

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

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:  
2019-CA-2762

To:

Soneet Kapila,

Assignee

Division L

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**LASERSCOPIC CLAIMANTS' EMERGENCY MOTION TO CONTINUE THE  
HEARING ON ASSIGNEE'S MOTION FOR (A) ORDER APPROVING SETTLEMENT  
AND COMPROMISE OF CLAIMS AGAINST FORMER DIRECTORS AND OFFICERS,  
(B) ORDER AUTHORIZING PAYMENT OF PROFESSIONAL FEES; AND (C) FINAL  
JUDGMENT AS TO SETTLED CLAIMS IN LAWSUIT**

Joe Samuel Bailey, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc. (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file this Emergency Motion to Continue the Hearing on "*Assignee's Motion for (A) Order Approving Settlement and Compromise of Claims Against Former Directors and Officers, (B) Order Authorizing Payment of Professional*

*Fees, and (C) Final Judgment As To Settled Claims In Lawsuits*” (the “Motion”). In support of the Motion, the Laserscopic Claimants allege and state as follows:

1. The Motion is scheduled for hearing before this Court for approval on **Monday, April 19, 2021**. The Laserscopic Claimants regret having to seek emergency relief, but for the reasons outlined below and more fully set forth in their Objection to the Motion being filed contemporaneously, these issues only surfaced in the past few days. The Laserscopic Claimants immediately began efforts to resolve the issue with counsel for the Assignee by having multiple meet and confer conferences and suggesting modifications that could be made to the proposed order and/or settlement agreement. Unfortunately, the parties were not able to reach an agreement necessitating the filing of this motion. Despite Laserscopic Claimants’ request, the Assignee has refused to consent to any extension or re-set.

2. Specifically, this week the defendants<sup>1</sup> in an action initiated by the Laserscopic Claimants in Dallas, Texas (Case No.: DC-20-06211) (the “Texas Piercing Action”), made multiple filings taking the position that: (1) the Assignee owns the claims initiated by the Laserscopic Claimants in the Texas Piercing Action;<sup>2</sup> (2) the settlement that the Assignee seeks to approve negates or

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<sup>1</sup> The defendants are principally the partners, officers and managers of Judgment Debtor EFO Laser Spine Institute, L.P. (“EFO LSI”). In the Texas Piercing Action, the Laserscopic Claimants—who have a \$369 million dollar Judgment that now stands at approximately \$408 million with post-judgment interest—contend, among other things, that the defendants breached their fiduciary duty to EFO LSI, fraudulently transferred assets from EFO LSI to themselves and took other illegal actions more fully set forth in the Third Amended Petition that caused them harm. It is important to note that in addition to any rights they have under statutory and common law, the Laserscopic Claimants purchased all causes of action that EFO LSI had, including against these same defendants, at auction in January of 2020.

<sup>2</sup> There is a companion fraudulent transfer case brought by the Laserscopic Claimants pending before this Court also involving certain of the EFO LSI transferees. Although there is overlap in many of the defendants, they did not make the same filings in the “Florida Fraudulent Transfer Action” presumably because this Court—also overseeing the ABC Proceeding—would fully appreciate the absurdity of their position. Instead, they only asserted these positions in the Texas Piercing Action before a judge who does not have familiarity with the ABC Proceeding or the interests or rights of the Assignee. The defendants are attempting to use the Assignee, the proposed

otherwise extinguishes or releases some or all of the claims brought by the Laserscopic Claimants; and, (3) the Laserscopic Claimants' claims in the Texas Piercing Action<sup>3</sup> are subject to a stay imposed by this Court in the ABC Litigation, which stay is being violated by the existence and prosecution of the Texas Piercing Action. The defendants in the Texas Piercing Action are alleging (and recently filed a "verified" Answer) stating that claims alleged against them by the Laserscopic Claimants were transferred to the Assignee for his possession, protection, preservation and administration and, therefore, the claims belong, in whole or in part, to the Assignee.<sup>4</sup>

3. It is undisputed that the Laserscopic Claimants have a \$369 million dollar judgment that is a disgorgement award, meaning that each of the judgment debtors (LSI, the EFO Debtors (EFO LSI Ltd., EFO Holdings LP and EFO Genpar Inc n/k/a EFO GP.) and James S. St. Louis) are required to, in addition to other damages, disgorge the tens of millions of dollars related to LSI. The Laserscopic Claimants disgorgement award was twice affirmed by the Second District Court of Appeals and is not in dispute. The award is also jointly and severally against each of the judgment debtors.

