtor,¹ in the amount of \$10,500,273.97 on January 17, 2019 (the “Judgment”) in the case styled *Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble, deceased and Robert Kimble in his own right, v. Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, Laser Spine Institute of Pennsylvania, LLC and Glenn Rubenstein* (collectively the “Defendants”), Case No. 16-00569 in the Court of Common Please, Chester County, Pennsylvania (the “Judgment”). A true and correct copy of the Judgment is attached hereto and incorporated herein as **Exhibit A**.

4. Administrator is the legal and valid owner and holder of the Judgment.

5. On or about February 14, 2019, Defendants, including the Debtor, secured and filed a Supersedeas Bond in the amount of \$11,970,312.33 in support of their appeal of the Judgment. A true and correct copy of the Supersedeas Bond is attached hereto and incorporated herein as **Exhibit B**.

6. The Supersedeas Bond was secured with non-debtor assets.

7. As a result of the filing of the Supersedeas Bond, Administrator currently possess a secured claim. However, should it be determined (by the Court or otherwise) that Administrator’s claim is not fully secured, Administrator reserves his right to amend his proof of claim to assert an unsecured deficiency claim.

8. This Proof of Claim may not include all amounts relating to all pre- and post-Petition Date fees, costs, expenses, charges, and attorney and other professional fees and expenses as to which Debtor is liable, including, without limitation, all costs and expenses incurred in enforcing and preserving Administrator’s rights in this case. Administrator reserves all rights to: (i) amend, clarify,

¹ Administrator secured a judgment against four Defendants: Laser Spine Institute, LLC, Laser Spine Institute of Philadelphia, Laser Spine Institute of Pennsylvania, LLC and Glenn Rubenstein. It is Administrator’s understanding that Defendant, Laser Spine Institute of Pennsylvania, LLC merged into Laser Spine Surgery Center of Pennsylvania, LLC and therefore, Administrator files his claim in that case.

modify, update or supplement this Proof of Claim at any time and in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for Administrator's claims, and/or to specify the amount of Administrator's contingent, unmatured and/or unliquidated claims, if any, as they become non-contingent, matured and/or liquidated, as well as amend its Proof of Claim to assert an unsecured deficiency claim; (ii) file additional proofs of claim at any time and in any respect; (iii) file separate proofs of claim on Administrator's behalf as: (a) required by law; or (b) otherwise ordered by the Court. By virtue of the filing of this Proof of Claim, Administrator does not waive, and hereby expressly reserves, Administrator's rights to pursue any and all claims and requests for payment, including but not limited to, the claims and requests for payment described herein based on the facts and circumstances giving rise to the claims asserted in this Proof of Claim, or any other alternative legal theories. In addition, certain of Administrator's claims cannot, at this time, be reasonably calculated or estimated (including ongoing attorneys' fees in the appellant case). Administrator does not waive any of its rights to any and all such claims by not ascribing a specific dollar amount thereto at this time.

9. All reservations of rights and benefits set forth in this Proof of Claim apply to the indebtedness and claims set forth herein.

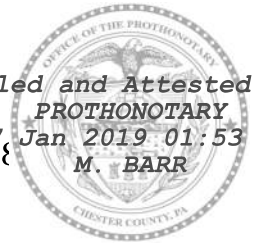
10. This claim is not subject to any setoff or counterclaim.

11. The execution and filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of Administrator's rights against any person, entity, or property, which may be liable for all or any part of the claims asserted herein; (b) a consent by Administrator to the jurisdiction of the Court with respect to proceedings commenced in this case against or otherwise involving Administrator; (c) a waiver or release of Administrator's right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal

or private rights or in any case, controversy or proceeding related hereto; (d) a waiver of the right to move or to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding which may be commenced in this case against or otherwise involving Administrator; (e) an election of remedies; or (f) a waiver or limitation of any procedural or substantive rights or defenses to any claim that may be asserted against Administrator by the Debtor or any trustee or examiner appointed in this case or any subsequent case, or any other party.

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
201 W. Market Street, Suite 1425, West Chester, PA 19380

Filed and Attested by
PROTHONOTARY
17 Jan 2019 01:53 PM
M. BARR



Matt Holliday
Prothonotary

To: **Defendants Laser Spine
Institute – Philadelphia,
Laser Spine Institute of
Pennsylvania, LLC,
Laser Spine Institute, LLC**

Defendant, Glenn Rubenstein
c/o John J. Hare, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
2000 Market Street, 23rd Floor
Philadelphia, PA 19103

c/o Kevin H. Wright, Esquire
Kevin H. Wright & Associates
34 Green Street
P.O. Box 5011
Lansdale, PA 19446

AND

James C. Sargent, Jr., Esquire
Maureen M. McBride, Esquire
Lamb McErlane P.C.
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565

Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble, deceased and Robert Kimble in his own right	:	CHESTER COUNTY
	:	COURT OF COMMON PLEAS
	:	
	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia, et al.	:	
	:	
Defendants.	:	

NOTICE

Pursuant to Rule 236 of the Supreme Court of Pennsylvania, you are hereby notified that a Judgment has been entered against you in the above proceeding as indicated below.

Matt Holliday
Prothonotary

- _____ Judgment by Default
- _____ Money Judgment
- _____ Judgment in Replevin
- _____ Judgment for Possession
- _____ Judgment on Award of Arbitrators
- X Judgment on Verdict
- _____ Judgment on Court Findings

If you have any questions concerning this notice, please call:

Attorney Lane R. Jubb, Jr., Esquire at this telephone number: (215) 592-1000.



Case Title: KIMBLE, ROBERT ET AL VS. LASER SPINE INSTITUTE
PHILADELPHIA ET AL
Case Number: 2016-00569-PL
Type: NOTICE

So Ordered

Meredith h. Barr

Electronically signed on 2019-01-18 12:49:47 page 3 of 3

THE BEASLEY FIRM, LLC
BY: LANE R. JUBB, JR., ESQUIRE
ID No. 319272
1125 Walnut Street
Philadelphia, PA 19107-4997
(215) 592-1000
(215) 592-8360 (Facsimile)

Attorneys for Plaintiff

Robert Kimble, Administrator and	:	CHESTER COUNTY
Personal Representative of the Estate	:	COURT OF COMMON PLEAS
of Sharon Kimble, deceased and	:	
Robert Kimble in his own right	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia,	:	
et al.	:	
Defendants.	:	

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in this matter on the verdict (see, Verdict Slip, attached hereto as Exhibit “A”) as molded by the Court’s Orders of December 28, 2018 (Exhibit “B”) and January 10, 2019 (Exhibit “C”), as follows:

*In favor of Plaintiff, Robert Kimble, against Defendants, Laser Spine Institute – Philadelphia, Laser Spine Institute of Pennsylvania, LLC, Laser Spine Institute, LLC, and Glenn Rubenstein, in the amount of the \$10,000,000.00 in Wrongful Death Act damages awarded by the jury, and delay damages in the amount of \$500,273.97, for a total amount of \$10,500,273.97.

THE BEASLEY FIRM, LLC

By: /s/ Lane R. Jubb, Jr.
LANE R. JUBB, JR., ESQUIRE
Attorney for Plaintiff

Date: 17 January 2019

EXHIBIT “A”

ROBERT KIMBLE, Administrator and
Personal Representative of the Estate of Sharon
Kimble, deceased and ROBERT KIMBLE in
his own right

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
: NO. 2016-00569

V.

LASER SPINE INSTITUTE and
GLEN RUBENSTIN, M.D.

:
:

2016 MAR 28 PM 3:51

PROthonotary
JENNIFER L. BROWN
2016 MAR 28 PA

VERDICT SLIP

Question 1:

Were any of the Defendants negligent?

Laser Spine Institute

Yes No

Glen Rubenstein, M.D.

Yes No

If you answered "Yes" to any Defendant, please move to Question 2 for that Defendant.
If you answered "No" to all Defendants, then you have reached a verdict and Plaintiffs may not recover.

Question 2:

Was the negligence of Defendant a factual cause of Plaintiffs' harm?

Laser Spine Institute

Yes No

Glen Rubenstein, M.D.

Yes No

If you answered "Yes" to any Defendant, please proceed to Question 3. If you answered "No" to all Defendants, then you have reached a verdict and Plaintiffs may not recover.

Question 3:

Do you find that the Plaintiff, Robert Kimble, was comparatively negligent?

_____ Yes No

If you answered "Yes" please proceed to Question 4. If you answered "No" please proceed to Question 5.

Question 4:

Was the negligence of Plaintiff a factual cause of his own harm?

_____ Yes _____ No

Question 5:

Taking the combined negligence that was a factual cause of any harm to the Plaintiffs at 100 percent, what percentage of that causal negligence was attributable to each party? (Answer only for those Defendants and Plaintiff that you have answered "Yes" to in both Questions 2 and 4.

Laser Spine Institute	<u>65</u> %
Glen Rubenstein, M.D.	<u>35</u> %
Robert Kimble	_____ %

Question 6:

What monetary amount do you award the Estate of Sharon Kimble for Sharon Kimble's past non-economic damages in a lump sum (survival claim)?

\$ ~~6,000,000.00~~
10,000,000.00 (AS)

Question 7:

What monetary amount do you award Plaintiff, Robert Kimble, for the past and future non-economic damages for the wrongful death of Sharon Kimble in a lump sum (wrongful death claim)?

\$ ~~6,000,000.00~~
10,000,000.00 (AS)

Date: 3/28/18

Alexa Smely
Foreperson

EXHIBIT “B”

ROBERT KIMBLE, administrator and personal representative of the Estate of Sharon Kimble, deceased and ROBERT KIMBLE in his own right

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
: NO. 2016-00569

V.

LASER SPINE INSTITUTE PHILADELPHIA,
LASER SPINE INSTITUTE OF PENNSYLVANIA, LLC,
LASER SPINE INSTITUTE, LLC,
GLENN RUBENSTEIN, M.D.


FILED
2018 DEC 28 PM 1:11
OFFICE OF THE PROTHONOTARY
CHESTER CO. PA.

Martin S. Kardon, Esquire, James E. Beasley, Esquire and Lane R. Jubb, Esquire, Attorneys for Plaintiffs
Kevin H. Wright, Esquire, Maureen M. McBride, Esquire and James C. Sargent, Esquire, Attorneys for Laser Spine Institute Defendants
Kevin H. Wright, Esquire and John J. Hare, Esquire, Attorneys for Defendant Glenn Rubenstein, M.D.

ORDER

AND NOW, this 28th day of December, 2018, upon consideration of Defendants' Post-Trial Motions, and all responses thereto, and after conducting argument on June 29, 2018,¹ it is hereby ORDERED and DECREED that the Motions are DENIED IN PART and GRANTED IN PART.² Judgment notwithstanding the verdict on the survival claim award only is GRANTED. All other relief is DENIED.

BY THE COURT:



William P. Mahon, J.

