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,	Division L
Assignee.	

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ASSIGNEE'S MOTION FOR ORDER APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST HOLLAND & KNIGHT

Soneet R. Kapila, as assignee (the "**Assignee**") for the benefit of creditors for Laser Spine Institute, LLC ("**LSI**") and fifteen (15) of LSI's affiliates[1] (collectively the "**LSI Entities**"), by and

[1] LSI's affiliates are: 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 (the "**Affiliated Companies**").

through his undersigned attorneys, files this motion (the "**Motion**") seeking the entry of an order approving the settlement and compromise attached as Exhibit A (the "**Settlement Agreement**") reached between the Assignee and Holland & Knight, LLP ("**H&K**").[2] In support of the Motion, the Assignee states as follows:

Background

1. On March 14, 2019, 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. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing the following assignment for the benefit of creditors proceedings for the Affiliated Companies of LSI (the "**Affiliated Assignment Cases**," and together with the LSI Assignment Case, the "**Assignment Cases**"): 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 (each, an "**Assignor**" and collectively, the "**Assignors**").

3. In 2006, Joe Samuel Bailey, individually and on behalf of Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic LLC; Laserscopic Diagnostic Imaging and Physical Therapy, LLC; Laserscopic Spinal Center of Florida, LLC; and Laserscopic Spine Centers of

[2] The Assignee, H&K, and the H&K Parties (as defined below) will be referred to as the "**Parties**."

America, Inc. (collectively the "**Bailey Plaintiffs**") filed suit (Case No. 06-08498 (Fla. 13th Cir. Ct.) (the "**Bailey Lawsuit**") against LSI; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; Laser Spine Surgical Center, LLC (collectively the "**LSI Defendants**"); as well as certain of LSI's equity holders and employees (James St. Louis ("**St. Louis**"); Michael Perry ("**Perry**"); EFO Laser Spine Institute, Ltd. ("**EFO LSI**"); EFO Genpar, Inc. ("**EFO Genpar**"), and EFO Holdings, L.P. ("**EFO Holdings**," and together with EFO LSI and EFO Genpar, defined as "**EFO**")) (collectively, the LSI Defendants, St. Louis, Perry, and EFO, defined as the "**Bailey Defendants**").

4. Beginning in 2009, H&K undertook the representation (the "**H&K Representation**") as co-counsel for the Bailey Defendants in the Bailey Lawsuit. The H&K Representation was led by experienced, highly regarded, board-certified lawyers. H&K was advised that there was an indemnification agreement in place among the Bailey Defendants and that LSI would pay for any settlement or judgment entered against the Bailey Defendants. Consistent with that understanding, LSI paid all of the fees and costs for H&K's representation of all defendants. As later memorialized in their joint representation agreement with H&K, all Bailey Defendants agreed that H&K would take its direction from LSI with respect to the Bailey Lawsuit. H&K jointly represented and defended all of the Bailey Defendants, and provided a vigorous defense. H&K regularly apprised LSI's representatives of material events with respect to the Bailey Lawsuit.

5. The Bailey Lawsuit proceeded to trial. Testimony began before the Honorable Richard Nielson in July 2010 and concluded in May 2011. The trial resulted in the entry of a 130-page order and a judgment in favor of the Bailey Plaintiffs for $1.6 million (the "**First Judgment**"). The Bailey Plaintiffs appealed, and the LSI Defendants cross-appealed.

6. On February 3, 2016, the Second District Court of Appeal reversed and remanded the First Judgment for further Circuit Court proceedings (the "**2016 Appellate Decision**").[3]

7. After the 2016 Appellate Decision, the Bailey Lawsuit continued, with further proceedings in the Circuit Court. These proceedings resulted in the Circuit Court awarding punitive damages in favor of the Bailey Plaintiffs and reinstituting the $1.6 million actual damages award in the First Judgment. Thus, the total judgment amount remained under $10 million (the "**Second Judgment**"). The Bailey Plaintiffs again appealed.

8. On December 26, 2018, the Second Judgment was reversed (the "**Second Appellate Decision**"). The appellate court instructed:

> Specifically, the court should enter an award *based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009* [between $264,000,000 and $265,000,000]. We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172."[4]

9. Based upon these instructions, the circuit court entered judgment in favor of the Bailey Plaintiffs on July 3, 2019 (the "**Final Bailey Judgment**") for more than $275 million (more than $369 million including interest) against certain of the Bailey Defendants, including the LSI Defendants.

10. By July 3, 2019, the LSI Defendants had already ceased all of their business operations and assigned all of their assets to the Assignee, and the Assignment Cases were well under way. To date, the LSI Defendants have not paid any portion of the Final Bailey Judgment.

11. Soneet Kapila, the Assignee, is an experienced insolvency professional. Following his appointment, the Assignee employed general counsel and conducted an initial investigation of any claims and causes of action that might exist in favor of the Assignee as successor to the LSI

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[3] Bailey v. St. Louis, 196 So. 3d 375 (Fla. 2d DCA 2016).
[4] Bailey v. St. Louis, 268 So. 3d 187, 202 (Fla. 2018) (emphasis added).

