

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--------------------|---|----------------------------|
| LIFE SPINE, INC., |) | |
| |) | |
| Plaintiff, |) | Case No. 19-cv-07092 |
| |) | |
| v. |) | Hon. Young B. Kim |
| |) | |
| AEGIS SPINE, INC., |) | Jury Trial Demanded |
| |) | |
| Defendant. |) | |
| _____ |) | |

LIFE SPINE'S RESPONSE TO AEGIS'S MOTION FOR STAY PENDING APPEAL

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Aegis’s Motion for Stay Pending Appeal (“Motion”) is nothing more than a repackaging of a narrow subset of arguments that this Court already heard and rejected in granting Life Spine’s Motion for Preliminary Injunction. While doubling down on these meritless arguments, Aegis ignores several key legal and factual findings that this Court relied on in issuing its Preliminary Injunction Order (“Order”), each of which independently supports the affirmance and continued enforcement of the Order. For these reasons, the Court should deny Aegis’s Motion and maintain its Order pending Aegis’s appeal.

LEGAL STANDARD

The Court “consider[s] four factors when deciding whether to stay an injunction pending appeal: (1) the likelihood the applicant will succeed on the merits of the appeal; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties; and (4) the public interest.” *Common Cause Ind. v. Lawson*, 978 F.3d 1036, 1039 (7th Cir. 2020).

ARGUMENT

I. AEGIS WILL NOT SUCCEED ON APPEAL.

A. Aegis Ignores Multiple Independent Bases For Affirmance Of This Court’s Order.

Aegis’s only argument on the merits is that the Seventh Circuit will reverse this Court’s Order because Life Spine purportedly does not keep anything about the ProLift implant—including the precise designs and specifications of its key components—secret or confidential. (*See* Dkt. 233 at 1-10.) The evidence proves that Aegis is wrong, as explained by this Court in its Memorandum Opinion and Order (“Opinion”) and as demonstrated below in Section I.B. But, critically, even if Aegis were right, that supposed lack of confidentiality would not provide grounds for the Seventh Circuit to reverse this Court’s Order because the Court based its Order on multiple

other grounds that have nothing to do with the confidentiality of the ProLift implant. Each of these unchallenged findings provides an independent basis for the Seventh Circuit to affirm the Order, and thus provides an independent basis for this Court to deny Aegis’s Motion to Stay. *See, e.g., Maher v. City of Chicago*, 547 F.3d 817, 821 (7th Cir. 2008) (rejecting appellant’s claim of error because he failed to challenge one of two independent grounds for the court’s holding); *Smith v. CPC Foodservice*, 1997 WL 349993, at *2 (N.D. Ill. June 23, 1997) (“[A]n affirmance may be based on fewer than all of the grounds relied on by the lower court if the appellate court finds the sustainable grounds sufficient for that purpose.”).

First, the Court found that Life Spine is likely to succeed in proving its claim that Aegis breached the Distribution and Billing Agreement’s confidentiality provision by disclosing to L&K numerous categories of confidential devices and information in addition to the ProLift implant and its detailed specifications, including: (i) a ProLift installer, (ii) details and descriptions of a custom ProLift installer Life Spine prepared specially for Aegis, (iii) details regarding the surgical use of ProLift derived from Aegis’s surgeon consultants, and (iv) the prices for ProLift. (Dkt. 212 at 33-39.) Aegis does not even mention, much less challenge, the Court’s conclusions regarding these items. There is no reason to think the Seventh Circuit will disturb this Court’s Order where Aegis argues that only one of several of the Court’s breach of confidentiality findings was questionable.¹

Second, the Court found that Aegis breached the Distribution and Billing Agreement’s restrictive covenants by taking steps to discover the underlying specifications of ProLift and using

¹ Further, the Court found that Aegis breached the Distribution and Billing Agreement’s requirement that it train its employees with respect to its obligation to protect Life Spine’s confidential information. (Dkt. 212 at 37.) This conclusion was sound, as all of Aegis’s top executives—including its CEO, Director of Research and Development, and Marketing Director—confirmed during the hearing that they either did not read the Distribution and Billing Agreement during Aegis’s relationship with Life Spine or did not take seriously Aegis’s obligations thereunder. (*See* P.I. Hr’g Tr. 511:2-8, 511:21-512:3 (Ahn); *id.* 656:17-23, 657:11-14 (J. Lee); Kang Dep. 9:10-13, 92:14-18.)

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