¹ A jury returned a verdict on March 28, 2018. On April 6, 2018, Defendants Laser Spine Institute, LLC and Glenn Rubenstein timely filed for joint post-trial relief. Thereafter, on April 10, 2018, the same trial and post-trial counsel filed for post-trial relief on behalf of Defendants Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC. On May 17, 2018, additional counsel entered an appearance on behalf of Glenn Rubenstein only and on June 8, 2018, original post-trial counsel withdrew their appearance for Glenn Rubenstein only. Trial counsel on behalf of all Defendants has remained counsel for all Defendants throughout trial and post-trial.

Throughout the entirety of trial, Defendants Laser Spine Institute, LLC, Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC were considered by all parties as one entity, the “Laser Spine Defendants” (“LSI”) collectively. They were all referred to as the Laser Spine Institute and represented, without objection, as that one entity on the verdict slip. Therefore, the filing of the April 10, 2018 motions for post-trial relief on behalf of Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC, thirteen (13) days after the jury verdict, is untimely pursuant to Pa.R.C.P. 227.1(c) despite the provisions that permit any **other** party to file a post-trial motion within ten (10) days after the filing of another party’s timely post-trial motion (emphasis added). To permit joint trial defendants, represented by the same counsel throughout both trial and post-trial, to request post-trial relief on behalf of one jointly represented defendant, and then acknowledge as timely successive requests for post-trial relief on behalf of the other jointly represented defendants raising identical post-trial issues outside the 10 day period as an “other” party would artificially extend the period for filing additional requests for post-trial relief by a period of time equal to ten days times the number of jointly represented defendants, less ten days. Such an interpretation of the rule would improperly compromise the ten day time period for an initial timely filing.

However, the post-trial motions on behalf of Defendants Laser Spine Institute, LLC and Glenn Rubenstein, filed on April 6, 2018, are substantially identical to those filed on behalf of Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC filed on April 10, 2018.

Defendants collectively seek JNOV (judgement notwithstanding the verdict); new trial; new trial on damages only or remittitur and in support of this relief have listed at least forty-five (45) different errors or contentions in support of their request for post-trial relief. Initially, we note that Defendants would do well to remember the words of the Honorable Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit:

With a decade and a half of federal appellate court experience behind me, I can say that even when we reverse a trial court it is rare that a brief successfully demonstrates that the trial court committed more than one or two reversible errors. I have said in open court that when I read an appellant’s brief that contains ten or twelve points, a presumption arises that there is no merit to *any* of them. I do not say that it is an irrebuttable presumption, but it is a presumption nevertheless that reduces the effectiveness of appellate advocacy. Appellate advocacy is measured by effectiveness, not loquaciousness.

United States v. Hart, 693 F.2d 286, 287 n.1 (3d Cir. 1982). See also Com. V. Ellis, 626 A.2d 1137 (Pa. 1998); Krishnan v. Cutler Group, Inc., 171 A.3d 856 (Pa. Super. 2017).

Although Judge Aldisert was referring to issues raised on appeal, we find his reasoning equally applicable to post-trial motion practice.

Pa.R.C.P. 227.1(b)(1), (2) requires that to obtain post-trial relief on any ground, the bases for relief must be properly raised in pre-trial or trial proceedings and must be specified in the post-trial motion as to how the issue was preserved in the record. Failure to do so waives the request for relief. Defendants’ post-trial motions contain no reference to the record other than blanket statements that their requests were preserved through appropriate pre-trial and trial motions and objections. See 4/6/18 Motion for Judgment N.O.V. at paragraph 1; 4/16/18 Motion for a New Trial at paragraph 1. This rule is critical because, as in this case, there is otherwise no requirement to file post-trial briefs, unless ordered by court to do so. Willistown Township Bd of Sup. v. Main Line Gardens, 155 A.3d 39 (Pa. 2017). The only reference to the record to preserve the right to JNOV is a reference to proposed binding jury instructions. See LSI Defendants Memo of Law in Support, pg. 6 n.2. Dr. Rubenstein simply argues in his memorandum of law that LSI and Dr. Rubenstein preserved their right to JNOV because of a denied nonsuit request.

Defendants filed Motion for Post-Trial Relief on April 6, 2018. By Order of April 12, 2018, the Court granted all Defendants thirty (30) days after receipt of the complete trial transcript to submit additional reasons for post-trial relief. On April 16, 2018, Plaintiffs’ filed their answer to Defendants’ Post-

Trial Motions. On May 17, 2018, LSI filed Supplemental Post-Trial Motions as did counsel for Dr. Glenn Rubenstein. On May 25, 2018, Plaintiffs filed their response in opposition to all Defendants supplemental motions. On June 7, 2018 all Defendants filed memoranda of law in support of their post-trial motions. On June 21, 2018 Plaintiffs filed their Brief in Opposition to Defendants post-trial motions. On June 28, 2018, Defendants respectively filed their reply memoranda which are not permissible filings, especially when new arguments are raised. In addition, those filings are violative of the Court's Order of April 12, 2018. On November 29, 2018 both Defendants again filed Supplemental Memorandum of Law in Support of their post-trial motions. The June 28 and November 29 filings are untimely and in violation of the Court's prior Order.

² Defendants contend that there is no basis for finding vicarious liability against LSI since Plaintiffs did not establish that Dr. Rubenstein was its employee or agent in their case in chief. The Court denied the non-suit motion and Defendants proceeded with their cases. Therefore, the correctness of the trial Court's ruling on Defendants' non-suit motion is MOOT. Dr. Rubenstein subsequently testified to vicarious responsibility and counsel stipulated same. See *Tong-Summerford v. Abington Mem. Hosp. & Cardiology Grp. Of Abington*, 190 A.3d 631 (Pa. Super. 2018); *F.W. Wise Gas Co. v. Beech C.R. Co.*, 263 A.2d 313 (Pa. 1968); *Whitaker v. Frankford Hospital*, 984 A.2d 512 (Pa. Super. 2009).

Defendants further contend that they have preserved their rights to request JNOV by way of proposed binding jury instructions. Although Defendants did submit a proposed directed verdict charge (See "requests for binding instructions ..." at paragraphs 1., 2. and 3., filed March 16, 2018 at docket reference number 185), counsel were informed that the Court was not inclined to give non-standard jury instructions. (See N.T. 3/27/2018 at page 40.) There was no formal denial of those specific instructions pursued by counsel for Defendants nor were any specific denial rulings made of record. (See N.T. 3/27/2018 pages 24 through 42; N.T. 3/28/2018 pages 2 through 6; pages 79 through 82; pages 89-90.) Despite the filing of the request for binding instructions, the absence of a specific request and ruling and/or objection on the binding instruction request does not preserve the issues for JNOV. See *Thomas Jefferson University v. Wapner*, 903 A.2d 565 (Pa. Super. 2006); see also *Faherty v. Gracias*, 874 A.2d 1239 (Pa. Super. 2005); *Corvin v. Tihansky*, 184 A.3d 986 (Pa. Super. 2018). Defendants failed to make objection, including at the conclusion of the Court's final charge to the jury and prior to the discharge of the jury. Defendants have failed to preserve their right to JNOV. See *Straub v. Cherne Industries*, 880 A.2d 561 (Pa. 2005). However, since Plaintiffs have filed a Praecepto to Withdraw Opposition to JNOV on November 27, 2018, as to the Survival Act Award, that motion is GRANTED as to all Defendants.

Defendants also seek a new trial claiming that the verdict against LSI is unsupported in the record. However, that issue was not properly preserved at trial. One basis raised by Defendants is essentially that LSI should not have been placed on the verdict slip since Plaintiffs were pursuing a vicarious liability claim against those Defendants as a result of the actions of its employee, Dr. Glenn Rubenstein. Therefore, since no separate corporate negligence claim was sought against LSI, LSI should not have been included on the verdict slip except on the issue of damages. The verdict slip submitted to the jury is as proposed by all Defendants and Plaintiffs with regard to inclusion of LSI. (See Proposed verdict sheet of Defendants filed March 27, 2018 at docket reference number 193 and at docket reference number 148, filed March 13, 2018, for Plaintiffs.) There was no objection raised by Defendants or Plaintiffs to the submission of the verdict slip except as to the inclusion of damages on Plaintiffs' non-economic survival act claim (the Court has granted JNOV on that award). The inconsistency now claimed by Defendants was never raised with the trial court prior to the discharge of the jury and as such is not preserved for review. See *Stapas v. Giant Eagle, Inc.*, 2018 WL 6070787 (Pa. 11/21/18); *Goldberg v. Isdamer*, 780 A.2d 654 (Pa. Super. 2001), rev'd on other grounds by *Vogelsberger v. Magee-Womens Hospital*, 903 A.2d 540 (Pa. Super. 2006); *Tong-Summerford, supra*. Defendants cannot fail to object to a self-created claimed inconsistency prior to the discharge of the jury and subsequently argue in post-trial motions that a verdict resulting from their failure to timely object to trial error is improper. *Stapas v. Giant Eagle, Inc. supra*. A party must make a timely and specific objection at the earliest possible stage of the adjudicatory process in order to afford the trial court the first opportunity to remedy any wrong and avoid appeal; otherwise the issue is not preserved for appellate review. *Hong v. Pelagatti*, 765 A.2d 1117 (Pa. Super. 2000). Even if not waived, LSI was properly included on the verdict slip based upon vicarious liability for the actions of LSI employee, Nurse Sean Perez, for failure to administer medication as ordered by Dr. Rubenstein. Such negligence was argued in Plaintiffs' closing argument without objection and the jury was instructed on vicarious negligence.

Defendants further challenge that the jury's finding of negligence and factual cause of harm alleged by Plaintiffs. Defendants contend that the testimony of Plaintiffs' experts lack a sufficient scientific basis and is without merit. Defendants did not seek to challenge the methodology underlying the testimony of Plaintiffs' experts prior to trial and have offered no basis or authority to challenge those opinions post-trial. Failure to request a *Frye* hearing on the methodology that forms the basis for Plaintiffs' experts' opinions, coupled with a failure to object at trial to the admission of testimony of those experts at trial, waives any post-trial objection to the scientific principles upon which the expert's testimony is based. See *Dilliplaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974); *Hong v. Pelagatti*, *supra*.