Defendants, including a potential action against H&K in connection with its representation of the LSI Defendants (the "**H&K Investigation**"). Attached hereto as Exhibit B is an Affidavit of the Assignee (the "**Affidavit**") setting forth the careful process that the Assignee employed during the H&K Investigation and summarizing the reasons that the Assignee filed the Motion and entered into the settlement described herein.[5]

12. As set forth in the Affidavit, Mr. Kapila has served as an assignee in other assignment cases under Chapter 727, as a Chapter 11 trustee, as a Chapter 11 examiner, as a liquidating trustee and plan administrator in Chapter 11 cases, as a Chief Restructuring officer and as a Financial Advisor in Chapter 11 cases, as a receiver, as a financial consultant in receivership cases, and as a Federal Court approved and SEC appointed Corporate Monitor. He has served as a Federal Bankruptcy Trustee on the panel of U.S. Bankruptcy Trustees in the Southern District of Florida from approximately 1992 through the current time. He holds designations of Certified Public Accountant, Certified Fraud Examiner, Certified Insolvency and Restructuring Advisor, and is Certified in Financial Forensics. He is a Fellow of the American College of Bankruptcy and currently serves as President of the American Bankruptcy Institute. In these various capacities, he has regularly investigated distressed businesses and their failures, investigated the financial affairs of debtors, evaluated asset recoveries and claims against third parties. The role routinely includes tracing assets, assessing for possible fraud and successor businesses. He has investigated causes of action against professionals, and his duties have extended to evaluating, bringing and overseeing litigation claims. Such claims have included tort litigation against professionals and directors and officers. He has been qualified as an expert dozens of times in federal and state courts.

[5] The Assignee adopts and incorporates the Affidavit into this Motion.

13. As his general counsel, the Assignee employed the law firm of Stichter, Riedel, Blain & Postler, P.A ("**SRBP**"). As special litigation counsel, he employed the firms of Rocke, McLean, & Sbar ("**RMS**") and Genovese, Joblove, & Battista, P.A. (now Venable) ("**Venable**"). The Assignee also continued, on an interim basis, the employment of LSI's existing in-house legal team, including its general counsel, Chris Knopik.

14. Because of the peculiar nature of a legal malpractice claim, the Assignee relied heavily upon his counsel to advise him with respect to any claim against H&K.

15. A legal malpractice action in Florida has three elements: 1) the attorney's employment; 2) the attorney's neglect of a reasonable duty; and 3) the attorney's negligence was the proximate cause of loss to the client. *Steele v. Kehoe*, 747 So. 2d. 931, 933 (Fla. 1999); *Cira v. Dillinger*, 903 So. 2d 367, 370 (Fla. 2d DCA 2005). The fulfillment of this reasonable duty does not require an attorney to be a predictor of the future, and an attorney who makes good faith tactical decisions or decisions made on a fairly debatable point of law will be protected by the doctrine of "judgmental immunity." Attorneys do not act as insurers of the outcome of a case. *Crosby v. Jones*, 705 So. 2d 1356 (Fla. 1998).

16. Against this general background, the H&K Investigation included a review of the record in the Bailey Lawsuit, a review of LSI's files related to the Bailey Lawsuit and the Representation, and interviews with employees of LSI, including members of the LSI in-house corporate legal team.

17. Unfortunately, for purposes of the H&K Investigation, none of LSI's former officers and employees who had been directly involved in the 2010-2011 Bailey trial remained employed in 2019. Likewise, no active employee of any of the Assignors in 2019 had any personal, first-hand

knowledge of the events that took place at trial. Although LSI had general counsel at the time of the Assignment, he had been employed by LSI well after the trial and the entry of the First Judgment.

18. The Assignee learned, however, that various Bailey Defendants asserted that the Final Judgment damage award was excessive and would have been much lower but for professional negligence on the part of H&K. This alleged neglect related primarily to damages, which included the LSI Defendants' decision not to call an expert to rebut the Bailey Plaintiffs' expert damages testimony and the decision by H&K not to espouse an alternative damages model. Under this theory, the magnitude of the loss would be the difference between the amount of the Final Bailey Judgment and the lesser amount that would have been awarded to the Bailey Plaintiffs had H K's legal representation been adequate.

19. The Bailey Plaintiffs based their claim for damages primarily upon the testimony of an expert witness, Alexander Fernandez ("**Fernandez**"), who presented damages models based on: (1) the alleged destruction of Laserscopic Spinal's business; (2) profits allegedly lost by Laserscopic Spinal, and (3) out-of-pocket damages allegedly sustained by Laserscopic Spine. Fernandez argued that the value of LSI was the best indicator of the value and expected profits of the Bailey Plaintiffs' start-up business, which he assumed was completely destroyed by the Bailey Defendants tortious conduct. Fernandez then performed a business valuation of LSI based on the present value of LSI's past and future earnings, using LSI's financial records, and its own internal projections of future earnings. He opined that as of December 31, 2009, LSI was valued at $186.7 million and had previously made distributions of $77.5 million, for a combined value to shareholders of $264.2 million. That estimate was lower than other valuations in the record at that time, including an analysis by J.P. Morgan Chase valuing LSI at $320 million and another by Goldman Sachs valuing LSI at $273 million.

20. On deposition and at trial, H&K questioned Fernandez regarding the assumptions underlying his valuation of LSI, and Fernandez testified that his valuation was based on conservative assumptions. H&K also attacked the core premise of Fernandez's damages calculation—his express assumption that the Bailey Plaintiffs' business was totally destroyed—by presenting evidence showing that the Bailey Plaintiffs' business was not, in fact, totally destroyed. H&K further argued that the Bailey Plaintiffs failed to provide evidence of lost profits and that Fernandez did not perform any independent calculation of lost profit damages. The trial court accepted H&K's position on these issues in the First Judgment, which was affirmed on appeal with respect to business destruction and lost profit damages.

