

Laser Spine Institute, LLC  
CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762  
Case No. 2019-CA-2764  
Case No. 2019-CA-2765  
Case No. 2019-CA-2766  
Case No. 2019-CA-2767  
Case No. 2019-CA-2768  
Case No. 2019-CA-2769  
Case No. 2019-CA-2770  
Case No. 2019-CA-2771  
Case No. 2019-CA-2772  
Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

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# EXHIBIT A

**ASSIGNEE'S MOTION TO DETERMINE PROCEDURES FOR  
REQUESTS FOR LEGAL FILES IN ASSIGNEE'S POSSESSION**

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

GULF COAST ORTHOPEDIC CENTER -  
ALFRED O. BONATI, P.A., et al.

CASE NO.: 12-CA-009002  
Division H

Plaintiffs,

vs.

LASER SPINE INSTITUTE, LLC, et al

Defendants.

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**DEFENDANTS' MOTION TO REQUIRE  
ASSIGNEE TO TURN OVER CLIENT FILES**

Defendants Dr. James St. Louis and Dr. Michael Perry ("Defendants"), through their undersigned counsel, respectfully requests that the Court enter an order directing that the LSI Assignee promptly turn over to them their client files that had been in the possession of their former lawyer Christopher Knopik, Esq. As grounds for this motion Drs. St. Louis and Perry show the following:

1. Defendants were previously represented in this litigation by Christopher Scott Knopik, Esq. ("Knopik"). Knopik had handled their representation in this case while he was employed as In-House counsel for the Defendant Laser Spine Institute ("LSI").
2. On March 29, 2019 Knopik filed a motion to withdraw as their counsel in this case without obtaining the consent of the Defendants. On April 9, 2019 Knopik's motion to withdraw as counsel was granted. Unfortunately Knopik did not supply a copy of the files he maintained for either Dr. St. Louis or Dr. Perry (the "Clients Files") at the time he withdrew.
3. When Knopik's motion to withdraw as counsel was granted there was virtually no activity in the case as is reflected by the docket sheet. There was an agreed stay in the case for

several years. Recently counsel for Plaintiff took steps to advance this case including requesting that it be set for jury trial. As a result undersigned counsel has appeared as counsel for Drs. St. Louis and Perry.

4. The Client Files are critical to the proper defense of both Drs. St. Louis and Perry. Their defense is dependent on undersigned counsel's ability to access and use the Client Files.

5. Undersigned counsel asked Knopik to produce copies of the Client Files for Drs. St. Louis and Perry in December of 2019. In response to that request for the Client Files, Knopik stated that he no longer has a copy of the Clients Files.

6. Knopik takes the position that the Client Files were the property of LSI, his former employer and now belong to the Assignee by dint of the Assignment for Benefit of Creditor filed by LSI.

7. Neither Knopik, nor for that matter counsel for Assignee, has ever provided any case law that would support the position that Knopik's client files for Drs. St. Louis and Perry belong either to LSI or the Assignee. There is case law that holds that counsel's file is the personal property of the lawyer. See *Dowda & Fields PA v. Cobb*, 452 So.2d. 1140, 1142 (Fla. 5<sup>th</sup> DCA 1984). However the holding in *Dowda* is properly limited to cases where the client owes money to the attorney. Knopik does not claim that he is or was owed money by the Defendants.

8. In an effort to help secure the Client Files, Knopik sent an email to Edward Peterson as counsel for the Assignee on January 2, 2020. That email is set out in full below and is also Exhibit A to this motion.<sup>1</sup>

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<sup>1</sup>Edward:  
Happy New Year.

9. Despite Knopik's request to Mr. Peterson, the exchange of many emails between the undersigned and Mr. Peterson and from the undersigned to counsel for Assignee and two extended telephone calls between them in an effort to resolve the issue, Mr. Peterson has refused to provide the Client Files.

10. Instead as of 4 February 2020 Mr. Peterson has insisted that a subpoena must be sent to the Assignee for the Client Files and that Drs. St. Louis and Perry must pay for the *"fees and costs associated with the production."*

11. Mr. Peterson has never quantified the wholly unspecified *"fees and costs associated with the production."* However in his email of 11 February 2020 Mr. Peterson suggested that the cost would be "about \$15,000.00." Not \$15,000.00 but "about" \$15,000.00 without any further specification or clarification. Even if they were inclined to pay something for their files "about \$15,000.00" that amount is not reasonable and is excessive even if it was an estimate that could be relied upon.