Plaintiffs presented, without objection, the expert testimony of Dr. Ian Hood, the Chester County Deputy Coroner and a forensic pathologist, as well as Dr. Jeffrey Brent and Dr. Miles Dinner, that the synergistic effect of the magnitude of medication administered by Dr. Rubenstein and Nurse Perez depressed Plaintiff's central nervous system and CO2 receptors, causing an increased risk of causing Mrs. Kimbel's death. This synergistic effect was affirmed by defense expert, Dr. Neil Hoffman, forensic pathologist. He confirmed that the synergistic effect of the administered medications could depress Mrs. Kimble's central nervous system but did not believe that the medications administered to Plaintiff in this case rose to that level. However, Dr. Hoffman appears to contradict himself when he testified that Plaintiff's central nervous system was so depressed by her administered medications that her CO2 receptors were not properly functioning and therefore, only slight pressure from a pillow or other soft object on her face, could cause respiratory obstruction and death. Dr. Hoffman also agreed with Plaintiffs' experts that the administered medications would not dissipate from the brain as quickly as from the blood stream. As such, the medication build up in the brain would exceed that measurable in the blood stream. This medication build up would manifest post discharge. The cumulative testimony could be viewed by the jury as supportive of Plaintiffs' causation claims and not supportive of Defendants comparative negligence claim. The credibility of all testimony is within the sole province of the jury and this testimony, if credited, is sufficient to support the verdict. Defendants attempted to mitigate any potential liability by seeking a comparative negligence claim, through both husband's suffocation of his wife and/or because of his failure to properly follow post discharge instructions. Those claims were rejected by the trier of fact despite the introduction of trial evidence of a prior Protection from Abuse Order ("PFA") issued against husband in 2011 (3/22/18 N.T. pp. 68-69) and which was still in existence. Additionally, Defendants introduced evidence of a divorce in 2012 (3/22/18 N.T. pp. 69-77). Defendants were permitted to confront husband about a 2004 domestic assault conviction involving decedent. (3/19/18 N.T. p. 47) but did not do so. The jury also heard that despite this marital discord, the Kimble's remarried on October 6, 2012, six months after the finalization of the prior divorce.

All Defendants further argue that the Court made erroneous evidentiary rulings that require the granting of a new trial. In particular, preventing the "robust questioning" of Mr. Kimble regarding a 2011 PFA and a 2012 divorce decree, both issued in the State of Ohio. In essence, Defendants wanted to re-litigate the 2011 PFA and the 2012 divorce actions. The documents that Defendants intended to introduce as evidentiary support were hearsay documents and not properly authenticated pursuant to 42 Pa. C.S.A. §5328. The documents were not public records nor self-authenticating and as such are hearsay. Defense trial counsel was made aware that he had to call a witness to authenticate the documents but failed to do so. The possession of non-authenticated copies of those documents provided a sufficient basis for defense counsel to question Mr. Kimble regarding what they represent, which counsel attempted, but the trial Court ruled that counsel was limited to the witness's answers since counsel could not properly admit them without proper Ohio authentication or direct authentication through Mr. Kimble. The Court was not going to permit a PFA trial or a divorce trial within the context of the medical malpractice trial. Defendants were permitted to show surviving spouse the hearsay copy of the documents and, if properly authenticated (which they were not), to introduce them into the record in support of closing arguments and for review by the jury. When the witness was shown the PFA document, he testified that he did not agree with that which was contained in it. Defense counsel could not thereafter introduce it into the record because it was not properly authenticated. Defense counsel then attempted to question spouse further about the PFA and the Court sustained objections regarding litigation of the collateral PFA issue. Defendants argue the admissibility of the PFA pursuant to Pa. R.E. 803(8) but fail to recognize that the document must first be authenticated pursuant to 42 Pa. C.S.A. §5328.

Similar analysis is applicable to the purported Ohio divorce document. Defendants failed to acknowledge that the Court permitted questioning that Mr. and Mrs. Kimble were divorced in early 2012. Upon further questioning, husband testified that he did not know that there was a divorce decree entered against him. Since spouse did not know that a divorce decree had been entered against him, there was no purpose in pursuing the matter with an unauthenticated hearsay document. Defendants' arguments that the divorce documents were self-authenticating pursuant to Pa. R.E. 902(2) are clearly misplaced.

Defense trial counsel never requested that these Ohio documents be used to refresh the recollection of the witness. Defendants failed to acknowledge that defense trial counsel did not use previously taken discovery depositions of decedent's husband at trial, which would have been proper to explore impeachment issues. The trial Court did not instruct defense trial counsel not to ask any further questions in these areas other than ones that would go outside of the contents of non-hearsay documents or initiate a collateral trial regarding the 2011 PFA or the 2012 divorce proceedings. Defense trial counsel could have properly introduced the PFA Order, the divorce decree and any 2004 statements made to the police by Mr. Kimble if those documents were properly authenticated ... but they were not. The trial rulings were an appropriate restriction in order to prevent the trial of collateral matters that had occurred many years before. Defense trial counsel was not prohibited from introducing non-hearsay documents or non-hearsay testimony regarding these matters... counsel simply failed to do so.

Finally, Defendants argue that the Court's evidentiary rulings prevented them from adequately pursuing the defense that Mr. Kimble suffocated his wife. In pursuit of that argument, Defendants attempted to present the testimony of medical experts that, based upon their review of records related to Mr. Kimble's 2004 arrest, the 2011 PFA and the 2012 divorce, in their opinion, Mrs. Kimble was suffocated by her husband, which was the cause of death. The Court precluded such testimony as being outside the scope of permissible medical expert testimony. The Court did not prevent questioning and testimony regarding suffocation. *See* testimony of Ian Hood, M.D. 3/23/18 N.T. pp. 114-116 (who performed the autopsy of Mrs. Kimble). The Court also permitted questioning of Dr. Hood regarding his efforts related to his preparation of his autopsy report, including his review of materials, and whether he interviewed employees of the Marriott Hotel who first found Mrs. Kimble, the emergency responders, the police or Mr. Kimble himself. Dr. Hood explained that he does not conduct an investigation and if he had any specific questions or suspicions, he could have asked the deputy coroner to further investigate, but he had no suspicions of criminal conduct. *See* 3/23/18 N.T. pages. 117 to 134.

Defendants have waived and are otherwise not entitled to JNOV. The wrongful death claim award does not shock the conscience of the Court and is supported by the weight of the evidence. *See Rettger v. UPMC Shadyside*, 991 A.2d 915 (Pa. Super. 2010), appeal denied 15 A.3d 491 (Pa. 2011); *Tong – Summerford v. Abington*, *supra*. The evidence of record clearly is sufficient to support the jury's wrongful death verdict. How much is a marital relationship worth to a surviving spouse? We leave that determination to the wisdom of a jury. To compare verdicts of other juries/fact finders in order to determine an appropriate award herein strikes at the independence of the jury process. To rule otherwise would permit other juries, hearing other evidence about other marriages, to create a "data bank" of acceptable ranges of compensation for the loss of a spouse. Defense trial counsel never objected to the amount of the verdict prior to jury discharge and did not request to poll the jury. Neither did counsel ask to view the verdict slip at any time before the jury was discharged. And finally, any complained of evidentiary rulings made by the Court were correct rulings or harmless error in light of the evidence found credible by the jury.

EXHIBIT “C”

SENT
JAN 14 2019

Robert Kimble, Administrator and
Personal Representative of the Estate
of Sharon Kimble, deceased and
Robert Kimble in his own right

CHESTER COUNTY
COURT OF COMMON PLEAS

Plaintiffs, :

Case No.: 16-00569

v. :

JURY TRIAL DEMANDED

Laser Spine Institute – Philadelphia,
et al.

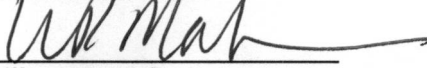
Defendants. :

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OFFICE OF THE
PROthonotary
CHESTER CO. PA.

ORDER

AND NOW, this 10th day of January, 2019, upon consideration of Plaintiff's Amended Motion for Delay Damages Pursuant to Pa. R.C.P. 238 and this Honorable Court's 31 December 2019 Order, ~~and any response thereto~~, it is hereby ORDERED and DECREED that the said Amended Motion is GRANTED. Delay damages in the amount of \$500,273.97 are added to the verdict on the \$10,000,000.00 Wrongful Death Act damages awarded by the jury; that verdict is now \$10,500,273.97. ①

BY THE COURT:


William P. Mahon, J.

① Defendants did not object to the mathematical calculations contained in Plaintiffs' original motion filed on March 29, 2018.

THE BEASLEY FIRM, LLC
BY: LANE R. JUBB, JR., ESQUIRE
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1125 Walnut Street
Philadelphia, PA 19107-4997
(215) 592-1000
(215) 592-8360 (Facsimile)

Attorneys for Plaintiff

Robert Kimble, Administrator and	:	CHESTER COUNTY
Personal Representative of the Estate	:	COURT OF COMMON PLEAS
of Sharon Kimble, deceased and	:	
Robert Kimble in his own right	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia,	:	
et al.	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via the Court's electronic filing and via electronic and certified mail upon the following:

Kevin H. Wright, Esquire
Kevin H. Wright & Associates
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Lansdale, PA 19446

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Marshall, Dennehey, Warner, Coleman & Goggin
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Philadelphia, PA 19103

James C. Sargent, Jr., Esquire
Maureen M. McBride, Esquire
Lamb McErlane P.C.
24 E. Market Street
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West Chester, PA 19381-0565

By: /s/Lane R. Jubb, Jr.
LANE R. JUBB, JR.

Date: 17 January 2019

LAMB McERLANE PC

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KEVIN H. WRIGHT & ASSOCIATES

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Counsel for Defendants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

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(215) 575-2609

*Counsel for Defendant,
Glenn Rubenstein, M.D.*

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

2019 FEB 19 PM 3:51

FILED

ROBERT KIMBLE, ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE AND ROBERT KIMBLE IN HIS OWN RIGHT,	:	CHESTER COUNTY
	:	COURT OF COMMON PLEAS
Plaintiffs	:	
v.	:	
LASER SPINE INSTITUTE, LLC, GLENN RUBENSTEIN, ET AL,	:	NO. 16-00569
Defendants	:	

PRAECIPE TO FILE SUPERSEDEAS BOND

TO THE PROTHONOTARY:

In conjunction with the appeal filed today from the judgment dated January 17, 2019,¹ kindly file of record the enclosed Supersedeas Bond in the amount of \$11,970,312.33, which is 120% of the relevant judgment amount.² By operation of Rule of Appellate Procedure 1731(a), the filing of the enclosed Bond results in an automatic stay of execution against Appellants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, Laser Spine Institute of Pennsylvania, LLC, and Glenn Rubenstein.

LAMB McERLANE PC

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

BY: 

James C. Sargent, Jr.

BY: John J. Hare

*Counsel for Defendants, Laser Spine Counsel for Defendant, Glenn
Rubenstein Institute, LLC, Laser Spine Institute Philadelphia,
Laser Spine Institute of Pennsylvania, LLC*

Date: February 19, 2019

¹ This Court's dockets reflect that Plaintiff's praecipe to enter judgment was filed on January 17, 2019, but the judgment was not indexed or reduced until January 23, 2019. For ease of reference, this praecipe and the enclosed Bond utilize a judgment date of January 17, 2019.

Moreover, the jury's verdict was entered against "Laser Spine Institute," but Plaintiff entered judgment against Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC. Those entities have filed a motion before the trial judge contesting the entry of judgment against them because they were not found liable on the jury verdict sheet. That motion is still pending, but Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC, file the enclosed Bond in an abundance of caution, to secure a stay of execution while their appeal is pending, and without waiver of their right to contest the entry of judgment against them.