21. The Bailey Plaintiffs also pursued an alternative theory of damages seeking disgorgement of LSI's profits, claiming that *any* profit LSI received following the alleged tortious conduct was subject to disgorgement. H&K's bench brief on disgorgement raised arguments that the trial judge found persuasive that disgorgement was not an available remedy. And the Bailey Plaintiffs' bench brief on disgorgement cited no Florida case law approving disgorgement damages of a company's full value. Further, Fernandez did not present testimony in support of disgorgement. Instead, he expressly disclaimed at trial that his calculations supported the Bailey Plaintiffs' disgorgement theory and reiterated that his testimony was premised on making plaintiffs whole by compensating them for the value of their destroyed business.[6]

22. In the First Judgment, the trial court noted that the Bailey Plaintiffs had called two witnesses to quantify their damages, that one (Fernandez), had calculated out-of-pocket damages at $6.8 million, and that the Court did "not accept the testimony of any of these experts [including two

[6] Trial Tr. Vol. 35, at 4655, *Bailey v. St. Louis*, No. 06-CA-08498 (Fla. 13th Cir. Ct. May 10, 2011) (stating that damages calculation was limited to "making [plaintiffs] whole" and "putting them back in the same position that they would have been").

called by the LSI Defendants] with the exception of the Fernandez calculation, generally, as to the out-of-pocket damages."[7] The Court attached a chart at the end of the First Judgement identifying damages for each count, consisting of four separate items totaling $1.6 million. Although H&K's strategy initially succeeded in the trial court, the Second Appellate Decision reversed and remanded with instructions to enter judgment in favor of the Bailey Plaintiffs for the full value of LSI as calculated by Fernandez.

23. During the H&K Investigation, the Assignee and H&K agreed to a pre-suit mediation in an effort to resolve their disputes prior to the initiation of litigation. Jennifer Altman (counsel for the Bailey Plaintiffs and special counsel to the Assignee), the Assignee, SRBP, RMS and Venable participated in the extensive mediation proceedings.

24. Concurrently with the mediation proceedings, the Assignee also sought and obtained a court order requiring H&K to turn over to the Assignee its client files from the Bailey Lawsuit, including more than 18,000 documents and 55 boxes of hard copy documents.

25. During the mediation, which remains pending to allow the Parties to use that resource to resolve any ancillary issues that may arise until the Court rules on this Motion, the H&K Investigation continued as additional documents were reviewed and as the mediation-privileged discussions and exchanges identified additional strengths and weaknesses of the Parties' respective positions.

26. As noted in the Settlement Agreement, H&K denies that it is liable to the Assignee. It has advised the Assignee that it will vigorously defend any suit filed against it.

[7] First Judgment, at 83-84.

Relief Requested

27. After engaging in lengthy, arms' length, and good faith settlement discussions, including the use of the mediator, the Parties reached an agreement on the terms of a settlement and compromise of any and all claims that the Assignee may have against H&K that is memorialized and set forth in the Settlement Agreement attached hereto as Exhibit A.

28. Pursuant to this Motion, the Assignee seeks the entry of an order approving the terms of the Settlement Agreement.

29. The key terms of the Settlement Agreement are as follows:[8] (i) H&K shall pay to the Assignee the sum of $5,450,000 in cash (the "**Settlement Amount**") upon the entry of a final order approving this Motion; (ii) the Assignee and the H&K Parties (as defined in the Settlement Agreement) shall provide mutual general releases to each other, other than obligations under the Settlement Agreement; (iii) the entry of a Bar Order (as defined below); and (iv) the Assignee shall cooperate (at no cost to the assignment estates) with H&K to preserve records and shall not assert the attorney-client privilege with respect to relevant documents or testimony.

Basis for Relief

A. The Settlement Agreement Should be Approved.

30. The statutory framework provided for assignment for the benefit of creditors cases authorizes the Court to approve the Settlement Agreement. Section 727.109 of the Florida Statutes specifically empowers the Court to enter an order approving "the compromise or settlement of a controversy" upon motion by the Assignee. Fla. Stat. § 727.109(7). Further, the Court is authorized to "[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter." Fla. Stat. § 727.109(15).

[8] The foregoing is a summary only of the terms of the Settlement Agreement. The terms of the Settlement Agreement shall control in the event of any inconsistencies.

31. Generally, "[t]he law favors compromise and settlement since it is to the best interest of the state and the parties that there should be an end to litigation." *Coe v. Diener*, 159 So. 2d 269 (Fla. 2d DCA 1964). Although the assignment statutes providing for court approval of settlements proposed by an assignee do not set forth any specific criteria for approving settlements, analogous bankruptcy principles should guide this Court's evaluation of the Settlement Agreement. "State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors." *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

32. Settlements in bankruptcy are favored as a means to minimize litigation, expedite administration of the bankruptcy estate, and provide for efficiently resolving bankruptcy cases. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Bankruptcy courts may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Bankruptcy courts should approve settlements unless the proposed settlement falls below the "lowest point" in the range of reasonableness. *In re S & I Investments.*, 421 B.R. 569, 583 (Bankr. S.D. Fla. 2009) *see also Gilmour v. Conn. Gen. Life. Ins. Co. (In re Victory Med. Center Mid-Cities, LP)*, 601 B.R. 739, 749 (Bankr. N.D. Tex. 2019). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984).

33. The Court need not conduct a mini-trial on the underlying claims; rather, the Court merely "must apprise itself of the relevant facts and law so that it can make an informed and intelligent decision." *Age Ref. Inc.*, 801 F.3d at 541 (internal quotation omitted). "'[T]he bankruptcy

judge does not have to decide the numerous questions of law and fact .... The court need only canvass the settlement to determine whether it is within the accepted range of reasonableness.'" *Victory Med. Center*, 601 B.R. at 749 (quoting *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994)).