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As you likely recall, the Bonati Spine Institute initiated and remains involved in long-pending litigation against Laser Spine Institute and a number of former LSI executives and employees. The Bonati Spine Institute is seeking to restart the litigation against the individual defendants. A case management is set for next week in Hillsborough County Circuit Court. As of the last time I was aware, Circuit Judge Battles was presiding over the matter. Most, and perhaps all, of the individual defendants have retained counsel after the LSI Legal Department withdrew now that the Bonati Spine Institute is again pushing the case.

The attorneys representing the individual defendants will need access to the file currently in the possession of LSI's Assignee. My recollection is that there are both paper and digital files in the case. Brooks Miller, an attorney in south Florida familiar with both LSI and the Bonati Spine Institute through prior legal matters, represents two of the individual defendants and has specifically requested for access to and/or a copy of the entire file. Brooks is included on this e-mail.

Will the Assignee please work with Brooks and the other attorneys to facilitate access to and transfer of file materials? Given the age of the case and the long history between the parties, the file is somewhat voluminous.

Please feel free to contact Brooks directly to further discuss this matter.

Thanks for your anticipated assistance. Let me know of any questions.

Chris Knopik

12. All that has been requested on behalf of Drs. St. Louis and Perry is the file that Knopik kept as counsel for them prior to withdrawing without their consent. That has been made amply clear to Mr. Peterson on several occasions as has the statement that they would accept Knopik's file as he kept it in either native or in .pdf format. At no time has a request been made to Mr. Peterson for a review of files or the production of documents kept in boxes.

13. Knopik has told Peterson where the files can be located electronically. There is no question that the files can be found and copied.

14. The record is amply clear that undersigned counsel has made every reasonable effort to get counsel for Assignee to produce voluntarily the client files for Dr. St. Louis and Dr. Perry. In response Peterson has taken the unsustainable position that he would only produce the files (a) in response to a subpoena and (b) conditioned on the payment of unspecified fees and costs which Peterson refuses to quantify.

15. The files for Drs. St. Louis and Perry likely have documents protected under work product and attorney client privileges. The Assignee, who is an active adverse party to Drs. St. Louis and Perry in pending litigation, should not be allowed to use these privileged documents against Drs. St. Louis and Perry. To avoid this possibility of prejudice, the Assignee should be required to disgorge the St. Louis and Perry files. The receipt of privileged documents is grounds for disqualification of the attorney receiving the documents based on the unfair tactical advantage such disclosure provides. And the potentially prejudiced party is "not required to demonstrate specific prejudice in order to justify disqualification." *Junger Utility & Paving Co., Inc. v. Myers*, 578 So.2d 1117, 1119 (Fla. 1st DCA 1989); *Abamar Housing and Development, Inc. v. Lisa Daly Lady Decor, Inc.*, 724 So.2d 572, 573 (Fla. 3d DCA 1998).

WHEREFORE Drs. St Louis and Perry respectfully request that the Court enter an order directing as follows:

- a. Directing that the Assignee provide undersigned counsel forthwith the client files of Knopik and LSI for Dr. James St. Louis and Dr. Michael Perry;
- b. Directing that the Assignee disgorge himself of all files that contain, or may contain, privileged materials belonging to Drs. St. Louis or Perry.
- b. Not permitting the dismissal of the Assignee as a defendant in this case until they have complied with (a) and (b).
- c. Staying setting this case for trial or other pretrial requirement until 20 days after the Assignee has complied with (a) and (b).
- d. Directing that, under the inherent powers of the Court, that the Assignee pay the reasonable attorneys' fees of undersigned counsel in bringing and having this motion heard; and
- e. For such other relief as would be appropriate and just.

**CERTIFICATE OF GOOD FAITH**

The undersigned has conferred with Edward Peterson as counsel for Assignee on many occasions in emails and calls regarding the relief sought in this motion in a good faith effort to resolve the issues but despite such substantial efforts has been unable to resolve the issues raised herein.



By: \_\_\_\_\_  
Brooks C. Miller, Esq.