² The judgment amount is \$10,500,273.97. The Medical Care Availability and Reduction of Error Act (MCARE) Fund has a statutory obligation with regard to Dr. Rubenstein's liability in the amount of \$500,000. See 40 P.S. §1303.712(c); and *Hosp. & Health System Ass'n of Pa. v. Commonwealth*, 77 A.3d 587, 592 (Pa. 2013) ("Presently, the fund's liability limit is \$500,000 per occurrence."). Additionally, MCARE pays its proportionate share of delay damages, which is \$25,013.70 (MCARE's obligation of \$500,000 amounts to a 5% share of the delay damages, or \$25,013.70). MCARE's obligation is not subject to the requirement of appellate security set forth in Pa.R.C.P. 1731. See *Rittenhouse v. Hanks*, 777 A.2d 1113, 1121 (Pa. Super. 2001) ("[T]he CAT Fund [MCARE's predecessor] is exempt from posting security[.]"). Thus, the amount of appellate security required by Rule 1731 is \$11,970,312.33 (the sum of the judgment of \$10,500,273.97 minus MCARE's obligation of \$25,013.70 times 120%).

ROBERT KIMBLE, ADMINISTRATOR
AND PERSONAL REPRESENTATIVE OF
THE ESTATE OF SHARON KIMBLE AND : CHESTER COUNTY
ROBERT KIMBLE IN HIS OWN RIGHT, : COURT OF COMMON PLEAS

Plaintiffs :

v. :

LASER SPINE INSTITUTE, LLC, GLENN : NO. 16-00569
RUBENSTEIN, ET AL,

Defendants :

SUPERSEDEAS BOND

Appellants, Laser Spine Institute, LLC, Laser Spine Institute of Philadelphia, Laser Spine Institute of Pennsylvania, LLC, and Glenn Rubenstein, having appealed from a judgment docketed on January 17, 2019, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned Surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania, for the use of the persons or parties entitled thereto, in the sum of Eleven Million Nine Hundred Seventy Thousand Three Hundred Twelve Dollars and Thirty-Three Cents (\$11,970,312.33), to be paid as required by law.

Upon conclusion of this matter, if the Appellants satisfy the above identified judgment or any court order modifying or affirming that judgment and pay all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force. In no event shall the Surety's obligation exceed Eleven Million Nine Hundred Seventy Thousand Three Hundred Twelve Dollars and Thirty-Three Cents (\$11,970,312.33).

Date: February 14, 2019



National Indemnity Company (Surety)
1314 Douglas Street, Suite 1400
Omaha, NE 68102-1944
NAIC: 20087

BY: _____

Ted J. Lane, Attorney-in-Fact
Bond No. 70NGP184641

**POWER-OF-ATTORNEY
NATIONAL INDEMNITY COMPANY**

1314 DOUGLAS STREET, SUITE 1400, OMAHA, NEBRASKA 68102-1944
(402) 916-3000

70NGP184641

KNOW ALL MEN BY THESE PRESENTS: This Power-of-Attorney is not valid unless attached to the duly-executed bond that it authorizes. This Power-of-Attorney specifies **THE AUTHORITY OF THE ATTORNEY-IN-FACT** and **THE LIABILITY OF NATIONAL INDEMNITY COMPANY, WHICH SHALL NOT EXCEED:**

**ELEVEN MILLION, NINE HUNDRED SEVENTY THOUSAND, THREE HUNDRED TWELVE
AND 33/100 DOLLARS
(\$ 11,970,312.33)**

NATIONAL INDEMNITY COMPANY, a Nebraska corporation, having its principal office in the City of Omaha, State of Nebraska, does hereby make, constitute and appoint Ted J. Lane in the City of Omaha, County of Douglas, State of Nebraska, its true and lawful attorney-in-fact, at Omaha, in the State of Nebraska, to make, execute, seal and deliver for and on its behalf, and as its act and deed, any and all bonds and undertakings, provided that the liability of the Company as surety on any such bond executed under this authority shall not in any event exceed the sum shown above.

THIS POWER VOID IF ALTERED OR ERASED

The acknowledgement and execution of any such document by the said Attorney-In-Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly-elected officers of this Company.

This Power of Attorney is granted, and is signed and sealed by original signature, under and by the authority of the following Resolution adopted by the Executive Committee, as duly authorized by the Board of Directors of NATIONAL INDEMNITY COMPANY, at a meeting duly called and held on the 15th day of March, 2017:

RESOLVED, That the President, any Vice President or the Secretary shall have the power and authority to (1) appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

FURTHER RESOLVED, That any Surety Administrator or Surety Underwriter shall have the power and authority to appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company any license bond with a limit of \$10,000 or less.

FURTHER RESOLVED, That any Surety Administrator shall have the power and authority to appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company (1) any bond, except an appeal bond, with a limit of \$10,000 or less and (2) any license bond with a limit of \$50,000 or less.

In Witness Whereof NATIONAL INDEMNITY COMPANY has caused its official seal to be hereunder affixed, and these presents to be signed by its President this 14th day of February, 2019.



NATIONAL INDEMNITY COMPANY

BY [Signature]
(Name) Donald F. Wurster
(Title) President

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.:

On this 14th day of February, 2019, before me, a Notary Public, personally appeared Donald F. Wurster, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as President of said NATIONAL INDEMNITY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.

JOSLYN JENSEN
General Notary State of Nebraska
My Commission Expires
June 22, 2022.

[Signature]
Notary Public, Nebraska

- 1. THIS POWER DOES NOT AUTHORIZE EXECUTION OF BONDS OF NE EXEAT OR ANY GUARANTEE FOR FAILURE TO PROVIDE PAYMENTS OF ALIMONY SUPPORT OR WAGE LAW CLAIMS, OR BONDS FOR CRIMINAL APPEARANCE.
- 2. THIS POWER DOES NOT AUTHORIZE THE EXECUTION OF BONDS FOR LOAN GUARANTEES.

This Power Can Only Be Used in The State of: PENNSYLVANIA
This Power Can Only Be Used For The Following Obligor(s): COMMONWEALTH OF PENNSYLVANIA
Bond Title or Description: SUPERSEDEAS BOND / NO. 16-00569, CHESTER COUNTY COURT OF COMMON PLEAS
Principal or case reference: LASER SPINE INSTITUTE, LLC, GLENN RUBENSTEIN, ET AL. (Defendants/Appellants)

LAMB McERLANE PC
 By: James C. Sargent, Jr.
 Attorney I.D. No. 28642
 Maureen M. McBride
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 (610) 940-2300

Counsel for Defendants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC

ROBERT KIMBLE, ADMINISTRATOR AND
 PERSONAL REPRESENTATIVE OF THE
 ESTATE OF SHARON KIMBLE AND
 ROBERT KIMBLE IN HIS OWN RIGHT,

Plaintiff

v.

LASER SPINE INSTITUTE, LLC,
 LASER SPINE INSTITUTE PHILADELPHIA,
 LASER SPINE INSTITUTE OF
 PENNSYLVANIA, LLC, GLENN
 RUBENSTEIN, M.D.,

Defendants.

: CHESTER COUNTY
 : COURT OF COMMON PLEAS

: NO. 16-00569

FILED
 2019 FEB 19 PM 3:54
 OFFICE OF THE
 PROTHONOTARY
 CHESTER CO., PA.

CERTIFICATE OF SERVICE

This is to certify that in this case, a copy of the foregoing Praecipe to File Supersedeas Bond of Defendants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC, was served on the following persons, by the following means and on the date stated below:

Name:	Means of Service	Date of Service
The Honorable William P. Mahon Chester County Justice Center 201 West Market Street West Chester, PA 19382	via Hand Delivery and First Class Mail	February 19, 2019

Martin Kardon, Esquire
Kanter Bernstein & Kardon P.C.
1617 JFK Blvd, Suite 1150
Philadelphia, PA 19103
Attorney for Plaintiff

Electronic and
First Class Mail

February 19, 2019

James E. Beasley, Jr., Esquire
Lane R. Jubb, Jr., Esquire
The Beasley Firm LLC
1125 Walnut Street
Philadelphia, PA 19107
Attorneys for Plaintiff

Electronic and
First Class Mail

February 19, 2019

LAMB McERLANE PC

By: 
James C. Sargent, Jr.

Dated: February 19, 2019

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

**NOTICE OF PROOF OF CLAIM OF
ROBERT KIMBLE, ADMINISTRATOR AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE**

ROBERT KIMBLE, ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE, by and through his undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files (with supporting documents) and gives notice of its Proof of Claim against Assignor, LASER SPINE INSTITUTE, LLC (Case No. 2019-2762), by delivering the Proof of Claim, attached hereto as Exhibit A, upon the Assignee, Soneet Kapila and Edward J. Peterson, Esquire of Stichter, Riedel, Blain & Postler, P.A.

DATE: July 9, 2019

/s/ Luis Martinez-Monfort
LUIS MARTINEZ-MONFORT, ESQ.
Florida Bar No. 0132713
AMANDA M. ULIANO, ESQ.
Florida Bar No. 0670340
Gardner Brewer Martinez-Monfort P.A.
400 North Ashley Drive, Ste. 1100
Tampa, Florida 33602
Telephone: (813) 221-9600
Facsimile: (813) 221-9611
Primary Email: lmmonfort@gbmmlaw.com
Secondary Email: litigation@gbmmlaw.com
*Attorneys for Robert Kimble, Administrator and
Personal Representative of the Estate of Sharon
Kimble*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing Notice of Proof of Claim of Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble with the Clerk of this Court by using the Florida Courts E-Filing Portal system which will send a Notice of Electronic Filing to all counsel of record.

/s/Luis Martinez-Monfort
Attorney

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

PROOF OF CLAIM

**TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES") YOU
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE
ASSIGNEE'S COUNSEL, NO LATER THAN:**

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:

**SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316**

**ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 260
TAMPA, FL 33602**

1. **PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:**
Laser Spine Institute, LLC – Case No. 2019-CA-2762 .

2. **CREDITOR NAME** (Your name): Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble
ADDRESS: c/o Luis Martinez-Monfort, Esq., Gardner Brewer Martinez-Monfort, P.A.
ADDRESS: 400 North Ashley Drive, Suite 1100
CITY, STATE, ZIP: Tampa, Florida 33602-4324
TELEPHONE NUMBER: 813-221-9600
EMAIL ADDRESS: lmmonfort@gbmmlaw.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: []

3. **BASIS FOR CLAIM:**

Goods Sold Wages, Salaries and Compensations Secured Creditor
 Services Performed Taxes
 Money Loaned Customer Deposit
 Other: Final Judgment _____

4. **DATE DEBT WAS INCURRED:** January 17, 2019

5. **AMOUNT OF CLAIM:** \$10,500,273.97 – Secured by a \$11,970,312.33 Supersedeas Bond (See attached Appendix to Claim).

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of te prior claim(s)?: No.

7. **SUPPORTING DOCUMENTS:** Attach copies of supporting documents such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary. NOTE: Copies attached to Appendix to Claim.

8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a “wrongful disclosure” under HIPPA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble

DATED: 7-8-2019

By: Robert Kimble
Signature of Claimant or Representative
ROBERT Kimble
Print Name and Title Here

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

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
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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:
Case No: 2019-CA-2762

To:

Soneet Kapila,

Division: L

Assignee.