34. In considering a settlement negotiated at arm's length by an independent fiduciary, deference should be accorded to the fiduciary's judgement. *In re Moorhead Corp.*, 208 B.R. 87, 89 (BAP 1st Cir. 1997). The court should not substitute its business judgment for that of the fiduciary "but only test his choice for reasonableness." *In re Ashford Hotels, Ltd*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998); *see also In re 110 Beaver Street Partnership,* 244 B.R. 185, 187 (Bankr. D. Mass. 2000) ("[T]he Court will defer to the trustee's judgment and approve the compromise, provided the trustee demonstrates that the proposed compromise falls within the 'range of reasonableness' and thus is not an abuse of his or her discretion.").

35. In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the Eleventh Circuit Court of Appeals enunciated certain factors to be considered in determining whether to approve a compromise. These factors include the following:

(i) The probability of success in the litigation;

(ii) The difficulties, if any, to be encountered in the matter of collection;

(iii) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and

(iv) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. The terms of the Settlement Agreement satisfy the above *Justice Oaks* factors.

36. ***The Probability of Success in Litigation***. The Assignee would face significant hurdles were he to file a complaint against H & K. This is not a case where a lawyer has failed to commence an action or allowed a default to be entered. Even in those cases, to the extent that they

involve a "trial within a trial," disputes over causation, and issues related to damages are difficult and expensive to prosecute.

37. In the case at bar, a primary assertion is that H&K failed to call its own damages expert or offer an alternative damages model. To the extent that the lawsuit challenges decisions made at trial, it would involve an in-depth examination of the handling of a complex commercial dispute that was tried by lawyers with excellent reputations over a ten-month period for seasoned and sophisticated client representatives. H&K's good faith trial court decisions are protected by Florida's judgmental immunity rule. "Good faith tactical decisions or decisions made on a fairly debatable point of law are generally not actionable under the rule of judgmental immunity." *Crosby v. Jones*, 705 So. 2d at 1358; *see also Air Turbine Tech., Inc. v. Quarles & Brady, LLC*, 165 So. 3d 816, 822 (Fla. 4th DCA 2015). The obstacles to prevailing on this theory are daunting.

a. First, the success of this theory assumes that, had the LSI Defendants called a damages expert, the trial court would have accepted this testimony and disregarded the Fernandez testimony on which the appellate court rested its damage calculations—an assumption that would be difficult or impossible to prove;

b. Second, H&K's damages strategy worked at trial and thus likely constitutes a good faith tactical decision. H&K, to the satisfaction of the trial court, attacked the core factual premise of Fernandez' opinion—his express assumption that the Bailey Plaintiffs' business was totally destroyed—by presenting evidence showing that the Bailey Plaintiffs' business was not, in fact, totally destroyed. H&K also successfully argued that the Bailey Plaintiffs failed to provide evidence of lost profits and that Fernandez did not perform any independent calculation of lost profit damages.

c. Third, the disgorgement theory adopted by the Second Appellate Decision rested on a fairly debatable question of law. The Bailey Plaintiffs pursued an alternative theory of damages seeking disgorgement of LSI's profits. The Bailey Plaintiffs argued that *any* profit LSI received following the alleged tortious conduct was subject to disgorgement. But the Bailey Plaintiffs cited no Florida case law approving such broad disgorgement damages; instead, they relied mainly on a non-binding decision from the U.S. Court of Appeals for the Eleventh Circuit in a Federal securities law action, *Pidcock v. Sunnyland Am., Inc.*, 854 F.2d 443 (11th Cir. 1988). The Bailey Plaintiffs also presented no expert witness testimony

in support of disgorgement, but instead presented this theory only through a bench brief. At trial, Fernandez disclaimed that his calculations supported the Bailey Plaintiffs' disgorgement theory and testified that his testimony was premised on making plaintiffs whole by compensating them for the value of their destroyed business. And H&K rebutted this disgorgement theory as well by challenging the Bailey Plaintiffs' legal theory and evidence.

d. Fourth, causation on this theory would be difficult to prove. As noted elsewhere, to the extent that LSI's own damage model valued the company at more than the opposing expert's testimony, LSI's damage evidence would have been harmful to it.

To the extent that an alternative damage theory *might* have led the trial court to enter a much lower, but still substantial, judgment, several obstacles nevertheless make trial on that issue uncertain. The Assignee believes it is likely that H&K will be able to obtain experts who will opine that the trial conduct of H&K was within the standard of care.

38. The secondary primary complaint is that H&K failed to properly analyze and evaluate the damage risks presented by the case, and, correspondingly, failed to properly advise the LSI Defendants of those risks and the advantages of settlement. H&K maintains that it appropriately analyzed the case and advised the LSI Defendants of the risks and points out that it twice prevailed at trial in limiting damages below $10 million.

39. To the extent that Samuel Bailey's 2009 personal bankruptcy is contended to have presented an opportunity for the LSI Defendants to resolve the dispute by purchasing shares in Laserscopic, that argument is subject to strong defenses—including that lawyers other than H&K led the effort to purchase the shares, that client representatives were also directly involved, and that there was no fair sale process.

40. Specifically, by way of background, the lead plaintiff in the Bailey Lawsuit, Samuel Bailey, went through personal bankruptcy proceedings (the "Bailey Bankruptcy") beginning in September 2009, prior to the start of trial in the Bailey Lawsuit. In the Bailey Bankruptcy, the Bailey

Defendants were primarily represented by Geoffrey Treece—an attorney unaffiliated with H&K. Treece and Louis Amato (who represented EFO) offered their bankruptcy expertise in assessing what resolution opportunities may have existed in the Bailey Bankruptcy. Robert Gramman was also quite involved in this process.

41. The Bailey Defendants, in fact, explored the possibility of acquiring through the bankruptcy Samuel Bailey's personal defamation claim against the Bailey Defendants and his ownership interest share in Laserscopic (together, the "Bailey Assets"), in an effort to take control of and ultimately dismiss the Bailey Lawsuit. Through Treece, the Bailey Defendants made offers to Samuel Bailey's bankruptcy trustee, Jill Jacoway, to acquire the Bailey Assets for $400,000 and $750,000, but Jacoway stated that she would need at least $10 million to sell the shares to the Bailey Defendants.

