

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

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

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**OBJECTION TO CLAIM OF KENNETH WINKLER**

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

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

**The Assignee seeks an order disallowing the Winkler Claim (defined below) filed by Kenneth Winkler. 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 claim filed by Kenneth Winkler (“**Winkler**”), 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 April 15, 2019, Winkler submitted a proof of claim (the “**Winkler Claim**”), a copy of which is attached as **Exhibit A**.<sup>2</sup> The Winkler Claim was filed without including any amount for the Amount of Claim (see, Composite Exhibit A, listing the Amount of Claim as “>1,000,000.00”). The only documentation attached to the Winkler Claim are a lawsuit filed in the Circuit Court of Hillsborough County, Florida, and a doctor’s affidavit.

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<sup>2</sup> By order entered May 28, 2019, the Court approved certain patient creditor confidentiality procedures, including providing notice to patient-creditors that any information or documentation included in a proof of claim could be filed by the Assignee as a permitted disclosure. However, to avoid disclosing Winkler’s medical information as part of this objection, documentation regarding medical injuries has been removed from the attachments. The additional information will be provided upon request consistent with the confidentiality procedures order.

3. The Winkler Claim cannot be allowed as filed because it is filed in an unliquidated amount. The Assignment Statute (Chapter 727 of the Florida Statutes, 717.101 et seq.) requires that “Claims shall be in written form entitled “proof of claim,” setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor’s authorized agent.” § 727.112(3), Fla. Stat. (Emphasis added). The Winkler Claim does not comply with this statutory provision and must be disallowed. Further, the Assignment Statute imposes a duty on the Assignee to determine the validity of claims. § 727.108(10) Fla. Stat. The Assignee cannot make any determination as to the validity of the Winkler Claim since it was filed without listing the amount of the claim.

4. The Assignee requests that the Winkler Claim be disallowed.

WHEREFORE, the Assignee requests that the Court (i) enter an order substantially in the form attached as **Exhibit B** disallowing the Winkler Claim 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  
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Counsel for Soneet Kapila, Assignee



# **Exhibit “A”**

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

KENNETH WINKLER

CASE NO: 17-CA-003613

DIVISION: G

Plaintiff

v.

ZOLTAN BEREZKI, D.O. and  
LASER SPINE INSTITUTE, LLC

Defendants


**PROOF OF CLAIM**

1. PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM: **Laser Spine Institute, LLC**
2. CREDITOR NAME: **Kenneth Winkler by, and through, his Attorney, William E. Hahn**  
ADDRESS: **310 S. Fielding Avenue**  
CITY, STATE, ZIP: **Tampa, FL 33606**  
TELEPHONE NUMBER: **813-250-0660**  
EMAIL ADDRESS: **bill@whahn-law.com**
3. BASIS FOR CLAIM: **Medical Malpractice**
4. DATE DEBT WAS INCURRED: **December 18, 2014**
5. AMOUNT OF CLAIM: **> \$1,000,000.00**
6. SUPPORTING DOCUMENTS: **Please see attached Complaint and Affidavit of Dr. Goldberger**
7. SIGNATURE:   
\_\_\_\_\_  
**William E. Hahn, Esq.,**  
**Attorney for Kenneth A. Winkler**

4.15.19

**CERTIFICATE OF SERVICE**

I hereby certify that this was sent to the following: Soneet Kapila, Assignee, 1000 South Federal Highway, Ste. 200 Fort Lauderdale, FL 33316; Edward Peterson, Esq. Strichter, Riedel, Blain & Postler, P.A. 110 E. Madison Street, Ste. 200 Tampa, FL 33602; and Kenneth Winkler on this 11<sup>th</sup> day of April, 2019.



William E. Hahn, Esq.  
Florida Bar #147108  
310 S. Fielding Avenue  
Tampa, FL 33606  
(813) 250-0660  
[bill@whahn-law.com](mailto:bill@whahn-law.com)

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

KENNETH WINKLER

CASE NO. \_\_\_\_\_

Plaintiff

v.

ZOLTAN BEREZKI, D.O. and  
LASER SPINE INSTITUTE, LLC

Defendants

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**COMPLAINT**

Plaintiff, KENNETH WINKLER, (hereafter referred to as Mr. Winkler), sues the Defendants, LASER SPINE INSTITUTE, LLC (hereafter referred to as LSI) and ZOLTAN BEREZKI, D.O. (hereafter referred to as Dr. Berezki), and says:

1. This is a medical malpractice action which is being brought pursuant to Florida Statutes 766 and 768, et seq.
2. This is an action for damages in excess of \$15,000, exclusive of interest, costs and attorneys' fees.
3. At all times material hereto, the actions complained of occurred in Tampa, Hillsborough County, Florida.
4. At all times material hereto, the Plaintiff has complied with any and all statutory conditions precedent to the bringing of this action including, but not limited to, compliance with Florida Statutes 766 and 768, et seq.
5. The defendant, LSI, at all times material hereto, was a corporation licensed to do business in the state of Florida, and doing business in Hillsborough County, Florida. The defendant, LSI, through its extensive advertising campaign, promoted its



facilities, physicians and employees as being highly skilled and with specialized expertise in minimally invasive spine surgery.