_____ /

APPENDIX TO CLAIM

1. Creditor, Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Administrator (“Administrator”), hereby submits this appendix to its proof of claim in the above-captioned case and, more specifically, in the Laser Spine Institute, LLC, Case No. 2019-CA-2762 (hereafter the “Debtor”).

2. This appendix supports Administrator’s timely filed claim.

3. Administrator secured a judgment against the Debtor, in the amount of \$10,500,273.97 on January 17, 2019 (the “Judgment”) in the case styled *Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Administrator, deceased and Robert Kimble in his own right, v. Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, Laser Spine Institute of Pennsylvania, LLC and Glenn Rubenstein* (collectively the “Defendants”), Case No. 16-00569 in the Court of Common Pleas, Chester County, Pennsylvania (the “Judgment”). A true and correct copy of the Judgment is attached hereto and incorporated herein as **Exhibit A**.

4. Administrator is the legal and valid owner and holder of the above referenced judgments.

5. On or about February 14, 2019, Defendants, including the Debtor, Laser Spine Institute, LLC, secured and filed a Supersedeas Bond in the amount of \$11,970,312.33 in support of their appeal of the Judgment. A true and correct copy of the Supersedeas Bond is attached hereto and incorporated herein as **Exhibit B**.

6. The Supersedeas Bond was secured with non-debtor assets.

7. As a result of the filing of the Supersedeas Bond, Administrator’s currently possess a secured claim. However, should it be determined (by the Court or otherwise) that Judgment Creditors’ claim is not fully secured, Judgment Creditors reserve their right to amend their proof of claim to assert an unsecured deficiency claim.

8. This Proof of Claim may not include all amounts relating to all pre- and post-Petition Date fees, costs, expenses, charges, and attorney and other professional fees and expenses as to which Debtor is liable, including, without limitation, all costs and expenses incurred in enforcing and preserving Administrator’s rights in this case. Administrator reserves all rights to: (i) amend, clarify, modify, update or supplement this Proof of Claim at any time and in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for

Administrator's claims, and/or to specify the amount of Administrator's contingent, unmatured and/or unliquidated claims, if any, as they become non-contingent, matured and/or liquidated, as well as amend its Proof of Claim to assert an unsecured deficiency claim; (ii) file additional proofs of claim at any time and in any respect; (iii) file separate proofs of claim on Administrator's behalf as: (a) required by law; or (b) otherwise ordered by the Court. By virtue of the filing of this Proof of Claim, Administrator does not waive, and hereby expressly reserves, Administrator's rights to pursue any and all claims and requests for payment, including but not limited to, the claims and requests for payment described herein based on the facts and circumstances giving rise to the claims asserted in this Proof of Claim, or any other alternative legal theories. In addition, certain of Administrator's claims cannot, at this time, be reasonably calculated or estimated (including ongoing attorneys' fees in the appellant case). Administrator does not waive any of its rights to any and all such claims by not ascribing a specific dollar amount thereto at this time.

9. All reservations of rights and benefits set forth in this Proof of Claim apply to the indebtedness and claims set forth herein.

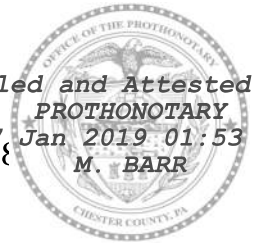
10. This claim is not subject to any setoff or counterclaim.

11. The execution and filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of Administrator's rights against any person, entity, or property, which may be liable for all or any part of the claims asserted herein; (b) a consent by Administrator to the jurisdiction of the Court with respect to proceedings commenced in this case against or otherwise involving Administrator; (c) a waiver or release of Administrator's right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto; (d) a waiver of the right to move or to withdraw the reference with respect to the subject matter of this Proof of Claim, any

objection thereto or other proceeding which may be commenced in this case against or otherwise involving Administrator; (e) an election of remedies; or (f) a waiver or limitation of any procedural or substantive rights or defenses to any claim that may be asserted against Administrator by the Debtor or any trustee or examiner appointed in this case or any subsequent case, or any other party.

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
201 W. Market Street, Suite 1425, West Chester, PA 19380

Filed and Attested by
PROTHONOTARY
17 Jan 2019 01:53 PM
M. BARR



Matt Holliday
Prothonotary

To: **Defendants Laser Spine
Institute – Philadelphia,
Laser Spine Institute of
Pennsylvania, LLC,
Laser Spine Institute, LLC**

Defendant, Glenn Rubenstein
c/o John J. Hare, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
2000 Market Street, 23rd Floor
Philadelphia, PA 19103

c/o Kevin H. Wright, Esquire
Kevin H. Wright & Associates
34 Green Street
P.O. Box 5011
Lansdale, PA 19446

AND

James C. Sargent, Jr., Esquire
Maureen M. McBride, Esquire
Lamb McErlane P.C.
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565

Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble, deceased and Robert Kimble in his own right	:	CHESTER COUNTY
	:	COURT OF COMMON PLEAS
	:	
	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia, et al.	:	
	:	
Defendants.	:	

NOTICE

Pursuant to Rule 236 of the Supreme Court of Pennsylvania, you are hereby notified that a Judgment has been entered against you in the above proceeding as indicated below.

Matt Holliday
Prothonotary

- _____ Judgment by Default
- _____ Money Judgment
- _____ Judgment in Replevin
- _____ Judgment for Possession
- _____ Judgment on Award of Arbitrators
- X Judgment on Verdict
- _____ Judgment on Court Findings

If you have any questions concerning this notice, please call:

Attorney Lane R. Jubb, Jr., Esquire at this telephone number: (215) 592-1000.



Case Title: KIMBLE, ROBERT ET AL VS. LASER SPINE INSTITUTE
PHILADELPHIA ET AL
Case Number: 2016-00569-PL
Type: NOTICE

So Ordered

Meredith h. Barr

Electronically signed on 2019-01-18 12:49:47 page 3 of 3

2016-00569-PL

THE BEASLEY FIRM, LLC
BY: LANE R. JUBB, JR., ESQUIRE
ID No. 319272
1125 Walnut Street
Philadelphia, PA 19107-4997
(215) 592-1000
(215) 592-8360 (Facsimile)

Attorneys for Plaintiff

Robert Kimble, Administrator and	:	CHESTER COUNTY
Personal Representative of the Estate	:	COURT OF COMMON PLEAS
of Sharon Kimble, deceased and	:	
Robert Kimble in his own right	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia,	:	
et al.	:	
Defendants.	:	

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in this matter on the verdict (see, Verdict Slip, attached hereto as Exhibit “A”) as molded by the Court’s Orders of December 28, 2018 (Exhibit “B”) and January 10, 2019 (Exhibit “C”), as follows:

*In favor of Plaintiff, Robert Kimble, against Defendants, Laser Spine Institute – Philadelphia, Laser Spine Institute of Pennsylvania, LLC, Laser Spine Institute, LLC, and Glenn Rubenstein, in the amount of the \$10,000,000.00 in Wrongful Death Act damages awarded by the jury, and delay damages in the amount of \$500,273.97, for a total amount of \$10,500,273.97.

THE BEASLEY FIRM, LLC

By: /s/ Lane R. Jubb, Jr.
LANE R. JUBB, JR., ESQUIRE
Attorney for Plaintiff

Date: 17 January 2019

EXHIBIT “A”

ROBERT KIMBLE, Administrator and
Personal Representative of the Estate of Sharon
Kimble, deceased and ROBERT KIMBLE in
his own right

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
: NO. 2016-00569

V.

LASER SPINE INSTITUTE and
GLEN RUBENSTIN, M.D.

:
:

2016 MAR 28 PM 3:51

PROthonARY
MAY 23 2016

VERDICT SLIP

Question 1:

Were any of the Defendants negligent?

Laser Spine Institute

Yes No

Glen Rubenstein, M.D.

Yes No

If you answered "Yes" to any Defendant, please move to Question 2 for that Defendant.
If you answered "No" to all Defendants, then you have reached a verdict and Plaintiffs may not recover.

Question 2:

Was the negligence of Defendant a factual cause of Plaintiffs' harm?

Laser Spine Institute

Yes No

Glen Rubenstein, M.D.

Yes No

If you answered "Yes" to any Defendant, please proceed to Question 3. If you answered "No" to all Defendants, then you have reached a verdict and Plaintiffs may not recover.

Question 3:

Do you find that the Plaintiff, Robert Kimble, was comparatively negligent?

_____ Yes X No

If you answered "Yes" please proceed to Question 4. If you answered "No" please proceed to Question 5.

Question 4:

Was the negligence of Plaintiff a factual cause of his own harm?

_____ Yes _____ No

Question 5:

Taking the combined negligence that was a factual cause of any harm to the Plaintiffs at 100 percent, what percentage of that causal negligence was attributable to each party? (Answer only for those Defendants and Plaintiff that you have answered "Yes" to in both Questions 2 and 4.

Laser Spine Institute	<u>65</u> %
Glen Rubenstein, M.D.	<u>35</u> %
Robert Kimble	_____ %

Question 6:

What monetary amount do you award the Estate of Sharon Kimble for Sharon Kimble's past non-economic damages in a lump sum (survival claim)?

\$ ~~6,000,000.00~~
10,000,000.00 (AS)

Question 7:

What monetary amount do you award Plaintiff, Robert Kimble, for the past and future non-economic damages for the wrongful death of Sharon Kimble in a lump sum (wrongful death claim)?

\$ ~~6,000,000.00~~
10,000,000.00 (AS)

Date: 3/28/18

Alexa Smely
Foreperson

EXHIBIT “B”

ROBERT KIMBLE, administrator and personal representative of the Estate of Sharon Kimble, deceased and ROBERT KIMBLE in his own right

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
: NO. 2016-00569

V.

LASER SPINE INSTITUTE PHILADELPHIA,
LASER SPINE INSTITUTE OF PENNSYLVANIA, LLC,
LASER SPINE INSTITUTE, LLC,
GLENN RUBENSTEIN, M.D.


FILED
2018 DEC 28 PM 1:11
OFFICE OF THE PROTHONOTARY
CHESTER CO. PA.

Martin S. Kardon, Esquire, James E. Beasley, Esquire and Lane R. Jubb, Esquire, Attorneys for Plaintiffs
Kevin H. Wright, Esquire, Maureen M. McBride, Esquire and James C. Sargent, Esquire, Attorneys for Laser Spine Institute Defendants
Kevin H. Wright, Esquire and John J. Hare, Esquire, Attorneys for Defendant Glenn Rubenstein, M.D.

ORDER

AND NOW, this 28th day of December, 2018, upon consideration of Defendants' Post-Trial Motions, and all responses thereto, and after conducting argument on June 29, 2018,¹ it is hereby ORDERED and DECREED that the Motions are DENIED IN PART and GRANTED IN PART.² Judgment notwithstanding the verdict on the survival claim award only is GRANTED. All other relief is DENIED.