42. In 2010 and 2011, Jacoway ultimately elected to sell the Bailey Assets to Samuel Bailey himself for $760,000 as part of a transaction funded by a litigation funder, Juridica Investments.

43. The record also reflects that H&K advised the Bailey Defendants of the risks and uncertainties of litigation during settlement negotiations with the Bailey Plaintiffs throughout the Bailey Lawsuit, including pre-trial, post-trial, and following the 2016 Appellate Decision. A trial on this issue would likely involve testimony that H&K's assessment of the merits of the Bailey Plaintiffs' claims was supported by others, including Brooks Miller, LSI's Board of Directors and in-house counsel, and EFO's leadership and counsel. Although the circuit court ultimately found the Bailey Defendants liable, H&K's analysis of liability was reasonable. A malpractice trial could clearly result in a finding that H&K also reasonably believed that even if the Bailey Plaintiffs were to prevail, they should not reasonably obtain full business destruction or lost profit damages, and that

any other damages were likely to be limited and would involve supporting testimony from former District Court of Appeal judge Chris Altenbernd (who had been retained by the LSI Defendants as a consultant), among others.

44. The Assignee will also have to establish a causal connection between any negligence that he can prove and the damage suffered (i.e., the entry of the over-large Final Bailey Judgment). This issue will also be contested. It may involve the "trial within the trial" procedure—in convincing the court that the alternative damage theory would have been adopted by the trial court below.

45. Finally, damages will be contested, and there are legal and factual challenges to the Assignee's damage model.

46. Thus, the first factor of probability of success weighs in favor of approval of the Settlement Agreement. Litigation would require a number of factual determinations that would likely preclude summary judgment in the favor of the Assignee and require a trial, including expert testimony. There is no certainty in litigation, including on appeal.

47. ***The Collection Factor***. The Assignee does not place great weight in urging approval of the Motion upon the second *Justice Oaks* factor involving difficulties in collection of any judgment against H&K. On the other hand, if the Assignee were to pursue litigation that resulted in a ruling in favor of H&K, certain of H&K's costs could be taxed as administrative expenses against the assignment estates, and other fee or costs shifting strategies, such as an proposal for settlement under Fla. R. Civ. P 1.442, might also expose the assignment estates to liability.

48. ***Complexity of Litigation***. The third factor of the complexity of the litigation weighs heavily in favor of approval of the Settlement Agreement. As described in part above, litigation with H&K would complex in nature, and will require a trial on the merits. This complexity would result in a significant investment in legal and professional fees and costs with no assurances of success.

49. ***Paramount Interests of Creditors***. The Settlement Agreement assures that funds currently available for distribution to unsecured creditors will not be diminished by litigation costs and taxation of H&K costs if it successful. It will also enhance the amounts currently available for distribution by $5.45 million (less legal contingency fees). Therefore, the Assignee believes that the Settlement Agreement is in the best interest of the creditors of creditors.

50. After listening carefully to the arguments of the Bailey Plaintiffs, and after also listening carefully to his general counsel, RMS, and Venable and after considering the positions advanced by H&K and the input of the impartial mediator, the Assignee believes that the exercise of sound business judgment compels him to seek approval of the Settlement Agreement.

51. For the foregoing reasons, the Assignee submits that the Settlement Agreement satisfies the Justice Oaks factors and falls well above the lowest point in the range of reasonableness and, accordingly, should be approved.

B. The Bar Order, as a Component of the Settlement Agreement, Should be Approved.

52. The Settlement Agreement before this Court does not to seek a bar of the direct claims of H&K's other clients—St. Louis, EFO, and Perry. It does seek to bar those parties from pursuing indemnity-related claims other than by pursuing claims in the Assignment Cases. This is a limited and appropriate request.

53. The Parties are seeking a limited Bar Order as a component of the Settlement Agreement. The Bar Order would become effective upon the H&K Parties paying the Settlement Payment.

54. Consistent with Fla. Stat. § 727.109(15), the Court has the power to approve the Bar Order because it can "exercise any other powers that are necessary to enforce or carry out the provisions of this chapter." Moreover, bar orders are established tools that bankruptcy courts use to

achieve just and fair results in similar circumstances; and "state courts often look to federal bankruptcy law for guidance as to legal issues arising in proceeding involving assignments for the benefit of creditors." *Phelan v. Antoine*, 845 So. 2d 904, 911 n.10 (Fla. 1st DCA 2003).[9]

55. The Bar Order satisfies the requirements of controlling Eleventh Circuit case law, including *Munford v. Munford (Matter of Munford, Inc.)*, 97 F.3d 449 (11th Cir. 1996) and its progeny. Bar orders are considered to be fair and equitable in the Eleventh Circuit under *Munford*, its progeny, and related law where: (i) the bar order fulfills the long-standing public policy of encouraging pretrial settlements; (ii) the settlement containing the bar order satisfies the requirements for the approval of settlements under *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990); and (iii) the bar order satisfies the nonexclusive set of factors for approval of bar order set forth in *Munford*, *see In re Superior Homes & Investments, LLC*, 521 Fed. App'x 895, 897 (11th Cir. 2013).

56. Eleventh Circuit law regarding bar orders is clear: bar orders limiting or affecting non-settling parties' rights—inside and outside of bankruptcy—are a necessary and permissible tool available to accomplish meaningful settlements for the benefit of creditors of an estate. When a requested bar order is interrelated with a fiduciary's claim, is an essential and critical element of the settlement, is necessary to achieve complete resolution of the issues within the settlement agreement, and is fair and equitable, then the entry of a bar order is a proper exercise of the Court's power under Section 105 of the Bankruptcy Code. *In re Munford*, 97 F.3d at 450 (finding bankruptcy court had authority under section 105(a) to enter order barring claims against certain defendants).