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settlement of the D&O claims and certain fraudulent transfer claims brought by the Assignee to severely prejudice the Laserscopic Claimants, who have a disgorgement judgment and are the largest unsecured creditors in the ABC Proceeding.

<sup>3</sup> The Assignee has been aware of the Texas Piercing Action and the Florida Fraudulent Transfer Action since their initial filing. The Assignee has never moved to stay those actions or otherwise taken the position that the Laserscopic Claimants do not have the right to pursue the same, and those actions have been filed for well over a year, thus likely waiving his position regarding a stay.

<sup>4</sup> The filings are lengthy. On Wednesday, the Laserscopic Claimants were served with a 276-page motion to dismiss in their Dallas Piercing Action claiming that their litigation against EFO must be dismissed based on the proposed, but flawed compromise, meaning the proposed settlement currently before this Court. Rather than clutter the record by attaching them twice, the pertinent filings will be submitted with the Laserscopic Claimants Objection being filed contemporaneously.

4. Critically, the Laserscopic Claimants purchased all causes of action owned by the EFO Debtors (including against their own principals and partners for breach of fiduciary duty) at auction in January of 2020. This too is not in dispute.

5. It likewise cannot be disputed that the 2012 Chapter 7 bankruptcy estate of one of the EFO Debtors—EFO Holdings LP—has been reopened by the trustee effective February 5, 2021. The Laserscopic Claimants are working closely with the bankruptcy trustee, Scott Seidel.

6. Even if the above were not all true—and it is—the defendants engage in pretzel logic to reach their desired result. Contrary to the allegations of the defendants in the Texas Piercing Action, there can be multiple “fraudulent transfers,” not only one. To the point, the Assignee has his claims for fraudulent transfers “owned” by LSI, which arise against its interest holders for defrauding LSI’s creditors.<sup>5</sup> EFO LSI, however, is a different entity (and also a judgment debtor), and it has its own claims against its own insiders who breached their duties to EFO LSI and made transfers from EFO LSI to defraud EFO LSI’s creditors. Those claims arise from a different set of decisionmakers (although there are some common decisionmakers), breaching different duties, to defraud a different set of creditors of EFO LSI. They are not the same claims. The defendants in the Texas Piercing Action are conflating the issue in an effort to confuddle the Texas judge, hoping to escape liability avoid a judgment that has ballooned to over \$400M. Notably, the defendants in the Texas Piercing Action did not, through their Florida lawyers before this Court, dare file the same meritless and frivolous motion or pleading in the Florida Fraudulent Transfer Action filed by the Laserscopic Claimants, which is pending before this Court. Their failure to do so is telling.

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<sup>5</sup> The Laserscopic Claimants believe that such amounts from LSI are subject to their disgorgement award, an issue that they have raised with the Assignee from shortly after the initiation of the ABC Proceeding, but the Assignee has rejected every attempt at curative language in the Agreement and still proposes to distribute funds subject to the disgorgement.

7. And, while the Laserscopic Claimants believe that their interests should be (and hopefully are given his status as a fiduciary) aligned with the Assignee because the above facts are undisputed, a review of the Settlement Agreement currently before the Court, when taken together with the recent filings of the defendants in the Texas Piercing Action, raise serious questions and concerns that mitigate against approving the transaction as currently drafted structured. The Settlement Agreement should not be approved before evidence is provided after necessary discovery is taken in light of the newly minted position of the defendants in the Texas Piercing Action and the confusing, mis-intended interpretations and consequences of the Settlement Agreement.

8. Until this week, the position of the Assignee and of the Laserscopic Claimants was in harmony – the proposed settlement would have no effect on the litigation brought in Dallas or Florida to recover hundreds of millions of dollars from well-heeled insiders of EFO.<sup>6</sup>

9. For reasons not known at this time, the Laserscopic Claimants were not apprised of the Settlement Agreement of the D&O claims before the Settlement Agreement was executed; rather, it essentially received notice of the same when all other creditors did, this even though it is the largest unsecured creditor. Had they been involved in the settlement discussions or negotiations, the Laserscopic Claimants could have included language that would protect their interests and prevent the multifarious language of the Agreement and avoid the necessity of this Motion. Although the Laserscopic Claimants proposed remedial language this week, counsel for the defendants in the D&O action rejected clarifying those terms. Understandably, this creates an