BY THE COURT:



William P. Mahon, J.

¹ A jury returned a verdict on March 28, 2018. On April 6, 2018, Defendants Laser Spine Institute, LLC and Glenn Rubenstein timely filed for joint post-trial relief. Thereafter, on April 10, 2018, the same trial and post-trial counsel filed for post-trial relief on behalf of Defendants Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC. On May 17, 2018, additional counsel entered an appearance on behalf of Glenn Rubenstein only and on June 8, 2018, original post-trial counsel withdrew their appearance for Glenn Rubenstein only. Trial counsel on behalf of all Defendants has remained counsel for all Defendants throughout trial and post-trial.

Throughout the entirety of trial, Defendants Laser Spine Institute, LLC, Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC were considered by all parties as one entity, the “Laser Spine Defendants” (“LSI”) collectively. They were all referred to as the Laser Spine Institute and represented, without objection, as that one entity on the verdict slip. Therefore, the filing of the April 10, 2018 motions for post-trial relief on behalf of Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC, thirteen (13) days after the jury verdict, is untimely pursuant to Pa.R.C.P. 227.1(c) despite the provisions that permit any **other** party to file a post-trial motion within ten (10) days after the filing of another party’s timely post-trial motion (emphasis added). To permit joint trial defendants, represented by the same counsel throughout both trial and post-trial, to request post-trial relief on behalf of one jointly represented defendant, and then acknowledge as timely successive requests for post-trial relief on behalf of the other jointly represented defendants raising identical post-trial issues outside the 10 day period as an “other” party would artificially extend the period for filing additional requests for post-trial relief by a period of time equal to ten days times the number of jointly represented defendants, less ten days. Such an interpretation of the rule would improperly compromise the ten day time period for an initial timely filing.

However, the post-trial motions on behalf of Defendants Laser Spine Institute, LLC and Glenn Rubenstein, filed on April 6, 2018, are substantially identical to those filed on behalf of Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC filed on April 10, 2018.

Defendants collectively seek JNOV (judgement notwithstanding the verdict); new trial; new trial on damages only or remittitur and in support of this relief have listed at least forty-five (45) different errors or contentions in support of their request for post-trial relief. Initially, we note that Defendants would do well to remember the words of the Honorable Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit:

With a decade and a half of federal appellate court experience behind me, I can say that even when we reverse a trial court it is rare that a brief successfully demonstrates that the trial court committed more than one or two reversible errors. I have said in open court that when I read an appellant’s brief that contains ten or twelve points, a presumption arises that there is no merit to *any* of them. I do not say that it is an irrebuttable presumption, but it is a presumption nevertheless that reduces the effectiveness of appellate advocacy. Appellate advocacy is measured by effectiveness, not loquaciousness.

United States v. Hart, 693 F.2d 286, 287 n.1 (3d Cir. 1982). See also Com. V. Ellis, 626 A.2d 1137 (Pa. 1998); Krishnan v. Cutler Group, Inc., 171 A.3d 856 (Pa. Super. 2017).

Although Judge Aldisert was referring to issues raised on appeal, we find his reasoning equally applicable to post-trial motion practice.

Pa.R.C.P. 227.1(b)(1), (2) requires that to obtain post-trial relief on any ground, the bases for relief must be properly raised in pre-trial or trial proceedings and must be specified in the post-trial motion as to how the issue was preserved in the record. Failure to do so waives the request for relief. Defendants’ post-trial motions contain no reference to the record other than blanket statements that their requests were preserved through appropriate pre-trial and trial motions and objections. *See* 4/6/18 Motion for Judgment N.O.V. at paragraph 1; 4/16/18 Motion for a New Trial at paragraph 1. This rule is critical because, as in this case, there is otherwise no requirement to file post-trial briefs, unless ordered by court to do so. *Willistown Township Bd of Sup. v. Main Line Gardens*, 155 A.3d 39 (Pa. 2017). The only reference to the record to preserve the right to JNOV is a reference to proposed binding jury instructions. *See* LSI Defendants Memo of Law in Support, pg. 6 n.2. Dr. Rubenstein simply argues in his memorandum of law that LSI and Dr. Rubenstein preserved their right to JNOV because of a denied nonsuit request.

Defendants filed Motion for Post-Trial Relief on April 6, 2018. By Order of April 12, 2018, the Court granted all Defendants thirty (30) days after receipt of the complete trial transcript to submit additional reasons for post-trial relief. On April 16, 2018, Plaintiffs’ filed their answer to Defendants’ Post-

Trial Motions. On May 17, 2018, LSI filed Supplemental Post-Trial Motions as did counsel for Dr. Glenn Rubenstein. On May 25, 2018, Plaintiffs filed their response in opposition to all Defendants supplemental motions. On June 7, 2018 all Defendants filed memoranda of law in support of their post-trial motions. On June 21, 2018 Plaintiffs filed their Brief in Opposition to Defendants post-trial motions. On June 28, 2018, Defendants respectively filed their reply memoranda which are not permissible filings, especially when new arguments are raised. In addition, those filings are violative of the Court's Order of April 12, 2018. On November 29, 2018 both Defendants again filed Supplemental Memorandum of Law in Support of their post-trial motions. The June 28 and November 29 filings are untimely and in violation of the Court's prior Order.

² Defendants contend that there is no basis for finding vicarious liability against LSI since Plaintiffs did not establish that Dr. Rubenstein was its employee or agent in their case in chief. The Court denied the non-suit motion and Defendants proceeded with their cases. Therefore, the correctness of the trial Court's ruling on Defendants' non-suit motion is MOOT. Dr. Rubenstein subsequently testified to vicarious responsibility and counsel stipulated same. See *Tong-Summerford v. Abington Mem. Hosp. & Cardiology Grp. Of Abington*, 190 A.3d 631 (Pa. Super. 2018); *F.W. Wise Gas Co. v. Beech C.R. Co.*, 263 A.2d 313 (Pa. 1968); *Whitaker v. Frankford Hospital*, 984 A.2d 512 (Pa. Super. 2009).

Defendants further contend that they have preserved their rights to request JNOV by way of proposed binding jury instructions. Although Defendants did submit a proposed directed verdict charge (See "requests for binding instructions ..." at paragraphs 1., 2. and 3., filed March 16, 2018 at docket reference number 185), counsel were informed that the Court was not inclined to give non-standard jury instructions. (See N.T. 3/27/2018 at page 40.) There was no formal denial of those specific instructions pursued by counsel for Defendants nor were any specific denial rulings made of record. (See N.T. 3/27/2018 pages 24 through 42; N.T. 3/28/2018 pages 2 through 6; pages 79 through 82; pages 89-90.) Despite the filing of the request for binding instructions, the absence of a specific request and ruling and/or objection on the binding instruction request does not preserve the issues for JNOV. See *Thomas Jefferson University v. Wapner*, 903 A.2d 565 (Pa. Super. 2006); see also *Faherty v. Gracias*, 874 A.2d 1239 (Pa. Super. 2005); *Corvin v. Tihansky*, 184 A.3d 986 (Pa. Super. 2018). Defendants failed to make objection, including at the conclusion of the Court's final charge to the jury and prior to the discharge of the jury. Defendants have failed to preserve their right to JNOV. See *Straub v. Cherne Industries*, 880 A.2d 561 (Pa. 2005). However, since Plaintiffs have filed a Praecipe to Withdraw Opposition to JNOV on November 27, 2018, as to the Survival Act Award, that motion is GRANTED as to all Defendants.

Defendants also seek a new trial claiming that the verdict against LSI is unsupported in the record. However, that issue was not properly preserved at trial. One basis raised by Defendants is essentially that LSI should not have been placed on the verdict slip since Plaintiffs were pursuing a vicarious liability claim against those Defendants as a result of the actions of its employee, Dr. Glenn Rubenstein. Therefore, since no separate corporate negligence claim was sought against LSI, LSI should not have been included on the verdict slip except on the issue of damages. The verdict slip submitted to the jury is as proposed by all Defendants and Plaintiffs with regard to inclusion of LSI. (See Proposed verdict sheet of Defendants filed March 27, 2018 at docket reference number 193 and at docket reference number 148, filed March 13, 2018, for Plaintiffs.) There was no objection raised by Defendants or Plaintiffs to the submission of the verdict slip except as to the inclusion of damages on Plaintiffs' non-economic survival act claim (the Court has granted JNOV on that award). The inconsistency now claimed by Defendants was never raised with the trial court prior to the discharge of the jury and as such is not preserved for review. See *Stapas v. Giant Eagle, Inc.*, 2018 WL 6070787 (Pa. 11/21/18); *Goldberg v. Isdamer*, 780 A.2d 654 (Pa. Super. 2001), rev'd on other grounds by *Vogelsberger v. Magee-Womens Hospital*, 903 A.2d 540 (Pa. Super. 2006); *Tong-Summerford, supra*. Defendants cannot fail to object to a self-created claimed inconsistency prior to the discharge of the jury and subsequently argue in post-trial motions that a verdict resulting from their failure to timely object to trial error is improper. *Stapas v. Giant Eagle, Inc. supra*. A party must make a timely and specific objection at the earliest possible stage of the adjudicatory process in order to afford the trial court the first opportunity to remedy any wrong and avoid appeal; otherwise the issue is not preserved for appellate review. *Hong v. Pelagatti*, 765 A.2d 1117 (Pa. Super. 2000). Even if not waived, LSI was properly included on the verdict slip based upon vicarious liability for the actions of LSI employee, Nurse Sean Perez, for failure to administer medication as ordered by Dr. Rubenstein. Such negligence was argued in Plaintiffs' closing argument without objection and the jury was instructed on vicarious negligence.

Defendants further challenge that the jury's finding of negligence and factual cause of harm alleged by Plaintiffs. Defendants contend that the testimony of Plaintiffs' experts lack a sufficient scientific basis and is without merit. Defendants did not seek to challenge the methodology underlying the testimony of Plaintiffs' experts prior to trial and have offered no basis or authority to challenge those opinions post-trial. Failure to request a *Frye* hearing on the methodology that forms the basis for Plaintiffs' experts' opinions, coupled with a failure to object at trial to the admission of testimony of those experts at trial, waives any post-trial objection to the scientific principles upon which the expert's testimony is based. See *Dilliplaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974); *Hong v. Pelagatti*, *supra*.