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[9] Citing *Blonder v. Cumberland Eng'g.*, 71 Cal. App. 4th 1057, 84 Cal. Rptr. 2d 216 (1999); *Angeles Elec. Co. v. Superior Court*, 27 Cal. App. 4th 426, 32 Cal. Rptr. 2d 660 (1994); *In the Matter of the General Assignment for Benefit of Creditors of M.S. Ackerman, Inc.*, 19 Misc. 2d 260, 186 N.Y.S. 2d 406 (N.Y. Sup. Ct. 1959); *Pavone Textile Corp. v. Bloom*, 302 N.Y. 206, 97 N.E. 2d 755 (1951).

57. Courts in the Eleventh Circuit are not hesitant to enter bar orders in recognition of the importance they have in facilitating settlements. For example, the court in *Munford* specifically identified the important policy reasons for granting bankruptcy courts the power to enter bar orders: (a) "public policy favors pretrial settlement so as to prevent the depletion of the parties' resources and taxpayer dollars; litigation costs are particularly burdensome on a bankrupt estate"; and (b) "bar orders play an integral role in facilitating settlements." 97 F.3d 449, 455 (11th Cir. 1996). The court in *In re Fundamental Long Term Care, Inc.*, 492 B.R. 571, 576 (Bankr. M.D. Fla. 2013), when analyzing the *Superior Homes* case, noted that "the Eleventh Circuit affirmed the bankruptcy court's entry of a bar order in *Superior Homes* because it, in part, prevented creditors from making 'an end-run around the normal bankruptcy procedure for distribution of the Estate.'"

58. *Munford* requires that a bar order fulfill the public policy of encouraging pretrial settlements. Here, there is no doubt that the Bar Order has encouraged the Parties to settle their disputes.

WHEREFORE, the Assignee respectfully requests that this Court enter an order, in substantially the form of the order attached hereto as Exhibit C, (i) granting this Motion, (ii) approving the Settlement pursuant to Section 727.109(7) of the Florida Statutes, and (iii) granting such other and further relief as is just and proper.

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By: /s/ Harley E. Riedel
Harley E. Riedel (Fla. Bar No. 183628)
Stichter, Riedel, Blain & Postler, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion for Order Approving Settlement and Compromise of Claims Against Holland & Knight* has been furnished on this 22 day of January 2024 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached.

/s/ Harley E. Riedel
Harley E. Riedel

MASTER LIMITED NOTICE SERVICE LIST
September 14, 2022

Assignors and Assignor's Counsel: (via the Court's electronic servicing system)

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
Laser Spine Institute, 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
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Assignee and Assignee's Counsel (via the Court's electronic servicing system)

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Maricopa County Treasurer
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Exhibit A

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (the "**Agreement**") is made and entered into, for the consideration and mutual promises hereinafter stated, by and between Soneet Kapila, solely in his capacity as the assignee (the "**Assignee**") for the benefit of the creditors of Laser Spine Institute, LLC ("**LSI**"); Laser Spine Surgical Center, LLC ("**Surgical Center**"); CLM Aviation, LLC; LSI HoldCo, LLC; LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of Cleveland, LLC; Laser Spine Surgery Center of Oklahoma, 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; and Total Spine Care, LLC (collectively, the "**Assignors**") in Case Nos. 2019-CA-2762, 2019-CA-2764, 2019-CA-2765, 2019-CA-2766, 2019-CA-2767, 2019-CA-2768, 2019-CA-2769, 2019-CA-2770, 2019-CA-2771, 2019-CA-2772, 2019-CA-2773, 2019-CA-2774, 2019-CA-2775, 2019-CA-2776, 2019-CA-2777, and 2019-CA-2780 currently pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "**Assignment Cases**"), on the one hand; and Holland & Knight LLP ("**H&K**"), on the other hand. The Assignee on behalf of the Assignors and H&K (referred to herein as the "**Parties**" and each a "**Party**") agree as follows:

RECITALS

WHEREAS, H&K represented LSI, Surgical Center, and two affiliates of LSI (Laser Spine Medical Clinic, LLC ("**Medical Clinic**") and Laser Spine Physical Therapy, LLC ("**Physical Therapy**")) (collectively, LSI, Surgical Center, Medical Clinic, and Physical Therapy, defined as the "**LSI Defendants**"), as well as certain of Assignors' shareholders and employees (James St. Louis; Michael Perry; EFO Laser Spine Institute, Ltd. ("**EFO LSI**"); EFO Genpar, Inc. ("**EFO Genpar**"), and EFO Holdings, L.P. ("**EFO Holdings**," and together with EFO LSI and EFO Genpar, defined as "**EFO**")) (collectively, the LSI Defendants, James St. Louis, Michael Perry, and EFO, defined as the "**Bailey Defendants**"), in the lawsuit styled *Bailey, et al., v. St. Louis, et al.*, Case No. 06-08498 (Fla. 13th Cir. Ct.) (the "**Bailey Lawsuit**");

WHEREAS, the Bailey Lawsuit proceeded to trial and, after prolonged appellate proceedings, resulted in a decision of the Second District Court of Appeal, 268 So.3d 197 (Fla.2d DCA 2018) (the "**2018 Appellate Decision**") and the subsequent entry of a judgment on July 3, 2019 (the "**Bailey Judgment**") for more than $275 million (over $369 million including interest) against certain of the Bailey Defendants, including the LSI Defendants;