6. At all times material hereto, the defendant Dr. Berezcki held himself out to the public in general, and specifically to Mr. Winkler, as being highly competent and skillful in the practice of orthopedic spine surgery and particularly in minimally invasive laser spine surgery.

#### **FACTS GIVING RISE TO THE CLAIM**

7. Defendant, LSI, advertises heavily in television, newspaper, and other print media throughout Hillsborough County. Relying on the advertising and promotional materials from LSI, Mr. Winkler became a patient of LSI on, December 18, 2014. Mr. Winkler had multiple evaluations on December 18, 2014 and his primary complaint was neck pain.

8. He returned again to the LSI on February 3, 2014 with complaints of low back, or lumbar pain and occasional pain in his left calf. Between February 3, 2015 and February 5, 2015, the date on which he was actually operated on, Mr. Winkler saw multiple employees of the defendant, LSI, and was encouraged to have surgery on his low back.

9. On February 5, 2015 the defendant, Dr. Berezcki, met Mr. Winkler for the very first time, and operated on him at the Laser Spine Institute in Tampa, Florida. According to the operative note, the defendant Dr. Berezcki performed a "lateral extraforaminal decompression on the left side of L2-3 together with destruction via thermal ablation of the paravertebral facet joint nerves, bilaterally at L2-3".

10. Although Mr. Winkler experienced temporary relief from his low back pain, pain, the pain returned and was much worse than before the operation. The defendant, Dr. Berezcki, because of the continuing and worsening complaints of pain, elected to repeat the same operation that he performed on February 3, 2015, on April 24, 2015 and repeated it again on July 17, 2015. Mr. Winkler, other than a very brief respite from pain following each surgery, never improved and continued to get worse following each of the with operations performed by the defendant, Dr. Berezcki.

11. After becoming disillusioned with the repeated surgeries by defendant, Dr. Berezcki at the Laser Spine Institute, Mr. Winkler came under the care of another physician who, because of the severe complaints of pain experienced by Mr. Winkler at that time, performed a left lumbar interbody fusion at L2-3 with a cage and pedicle screws. The surgery performed by Dr. Henkin took place on March 31, 2016. As a consequence of that operation, Mr. Winkler improved somewhat but still experiences debilitating back pain as a consequence of the multiple surgeries by the defendant Berezcki.

**COUNT I**  
**CLAIMS AGAINST LASER SPINE INSTITUTE**

12. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 11 and further says:

13. At all times material hereto, LSI was liable for the negligence of its own employees and is vicariously liable for the negligent acts of its agents and apparent agents. Dr. Berezcki, and the other physicians and physician assistants who saw Mr.

Winkler in the ordinary course of business were all employed by LSI.

14. When Mr. Winkler was accepted as a patient by LSI, it held Dr. Bereczki and the other physicians and physician assistants out to be competent physicians and physician assistants, trained and skilled in the diagnosis and treatment of disorders of the spine. Throughout the course of Mr. Winkler's treatment at LSI, all of the care provided by Dr. Bereczki, the other physicians who saw him and the other physician assistants and nurses who participated in his care, were all acting within the course and scope of their employee, agency or apparent agency.

15. LSI had a duty to provide appropriate and proper care for Mr. Winkler which was consistent with the care provided by other similar facilities providing physicians, physicians assistants, nurses and other ancillary personnel for diagnostic and treatment purposes. LSI failed to provide competent non-negligent care through its employees, agents and apparent agents.

16. Any or all of the following acts and/or omissions are below the level of care, skill and treatment which in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonable and similar healthcare providers in Hillsborough County or any other similar medical community:

- a. The pre-operative work-up and planning for Mr. Winkler was inadequate. There is an absence of good documentation that Mr. Winkler required any surgery at all. In addition, it was apparent or should have been apparent, that minimally invasive laser spine surgery was probably inappropriate for his condition. Further,

because his complaints were primarily left-sided and bilateral surgery for Mr. Winkler under the circumstances was below the standard of care.

- b. The surgery that was performed created an inherent instability in Mr. Winkler's spine at L5/S1. The creation of instability in Mr. Winkler's spine is below the standard of care.
- c. There may be other acts of negligence of LSI that are, at the present time not known to Mr. Winkler and therefore, the Plaintiff reserves the right to amend his complaint to add other acts of negligence.