Plaintiffs presented, without objection, the expert testimony of Dr. Ian Hood, the Chester County Deputy Coroner and a forensic pathologist, as well as Dr. Jeffrey Brent and Dr. Miles Dinner, that the synergistic effect of the magnitude of medication administered by Dr. Rubenstein and Nurse Perez depressed Plaintiff's central nervous system and CO2 receptors, causing an increased risk of causing Mrs. Kimbel's death. This synergistic effect was affirmed by defense expert, Dr. Neil Hoffman, forensic pathologist. He confirmed that the synergistic effect of the administered medications could depress Mrs. Kimble's central nervous system but did not believe that the medications administered to Plaintiff in this case rose to that level. However, Dr. Hoffman appears to contradict himself when he testified that Plaintiff's central nervous system was so depressed by her administered medications that her CO2 receptors were not properly functioning and therefore, only slight pressure from a pillow or other soft object on her face, could cause respiratory obstruction and death. Dr. Hoffman also agreed with Plaintiffs' experts that the administered medications would not dissipate from the brain as quickly as from the blood stream. As such, the medication build up in the brain would exceed that measurable in the blood stream. This medication build up would manifest post discharge. The cumulative testimony could be viewed by the jury as supportive of Plaintiffs' causation claims and not supportive of Defendants comparative negligence claim. The credibility of all testimony is within the sole province of the jury and this testimony, if credited, is sufficient to support the verdict. Defendants attempted to mitigate any potential liability by seeking a comparative negligence claim, through both husband's suffocation of his wife and/or because of his failure to properly follow post discharge instructions. Those claims were rejected by the trier of fact despite the introduction of trial evidence of a prior Protection from Abuse Order ("PFA") issued against husband in 2011 (3/22/18 N.T. pp. 68-69) and which was still in existence. Additionally, Defendants introduced evidence of a divorce in 2012 (3/22/18 N.T. pp. 69-77). Defendants were permitted to confront husband about a 2004 domestic assault conviction involving decedent. (3/19/18 N.T. p. 47) but did not do so. The jury also heard that despite this marital discord, the Kimble's remarried on October 6, 2012, six months after the finalization of the prior divorce.

All Defendants further argue that the Court made erroneous evidentiary rulings that require the granting of a new trial. In particular, preventing the "robust questioning" of Mr. Kimble regarding a 2011 PFA and a 2012 divorce decree, both issued in the State of Ohio. In essence, Defendants wanted to re-litigate the 2011 PFA and the 2012 divorce actions. The documents that Defendants intended to introduce as evidentiary support were hearsay documents and not properly authenticated pursuant to 42 Pa. C.S.A. §5328. The documents were not public records nor self-authenticating and as such are hearsay. Defense trial counsel was made aware that he had to call a witness to authenticate the documents but failed to do so. The possession of non-authenticated copies of those documents provided a sufficient basis for defense counsel to question Mr. Kimble regarding what they represent, which counsel attempted, but the trial Court ruled that counsel was limited to the witness's answers since counsel could not properly admit them without proper Ohio authentication or direct authentication through Mr. Kimble. The Court was not going to permit a PFA trial or a divorce trial within the context of the medical malpractice trial. Defendants were permitted to show surviving spouse the hearsay copy of the documents and, if properly authenticated (which they were not), to introduce them into the record in support of closing arguments and for review by the jury. When the witness was shown the PFA document, he testified that he did not agree with that which was contained in it. Defense counsel could not thereafter introduce it into the record because it was not properly authenticated. Defense counsel then attempted to question spouse further about the PFA and the Court sustained objections regarding litigation of the collateral PFA issue. Defendants argue the admissibility of the PFA pursuant to Pa. R.E. 803(8) but fail to recognize that the document must first be authenticated pursuant to 42 Pa. C.S.A. §5328.

Similar analysis is applicable to the purported Ohio divorce document. Defendants failed to acknowledge that the Court permitted questioning that Mr. and Mrs. Kimble were divorced in early 2012. Upon further questioning, husband testified that he did not know that there was a divorce decree entered against him. Since spouse did not know that a divorce decree had been entered against him, there was no purpose in pursuing the matter with an unauthenticated hearsay document. Defendants' arguments that the divorce documents were self-authenticating pursuant to Pa. R.E. 902(2) are clearly misplaced.

Defense trial counsel never requested that these Ohio documents be used to refresh the recollection of the witness. Defendants failed to acknowledge that defense trial counsel did not use previously taken discovery depositions of decedent's husband at trial, which would have been proper to explore impeachment issues. The trial Court did not instruct defense trial counsel not to ask any further questions in these areas other than ones that would go outside of the contents of non-hearsay documents or initiate a collateral trial regarding the 2011 PFA or the 2012 divorce proceedings. Defense trial counsel could have properly introduced the PFA Order, the divorce decree and any 2004 statements made to the police by Mr. Kimble if those documents were properly authenticated ... but they were not. The trial rulings were an appropriate restriction in order to prevent the trial of collateral matters that had occurred many years before. Defense trial counsel was not prohibited from introducing non-hearsay documents or non-hearsay testimony regarding these matters... counsel simply failed to do so.

Finally, Defendants argue that the Court's evidentiary rulings prevented them from adequately pursuing the defense that Mr. Kimble suffocated his wife. In pursuit of that argument, Defendants attempted to present the testimony of medical experts that, based upon their review of records related to Mr. Kimble's 2004 arrest, the 2011 PFA and the 2012 divorce, in their opinion, Mrs. Kimble was suffocated by her husband, which was the cause of death. The Court precluded such testimony as being outside the scope of permissible medical expert testimony. The Court did not prevent questioning and testimony regarding suffocation. *See* testimony of Ian Hood, M.D. 3/23/18 N.T. pp. 114-116 (who performed the autopsy of Mrs. Kimble). The Court also permitted questioning of Dr. Hood regarding his efforts related to his preparation of his autopsy report, including his review of materials, and whether he interviewed employees of the Marriott Hotel who first found Mrs. Kimble, the emergency responders, the police or Mr. Kimble himself. Dr. Hood explained that he does not conduct an investigation and if he had any specific questions or suspicions, he could have asked the deputy coroner to further investigate, but he had no suspicions of criminal conduct. *See* 3/23/18 N.T. pages. 117 to 134.

Defendants have waived and are otherwise not entitled to JNOV. The wrongful death claim award does not shock the conscience of the Court and is supported by the weight of the evidence. *See Rettger v. UPMC Shadyside*, 991 A.2d 915 (Pa. Super. 2010), appeal denied 15 A.3d 491 (Pa. 2011); *Tong – Summerford v. Abington*, *supra*. The evidence of record clearly is sufficient to support the jury's wrongful death verdict. How much is a marital relationship worth to a surviving spouse? We leave that determination to the wisdom of a jury. To compare verdicts of other juries/fact finders in order to determine an appropriate award herein strikes at the independence of the jury process. To rule otherwise would permit other juries, hearing other evidence about other marriages, to create a "data bank" of acceptable ranges of compensation for the loss of a spouse. Defense trial counsel never objected to the amount of the verdict prior to jury discharge and did not request to poll the jury. Neither did counsel ask to view the verdict slip at any time before the jury was discharged. And finally, any complained of evidentiary rulings made by the Court were correct rulings or harmless error in light of the evidence found credible by the jury.

EXHIBIT “C”

SENT
JAN 14 2019

Robert Kimble, Administrator and
Personal Representative of the Estate
of Sharon Kimble, deceased and
Robert Kimble in his own right

CHESTER COUNTY
COURT OF COMMON PLEAS

Plaintiffs, :

Case No.: 16-00569

v. :

JURY TRIAL DEMANDED

Laser Spine Institute – Philadelphia,
et al.

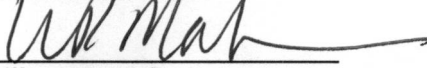
Defendants. :

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OFFICE OF THE
PROthonARY
CHESTER CO. PA.

ORDER

AND NOW, this 10th day of January, 2019, upon consideration of Plaintiff's Amended Motion for Delay Damages Pursuant to Pa. R.C.P. 238 and this Honorable Court's 31 December 2019 Order, ~~and any response thereto~~, it is hereby ORDERED and DECREED that the said Amended Motion is GRANTED. Delay damages in the amount of \$500,273.97 are added to the verdict on the \$10,000,000.00 Wrongful Death Act damages awarded by the jury; that verdict is now \$10,500,273.97. ①

BY THE COURT:


William P. Mahon, J.

① Defendants did not object to the mathematical calculations contained in Plaintiffs' original motion filed on March 29, 2018.

THE BEASLEY FIRM, LLC
BY: LANE R. JUBB, JR., ESQUIRE
ID No. 319272
1125 Walnut Street
Philadelphia, PA 19107-4997
(215) 592-1000
(215) 592-8360 (Facsimile)

Attorneys for Plaintiff

Robert Kimble, Administrator and	:	CHESTER COUNTY
Personal Representative of the Estate	:	COURT OF COMMON PLEAS
of Sharon Kimble, deceased and	:	
Robert Kimble in his own right	:	Case No.: 16-00569
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
Laser Spine Institute – Philadelphia,	:	
et al.	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via the Court's electronic filing and via electronic and certified mail upon the following:

Kevin H. Wright, Esquire
Kevin H. Wright & Associates
34 Green Street
P.O. Box 5011
Lansdale, PA 19446

John J. Hare, Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
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Philadelphia, PA 19103

James C. Sargent, Jr., Esquire
Maureen M. McBride, Esquire
Lamb McErlane P.C.
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565

By: /s/Lane R. Jubb, Jr.
LANE R. JUBB, JR.

Date: 17 January 2019

LAMB McERLANE PC

By: James C. Sargent, Jr.
Attorney I.D. No. 28642
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KEVIN H. WRIGHT & ASSOCIATES

By: Kevin H. Wright, Esq.
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*Counsel for Defendants, Laser Spine Institute,
LLC, Laser Spine Institute Philadelphia and
Laser Spine Institute of Pennsylvania, LLC*

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

John J. Hare, Esquire
Attorney I.D. No. 70419
2000 Market St., 23rd Floor
Philadelphia, PA 19103
(215) 575-2609

*Counsel for Defendant,
Glenn Rubenstein, M.D.*

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

2019 FEB 19 PM 3:51

FILED

ROBERT KIMBLE, ADMINISTRATOR
AND PERSONAL REPRESENTATIVE OF
THE ESTATE OF SHARON KIMBLE AND
ROBERT KIMBLE IN HIS OWN RIGHT, : CHESTER COUNTY
: COURT OF COMMON PLEAS
Plaintiffs :
v. :
LASER SPINE INSTITUTE, LLC, GLENN : NO. 16-00569
RUBENSTEIN, ET AL, :
Defendants :

PRAECIPE TO FILE SUPERSEDEAS BOND

TO THE PROTHONOTARY:

In conjunction with the appeal filed today from the judgment dated January 17, 2019,¹ kindly file of record the enclosed Supersedeas Bond in the amount of \$11,970,312.33, which is 120% of the relevant judgment amount.² By operation of Rule of Appellate Procedure 1731(a), the filing of the enclosed Bond results in an automatic stay of execution against Appellants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, Laser Spine Institute of Pennsylvania, LLC, and Glenn Rubenstein.

LAMB McERLANE PC

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

BY: 

James C. Sargent, Jr.

BY: John J. Hare

*Counsel for Defendants, Laser Spine Counsel for Defendant, Glenn
Rubenstein Institute, LLC, Laser Spine Institute Philadelphia,
Laser Spine Institute of Pennsylvania, LLC*

Date: February 19, 2019

¹ This Court's dockets reflect that Plaintiff's praecipe to enter judgment was filed on January 17, 2019, but the judgment was not indexed or reduced until January 23, 2019. For ease of reference, this praecipe and the enclosed Bond utilize a judgment date of January 17, 2019.