WHEREAS, H&K withdrew from representation of the Bailey Defendants on May 20, 2019, after the 2018 Appellate Decision and before the entry of the Bailey Judgment;

WHEREAS, LSI was the sole managing member of Medical Clinic and Physical Therapy until LSI dissolved both entities on April 26, 2013;

WHEREAS, on March 14, 2019, LSI and Surgical Center each executed and delivered assignments for the benefit creditors to the Assignee, and the Assignee filed Petitions in the

Assignment Cases on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes;

WHEREAS, upon his appointment in the Assignment Cases, the Assignee, employed general counsel, and, as appropriate, special litigation counsel;

WHEREAS, the Assignee with the assistance of counsel, conducted a fulsome investigation of the claims and causes of action that existed in favor of the Assignee, including any claims against H&K that may exist with respect to H&K's representation of the LSI Defendants in the Bailey Lawsuit (the "**Representation**");

WHEREAS, as part of his investigation, the Assignee and his legal team reviewed the record in the Bailey Lawsuit; interviewed individuals with knowledge of the Bailey Lawsuit and the Representation; reviewed LSI's files related to the Bailey Lawsuit and the Representation; and obtained a court order requiring H&K to turn over to the Assignee its client files from the Bailey Lawsuit, including more than 18,000 documents and 55 boxes of hard copy documents;

WHEREAS, as a result of that investigation, the Assignee has considered whether he may have potential claims against H&K, including for professional negligence constituting legal malpractice and breach of fiduciary duty under Florida law that may arise out of, concern, or relate to the Representation (the "**Claims**");

WHEREAS, H&K, on behalf of itself and the H&K Released Parties (defined below), vehemently denies the Claims and any related allegations;

WHEREAS, the Parties have engaged in an extensive and robust, arms-length mediation with a professional mediator, during which they exchanged documents, and undertook lengthy negotiations regarding the Claims; and

WHEREAS, the Parties desire to resolve their disputes, and, without any admission of liability or wrongdoing by any Party, the Parties have agreed to compromise, settle, and resolve any and all claims that any of them had, has, or may have against all persons and entities released herein that arise out of, concern, or relate to the Assignors, the LSI Defendants, the Assignment Cases, the Bailey Lawsuit, the Bailey Judgment, the Bailey Defendants, the Claims, and the Representation (collectively, **"Subject Claims"**);

NOW, THEREFORE, in consideration of the covenants and releases contained in this Agreement and for other further good and valuable consideration, including, but not limited to, the terms herein and the avoidance of further costs, inconvenience, and uncertainties relating to the resolution of their disputes, the Parties agree as follows:

AGREEMENT

1. Definitions

   a. "**Effective Date**" means the latest of: (i) the date on which all Parties have executed this Agreement; (ii) Florida Court Approval (defined below); (iii) the date on which

the time for any person to appeal the Florida Court Approval has expired; or (iv) if any person appeals the Florida Court Approval, (a) Florida Appellate Approval; (b) the date on which the time for any person to seek Florida Supreme Court review of the Florida Appellate Approval expires; or (c) if any person seeks review of the Florida Appellate Approval, fourteen (14) days from the date H&K is notified of final disposition declining to review the Florida Appellate Approval or affirming the Florida Appellate Approval.

b. "**Florida Court**" means the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

c. "**Florida Court Approval**" means entry by the Florida Court of an order authorizing the Assignee to exercise his powers to enter into this Agreement on behalf of the Assignors.

d. "**Florida Appellate Approval**" means final disposition rejecting any and all appeals of the Florida Court Approval and affirming the Florida Court Approval

e. "**H&K**" means Holland & Knight LLP and all of its affiliates.

f. "**H&K Released Parties**" means H&K, as well as its successors, predecessors, and affiliates and all of their respective current and former partners (including but not limited to Stacy D. Blank; William K. Fendrick; Bradford D. Kimbro; and Joseph H. Varner, III), of counsel, associates, other attorneys, agents and employees, and all of their past and present members, partners , associates, other attorneys, owners, affiliates, parents, officers, directors, related entities, employees, fiduciaries, managers, trusts, beneficiaries, executors, trustees, administrators, benefit plans and plan administrators, subsidiaries, independent contractors, contractors, shareholders, agents, counsel (including but not limited to Gibson, Dunn & Crutcher LLP, and all of its current and former partners, of counsel, associates, other attorneys, agents and employees), consultants, experts, advisors, insurers, reinsurers, heirs, spouses, assigns, and representatives.

g. "**Released Claims**" means all of the Subject Claims, as well as any and all claims, liabilities, demands of every kind and nature, damages, suits, complaints, arbitration claims, counterclaims, sanctions, debts, proofs of claim, obligations, judgments, liens, promises, agreements, controversies, rights, losses, charges, attorneys' fees, costs and expenses, including but not limited to all actions, causes of action or suits at law or in equity of whatever kind or nature, whether direct, indirect or derivative, whether by or through any of the Parties or Medical Clinic or Physical Therapy, arising from, related to, or in connection with any or all of the Subject Claims or the Representation, whether based upon alleged tort or contract or any other legal or equitable theory of recovery, whether based upon federal, state, statutory, common, or foreign law (including but not limited to the State of Florida) or otherwise, whether known or unknown, whether seeking damages, punitive damages, attorneys' fees, costs, equitable relief or any other form of relief or compensation, whether accruing in the past, present, or future, and whether

anticipated or not anticipated, any and all of which have arisen or are now arising or hereafter may arise, from the beginning of time through the Effective Date of this Agreement, and without limiting the generality of the foregoing, arising out of, in connection with, or related in any way to the Representation or any or all of the Subject Claims.