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<sup>6</sup> The EFO Debtors are EFO Holdings, L.P. (who swears it does not own any interest in LSI) and the EFO affiliates EFO Genpar, Inc. n/k/a EFO GP (EFO Holdings' general partner) and EFO Laser Spine Institute, Ltd. ("EFO LSI"). EFO Holdings is currently in a chapter 7 bankruptcy and its current chapter 7 trustee is Scott Seidel. He was never served with the Assignee's motion.

additional layer of concern and inequitable conflict for the Laserscopic Claimants: if it was not their respective desire to try and settle out claims for which they truly have no right to do so, interlineating the proposed clarifying language would eliminate at least one of these issues.

10. Additionally, the Assignee recently filed a number of avoidance claims against some of the same individuals and entities as are defendants in the Texas Piercing Action and the Florida Fraudulent Transfer Action in numerous jurisdictions around the United States. While this alone is not an issue—as both LSI and EFO LSI (two different, separate entities) have separate rights and claims—given that the Assignee did not discuss with or apprise the Laserscopic Claimants of his intent to do so, or even provide any notice of the specific actions filed, this raises additional “red flags” about the true nature of the Agreement and whether the Motion actually apprised all parties of all pertinent facts, given the other actions outlined herein.

11. And, to the Laserscopic Claimants knowledge, no applications to employ the Assignee’s Dallas counsel (California Counsel, Connecticut Counsel, Georgia, Tennessee or other counsel)<sup>7</sup> was filed and no notice given. Under Fla. Stat. Ann. §727.108(7) and §727.109(10), the Laserscopic Claimants must be provided notice and an opportunity to examine, perhaps even object to fees.

12. As more fully outlined in the objection, as written, the Settlement Agreement:

- a. Releases claims of “members” of Companies, which is akin to releasing claims of shareholders – a legal impossibility – in other words the Assignee does not have the right to release tortfeasors that are not a party to this settlement proposal.
- b. Potentially releases claims against various wrongdoers in the various actions brought by the Laserscopic Claimants.
- c. The chapter 7 Trustee of the EFO Holdings, L.P. bankruptcy holds claims that are (under Defendants’ flawed and strained interpretation) implicated by the

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<sup>7</sup> Apparently, quite a few lawsuits were filed in various jurisdiction. The Laserscopic Claimants have not been provided with copies and are undertaking a search to determine the number and location of the various actions.

Agreement but he was not served with the Motion or consulted on the Agreement. If Defendants' arguments were to prevail, the Settlement Agreement would lack capacity without bankruptcy court approval from the court overseeing the EFO Holdings chapter 7 and they do not own the claims attached by writ of execution and turnover order.

13. The Laserscopic Claimants attempted to resolve these issues to avoid delay, but unfortunately were unable to do so and are left with no choice but to seek this emergency relief, to allow them the time needed to depose relevant witnesses, examine and investigate fiduciary responsibilities, obtain documents, and determine whether parties attempted to settle claims they do not own, ignored the disgorgement award, and refused to remedy structural issues within the ambiguous Agreement.

14. The Laserscopic Claimants adopt and incorporate their arguments in their objection herein but does not repeat those arguments to conserve space. This Motion is not interposed for any improper purpose and the granting of this relief will benefit all unsecured creditors of this estate, not just those represented by the undersigned counsel.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court granting this Motion and continuing the currently scheduled hearing and allowing the unsecured creditors to conduct discovery related to the proposed settlement, and to otherwise attempt to negotiate language, that would protect their valuable interests and avoid undue prejudice, waste court resources, and potential years of follow-on litigation over the meaning of the Agreement. The failure to grant this relief and to approve the Settlement Agreement will severely and unfairly prejudice the largest unsecured creditors, deprive them of their ability to present evidence at the evidentiary hearing, and reward the wrongdoers who already misused and abused an ambiguously flawed Agreement, even before it has been approved. Alternatively, the Court should treat the hearing as a scheduling conference and schedule discovery and further evidentiary hearings in the interests of justice.

Dated: April 16, 2021.

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**CERTIFICATE OF SERVICE**

I CERTIFY that on April 16, 2021, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record or electronic mail to the parties listed on the Limited Notice Parties attached.

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January 14, 2020

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