Moreover, the jury's verdict was entered against "Laser Spine Institute," but Plaintiff entered judgment against Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC. Those entities have filed a motion before the trial judge contesting the entry of judgment against them because they were not found liable on the jury verdict sheet. That motion is still pending, but Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC, file the enclosed Bond in an abundance of caution, to secure a stay of execution while their appeal is pending, and without waiver of their right to contest the entry of judgment against them.

² The judgment amount is \$10,500,273.97. The Medical Care Availability and Reduction of Error Act (MCARE) Fund has a statutory obligation with regard to Dr. Rubenstein's liability in the amount of \$500,000. See 40 P.S. §1303.712(c); and *Hosp. & Health System Ass'n of Pa. v. Commonwealth*, 77 A.3d 587, 592 (Pa. 2013) ("Presently, the fund's liability limit is \$500,000 per occurrence."). Additionally, MCARE pays its proportionate share of delay damages, which is \$25,013.70 (MCARE's obligation of \$500,000 amounts to a 5% share of the delay damages, or \$25,013.70). MCARE's obligation is not subject to the requirement of appellate security set forth in Pa.R.C.P. 1731. See *Rittenhouse v. Hanks*, 777 A.2d 1113, 1121 (Pa. Super. 2001) ("[T]he CAT Fund [MCARE's predecessor] is exempt from posting security[.]"). Thus, the amount of appellate security required by Rule 1731 is \$11,970,312.33 (the sum of the judgment of \$10,500,273.97 minus MCARE's obligation of \$25,013.70 times 120%).

ROBERT KIMBLE, ADMINISTRATOR
AND PERSONAL REPRESENTATIVE OF
THE ESTATE OF SHARON KIMBLE AND : CHESTER COUNTY
ROBERT KIMBLE IN HIS OWN RIGHT, : COURT OF COMMON PLEAS

Plaintiffs :

v. :

LASER SPINE INSTITUTE, LLC, GLENN : NO. 16-00569
RUBENSTEIN, ET AL,

Defendants :

SUPERSEDEAS BOND

Appellants, Laser Spine Institute, LLC, Laser Spine Institute of Philadelphia, Laser Spine Institute of Pennsylvania, LLC, and Glenn Rubenstein, having appealed from a judgment docketed on January 17, 2019, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned Surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania, for the use of the persons or parties entitled thereto, in the sum of Eleven Million Nine Hundred Seventy Thousand Three Hundred Twelve Dollars and Thirty-Three Cents (\$11,970,312.33), to be paid as required by law.

Upon conclusion of this matter, if the Appellants satisfy the above identified judgment or any court order modifying or affirming that judgment and pay all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force. In no event shall the Surety's obligation exceed Eleven Million Nine Hundred Seventy Thousand Three Hundred Twelve Dollars and Thirty-Three Cents (\$11,970,312.33).

Date: February 14, 2019



National Indemnity Company (Surety)
1314 Douglas Street, Suite 1400
Omaha, NE 68102-1944
NAIC: 20087

BY: _____

Ted J. Lane, Attorney-in-Fact
Bond No. 70NGP184641

**POWER-OF-ATTORNEY
NATIONAL INDEMNITY COMPANY**

1314 DOUGLAS STREET, SUITE 1400, OMAHA, NEBRASKA 68102-1944
(402) 916-3000

70NGP184641

KNOW ALL MEN BY THESE PRESENTS: This Power-of-Attorney is not valid unless attached to the duly-executed bond that it authorizes. This Power-of-Attorney specifies **THE AUTHORITY OF THE ATTORNEY-IN-FACT** and **THE LIABILITY OF NATIONAL INDEMNITY COMPANY, WHICH SHALL NOT EXCEED:**

**ELEVEN MILLION, NINE HUNDRED SEVENTY THOUSAND, THREE HUNDRED TWELVE
AND 33/100 DOLLARS
(\$ 11,970,312.33)**

NATIONAL INDEMNITY COMPANY, a Nebraska corporation, having its principal office in the City of Omaha, State of Nebraska, does hereby make, constitute and appoint Ted J. Lane in the City of Omaha, County of Douglas, State of Nebraska, its true and lawful attorney-in-fact, at Omaha, in the State of Nebraska, to make, execute, seal and deliver for and on its behalf, and as its act and deed, any and all bonds and undertakings, provided that the liability of the Company as surety on any such bond executed under this authority shall not in any event exceed the sum shown above.

THIS POWER VOID IF ALTERED OR ERASED

The acknowledgement and execution of any such document by the said Attorney-In-Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly-elected officers of this Company.

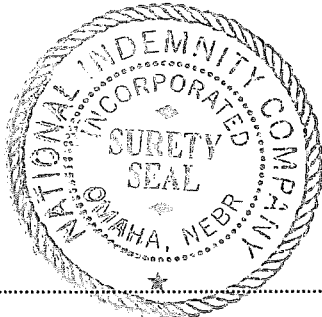
This Power of Attorney is granted, and is signed and sealed by original signature, under and by the authority of the following Resolution adopted by the Executive Committee, as duly authorized by the Board of Directors of NATIONAL INDEMNITY COMPANY, at a meeting duly called and held on the 15th day of March, 2017:

RESOLVED, That the President, any Vice President or the Secretary shall have the power and authority to (1) appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

FURTHER RESOLVED, That any Surety Administrator or Surety Underwriter shall have the power and authority to appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company any license bond with a limit of \$10,000 or less.

FURTHER RESOLVED, That any Surety Administrator shall have the power and authority to appoint Attorneys-in-fact and to authorize them to execute on behalf of this Company (1) any bond, except an appeal bond, with a limit of \$10,000 or less and (2) any license bond with a limit of \$50,000 or less.

In Witness Whereof NATIONAL INDEMNITY COMPANY has caused its official seal to be hereunder affixed, and these presents to be signed by its President this 14th day of February, 2019.



NATIONAL INDEMNITY COMPANY

BY [Signature]
(Name) **Donald F. Wurster**
(Title) **President**

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.:

On this 14th day of February, 2019, before me, a Notary Public, personally appeared Donald F. Wurster, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as President of said NATIONAL INDEMNITY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.

JOSLYN JENSEN
General Notary State of Nebraska
My Commission Expires
June 22, 2022.

[Signature]
Notary Public, Nebraska

- 1. THIS POWER DOES NOT AUTHORIZE EXECUTION OF BONDS OF NE EXEAT OR ANY GUARANTEE FOR FAILURE TO PROVIDE PAYMENTS OF ALIMONY SUPPORT OR WAGE LAW CLAIMS, OR BONDS FOR CRIMINAL APPEARANCE.
- 2. THIS POWER DOES NOT AUTHORIZE THE EXECUTION OF BONDS FOR LOAN GUARANTEES.

This Power Can Only Be Used in The State of: PENNSYLVANIA
This Power Can Only Be Used For The Following Obligor(s): COMMONWEALTH OF PENNSYLVANIA
Bond Title or Description: SUPERSEDEAS BOND / NO. 16-00569, CHESTER COUNTY COURT OF COMMON PLEAS
Principal or case reference: LASER SPINE INSTITUTE, LLC, GLENN RUBENSTEIN, ET AL. (Defendants/Appellants)

LAMB McERLANE PC
 By: James C. Sargent, Jr.
 Attorney I.D. No. 28642
 Maureen M. McBride
 Attorney I.D. No. 57668
 24 East Market Street, Box 565
 West Chester, PA 19381-0565
 (610) 430-8000

KEVIN H. WRIGHT & ASSOCIATES
 By: Kevin H. Wright
 Attorney I.D. No. 25435
 34 Green Street
 P.O. Box 5011
 Lansdale, PA 19446
 (610) 940-2300

Counsel for Defendants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia and Laser Spine Institute of Pennsylvania, LLC

ROBERT KIMBLE, ADMINISTRATOR AND
 PERSONAL REPRESENTATIVE OF THE
 ESTATE OF SHARON KIMBLE AND
 ROBERT KIMBLE IN HIS OWN RIGHT,

Plaintiff

v.

LASER SPINE INSTITUTE, LLC,
 LASER SPINE INSTITUTE PHILADELPHIA,
 LASER SPINE INSTITUTE OF
 PENNSYLVANIA, LLC, GLENN
 RUBENSTEIN, M.D.,

Defendants.

: CHESTER COUNTY
 : COURT OF COMMON PLEAS

: NO. 16-00569

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 2019 FEB 19 PM 3:54
 OFFICE OF THE
 PROTHONOTARY
 CHESTER CO., PA.

CERTIFICATE OF SERVICE

This is to certify that in this case, a copy of the foregoing Praecipe to File Supersedeas Bond of Defendants, Laser Spine Institute, LLC, Laser Spine Institute Philadelphia, and Laser Spine Institute of Pennsylvania, LLC, was served on the following persons, by the following means and on the date stated below:

Name:	Means of Service	Date of Service
The Honorable William P. Mahon Chester County Justice Center 201 West Market Street West Chester, PA 19382	via Hand Delivery and First Class Mail	February 19, 2019

Martin Kardon, Esquire
Kanter Bernstein & Kardon P.C.
1617 JFK Blvd, Suite 1150
Philadelphia, PA 19103
Attorney for Plaintiff

Electronic and
First Class Mail

February 19, 2019

James E. Beasley, Jr., Esquire
Lane R. Jubb, Jr., Esquire
The Beasley Firm LLC
1125 Walnut Street
Philadelphia, PA 19107
Attorneys for Plaintiff

Electronic and
First Class Mail

February 19, 2019

LAMB McERLANE PC

By: 
James C. Sargent, Jr.

Dated: February 19, 2019

Exhibit “2”

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.

**ORDER SUSTAINING OBJECTION TO CLAIMS
OF ROBERT KIMBLE, ADMINISTRATOR AND PERSONAL
REPRESENTATIVE OF THE ESTATE OF SHARON KIMBLE**

¹ 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**”).

THESE CASES came on for consideration upon the Objection to Claims of Robert Kimble, Administrator and Personal Representative of the Estate of Sharon Kimble (the “**Objection**”). The Objection seeks to disallow the Kimble Claims². The Objection was filed on February ____, 2024, and was served by negative notice. No response to the Objection was filed. The Court finds that under the circumstances of this case, due and sufficient notice of the Objection was provided to parties, and that such notice was adequate and appropriate. Therefore, any requests for other and further notice shall be and hereby are dispensed with and waived, and no other or further notice is necessary. The Court, having considered the Objection, and being fully advised of the record, finds that the Objection should be sustained. Accordingly, it is

ORDERED:

1. The Objection is sustained.
2. The Kimble Claims are disallowed.

DONE AND ORDERED in Hillsborough County, Florida this ____ day of _____, 2024.

DARREN FARFANTE
Circuit Court Judge

Copy to: Counsel of record

² Capitalized claims not defined in the Order shall have the meaning set forth in the Objection.