17. As a consequence of the above-described negligence of LSI, Mr. Winkler has suffered bodily injury resulting in pain and suffering, disability, disfigurement, mental anguish, loss of mental capacity, loss of the capacity for enjoyment, suffered the expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money in the future and his underlying back condition has been aggravated. These losses are permanent and continuing and Mr. Winkler will continue to suffer these losses into the future.

WHEREFORE, Plaintiff, KENNETH WINKLER, demands judgment for damages against the Defendant, LASER SPINE INSTITUTE, LLC, in excess of \$15,000.00, together with interest and the costs of maintaining this action, and further demands a trial by jury on all issues triable as a matter of right by jury.

**COUNT II**  
**CLAIMS AGAINST DEFENDANT ZOLTAN BERECKZI**

18. Plaintiff re-alleges and incorporates by reference the allegations contained

in paragraphs 1 through 17 and further says:

19. At all times material hereto the Defendant Dr. Bereczki was liable for his own negligent conduct. Dr. Bereczki had a duty to provide proper and appropriate care to Mr. Winkler in accordance with the accepted standards of care in Hillsborough County, Florida or in any similar medical community.

20. Dr. Bereczki failed to provide competent medical care to Mr. Winkler under circumstances in which he knew or should have known at the time since services were provided, that they were likely to cause injury and damage to Mr. Winkler. Any or all of the following acts or omissions by Dr. Bereczki were below the standard of care, skill and treatment which, in light of all relevant, surrounding circumstances, were recognized as being acceptable and appropriate by reasonable healthcare providers in Hillsborough County, Florida or any other similar medical community:

- a. The pre-operative work-up and planning for Mr. Winkler was inadequate. There is an absence of good documentation that Mr. Winkler required any surgery at all. In addition, it was apparent or should have been apparent, that minimally invasive laser spine surgery was probably inappropriate for his condition. Further, because his complaints were primarily left-sided, and bilateral surgery for Mr. Winkler under the circumstances was below the standard of care.
- b. The surgery that was performed created an inherent instability in Mr. Winkler's spine at L5/S1. The creation of instability in Mr. Winkler's

spine is below the standard of care.

- c. There may be other acts of negligence of LSI that are, at the present time not known to Mr. Winkler and therefore, the Plaintiff reserves the right to amend his complaint to add other acts of negligence.

21. As a consequence of the above-described negligence of Dr. Bereczki, Mr. Winkler has suffered bodily injury resulting in pain and suffering, disability, disfigurement, mental anguish, loss of mental capacity, loss of the capacity for the enjoyment of life, suffered the expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money in the future. Mr. Winkler's underlying back condition was aggravated by the conduct of Dr. Bereczki. These losses are permanent and continuing and Mr. Winkler will continue to suffer these losses into the future.

WHEREFORE, Plaintiff, KENNETH WINKLER, demands judgment for damages against the Defendant, ZOLTAN BERECZKI, D.O., in excess of \$15,000.00, together with interest and the costs of maintaining this action, and further demands a trial by jury on all issues triable as a matter of right by jury.

#### **CONDITIONS PRECEDENT**

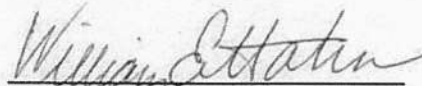
Plaintiff has satisfied all conditions precedent for the filing of this lawsuit pursuant to Florida Statutes 766 and 768.

**PLAINTIFFS' CERTIFICATE OF REASONABLE INVESTIGATION**

The undersigned counsel for Plaintiff certifies that he has made as reasonable an investigation as was permitted by the circumstances, and that this investigation has given rise to his belief that reasonable grounds exist for the filing of this Complaint.

WHEREFORE, the Plaintiff, KENNETH WINKLER, demands judgment for damages against LASER SPINE INSTITUTE, LLC and ZOLTAN BERECKZI, D.O., in an amount in excess of \$15,000.00, together with interest and the costs of maintaining this action and demand trial by jury.

Dated this 18<sup>th</sup> day of APRIL, 2017.



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cc: Shondra Watson

# **Exhibit “B”**



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

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
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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.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

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**ORDER SUSTAINING OBJECTION  
TO CLAIM OF KENNETH WINKLER**

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

THESE CASES came on for hearing on \_\_\_\_\_ upon the Objection to Claim of Kenneth Winkler (the “**Objection**”). The Objection seeks to disallow the Winkler Claim<sup>2</sup>. 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 Winkler Claim is disallowed.

DONE AND ORDERED in Hillsborough County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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DARREN FARFANTE  
Circuit Court Judge

Copy to: Counsel of record

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<sup>2</sup> Capitalized claims not defined in the Order shall have the meaning set forth in the Objection.