Brooks C. Miller, P.A.  
Counsel for Michael W. Perry, M.D.  
and James St. Louis, D.O.  
Miami Tower Suite 3900  
100 SE 2<sup>nd</sup> Street  
Miami, FL 33131  
Telephone: (305) 372-3900  
Primary Email: [bmiller@brooksmiller.com](mailto:bmiller@brooksmiller.com)  
Secondary Email: [jsoto@brooksmiller.com](mailto:jsoto@brooksmiller.com)



By: \_\_\_\_\_  
Brooks C. Miller, Esq.  
Florida Bar No. 316695

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 19, 2020, a true copy of the foregoing was electronically filed with the Clerk of Court by using the Florida E-Filing Portal, which will serve a copy of this document by electronic notice to the attorneys identified on the following service list.



By: \_\_\_\_\_  
Brooks C. Miller

**SERVICE LIST**

<p>Samuel J. Heller, Esq. HELLER LAW, PLLC <a href="mailto:sheller@heller-law.com">sheller@heller-law.com</a> <a href="mailto:kphillips@heller-law.com">kphillips@heller-law.com</a> Scott J. Flint, Esq. <a href="mailto:scott@flintlawpa.com">scott@flintlawpa.com</a> <a href="mailto:kphillips@heller-law.com">kphillips@heller-law.com</a> 695 Central Avenue St. Petersburg, FL 33701</p>	<p>Craig E. Rothburd, Esq. CRAIG E. ROTHBURD, P.A. <a href="mailto:craig@rothburdpa.com">craig@rothburdpa.com</a> <a href="mailto:maria@rothburdpa.com">maria@rothburdpa.com</a> 320 W. Kennedy Blvd., #700 Tampa, Florida 33606  <i>Counsel for Defendant Dotty Jane Bollinger</i></p>
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<i>Counsel for Plaintiffs</i>	
<p>Harley Riedel, Esq.  <a href="mailto:hriedel@srbp.com">hriedel@srbp.com</a>          Edward Peterson, Esq.  <a href="mailto:epeterson@srbp.com">epeterson@srbp.com</a>          Stichter, Riedel, Blain, &amp; Postler, P.A.          110 East Madison Street, Suite 200          Tampa, FL 33602</p>	<p>William J. Schifino, Jr., Esq.          GUNSTER, YOAKLEY &amp; STEWART, P.A.  <a href="mailto:wschifino@gunster.com">wschifino@gunster.com</a>  <a href="mailto:csanders@gunster.com">csanders@gunster.com</a>          401 East Jackson Street          Suite 2500          Tampa, FL 33602</p>
<i>Counsel for Assignee</i>	<i>Counsel for Defendant Josh Helms</i>
<p>William E. Horne  <a href="mailto:bhorne@hornemgmt.com">bhorne@hornemgmt.com</a></p>	<p>W. Justin Horne  <a href="mailto:pdaaec@gmail.com">pdaaec@gmail.com</a></p>
<i>ProSe Defendant, W. Horne</i>	<i>ProSe Defendant, W.J. Horne</i>



**From:** Chris Knopik cknopik@bhlaws.com  
**Subject:** Bonati v. LSI and individual defendants  
**Date:** January 2, 2020 at 5:18 PM  
**To:** Edward Peterson epeterson@srbp.com  
**Cc:** Brooks Miller Esquire (bmiller@brooksmiller.com) bmiller@brooksmiller.com, Laura Wiseman lwiseman@bhlaws.com



Edward:

Happy New Year.

As you likely recall, the Bonati Spine Institute initiated and remains involved in long-pending litigation against Laser Spine Institute and a number of former LSI executives and employees. The Bonati Spine Institute is seeking to restart the litigation against the individual defendants. A case management is set for next week in Hillsborough County Circuit Court. As of the last time I was aware, Circuit Judge Battles was presiding over the matter. Most, and perhaps all, of the individual defendants have retained counsel after the LSI Legal Department withdrew now that the Bonati Spine Institute is again pushing the case.

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Thanks for your anticipated assistance. Let me know of any questions.

Chris Knopik

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Christopher S. Knopik  
Board Certified Civil Trial Lawyer  
Betras, Kopp & Harshman, LLC  
1611 West Platt Street  
Tampa, Florida 33606  
[CKnopik@BHLaws.com](mailto:CKnopik@BHLaws.com)  
(800) 457-2889  
(813) 333-9420  
(813) 333-9422 (fax)

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