2. Florida Court Approval. It is a condition precedent to the effectiveness of this Agreement that the Assignee obtain Florida Court Approval. The Assignee acting by his counsel shall move as expeditiously as reasonable in seeking Florida Court Approval. H&K agrees to cooperate with the Assignee's efforts to obtain Florida Court Approval. In support of Florida Court Approval, the Assignee will submit the motion attached as Exhibit 1 hereto.

3. Payment of Settlement Amount. In consideration of the general releases contained herein and other valuable consideration provided by this Agreement, H&K will cause to be paid by wire transfer the total sum of Five Million, Four Hundred Seventy-Five Thousand Dollars ($5,475,000) in United States dollars (the "**Settlement Amount**") to be wired transferred following the later of (a) thirty (30) business days after the Effective Date, or (b) the Assignee's transmittal to H&K of written wiring instructions and an appropriate W-9 from the party designated in writing by the Assignee to receive the wire transfer. The Parties agree that, apart from the Settlement Amount as defined in this Agreement, the Assignee is entitled to no payments or other consideration from H&K, any of the H&K Released Parties, or any of H&K's or the Released Parties' insurers and reinsurers (solely in their capacity as insurers or reinsurers of H&K), in respect of the Released Claims or other matters released herein. H&K shall have no further obligation to the Assignee or any other person or entity regarding the Settlement Amount and shall have no responsibility for the disposition of the Settlement Amount, including but not limited to disposition by the Assignee. It is expressly understood and agreed by the Parties that H&K's payment obligation shall be completely satisfied immediately upon the final transfer of the Settlement Amount pursuant to the wire instructions provided by the Assignee, and that neither H&K nor the H&K Released Parties are or will be responsible in any way for any taxes, offsets, or any other deductions with respect to any portion of the Settlement Agreement. The Assignee acknowledges and agrees that he is solely responsible for any tax obligations and will indemnify and hold harmless H&K from any claims, liabilities, or expenses (including, without limitation, attorney fees) arising from any such tax obligations.

4. Release of Claims by the Assignee. For and in consideration of the agreements herein and conditioned on the receipt of the Settlement Amount, the Assignee, on behalf of Assignors, and to the fullest extent the Assignee has authority to do so, for Medical Clinic, Physical Therapy, and all of Assignors', Medical Clinic's, and Physical Therapy's past and present owners, members, parents, subsidiaries, affiliates, related entities, shareholders, investors, creditors, officers, directors, successors, beneficiaries, advisors, consultants, attorneys, predecessors, agents, trusts, trustees, representatives (including but not limited to the Assignee), heirs, spouses, and assigns claiming by or through them, and all others of those who do or may assert any claim or any of the Subject Claims, by or through any or all of them, whether direct, indirect or derivative, hereby forever irrevocably, unconditionally, fully, and finally release, acquit, and discharge the H&K Released Parties from any and all Released Claims.

5. Release of Claims by H&K. For and in consideration of the agreements herein, H&K, for itself, and to the fullest extent that it has authority to do so, for all of their past and present owners, members, parents, subsidiaries, affiliates, related entities, shareholders, investors, creditors, officers, directors, successors, advisors, consultants, attorneys, predecessors, agents, trusts, trustees, representatives, heirs, spouses, and assigns claiming by or through them, and all others of those who do or may assert any claim by or through any or all of them, whether direct, indirect, or derivative, do hereby forever irrevocably, unconditionally, fully, and finally release, acquit, and discharge the Assignee and Assignors from any and all Released Claims.

6. Release and Waiver of Rights. The Parties expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or international or foreign law, which would limit the scope of the releases provided in this Agreement.

In connection with such waiver and relinquishment, the Parties acknowledge that they are aware that they might later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby fully, finally, and forever to settle and release all Released Claims. This Agreement is intended to be and is final and binding, regardless of any claims of misrepresentation, concealment of fact, or mistake of law or fact and shall be and remain in effect as a full and complete release of all such claims, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. In furtherance of such intention, the releases given pursuant to this Agreement shall be in, and shall remain in, effect as a full and complete release, notwithstanding the discovery or existence of any such additional or different facts. The Parties also acknowledge and agree that all persons and entities released pursuant to this Agreement are third party beneficiaries of this Agreement, including but not limited to the releases contained herein. Notwithstanding the foregoing, the Parties acknowledge that nothing herein is intended to or shall release (1) any claims brought by James St. Louis, Michael Perry, EFO LSI, EFO Genpar, or EFO Holdings against the H&K Released Parties in Case Nos. 21-CA-008456, 21-CA-008909, and 21-CA-008937, currently pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, other than those claims specified in Paragraphs 8.a and 8.b herein, or (2) any claims and causes of action based on fraudulent transfer theories or otherwise that the Assignee has or that he may assert against the former owners of the LSI Defendants and subsequent transferees, including without limitation, claims for the avoidance and recovery of a transfer of money or property made by the LSI Defendants.

7. Covenant Not to Sue/Scope of Releases. The Parties covenant and agree that they will not make, assert, or maintain any claim, demand, action, or cause of action that is released herein other than to enforce the provisions of this Agreement.

8. Bar Order. As part of its efforts to obtain Florida Court Approval, Assignee shall request that the Florida Court enter, and shall make all reasonable efforts to obtain, a bar order provision that bars, enjoins and restrains, in any and all jurisdictions, including any federal or state court, and any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, to the maximum extent permitted by law, the commencement, prosecution, or assertion against the H&K Released Parties of all claims, cross-claims, counterclaims, and third-

party claims or actions that are Released Claims, whether arising under state, federal or foreign law, including but not limited to:

a. Any claim against the H&K Released Parties arising out of or predicated in any way on the entry of the Bailey Judgment or based on any allegation of diminished value of the Assignors or the LSI Defendants as a result of the Representation, the Bailey Lawsuit, or the Bailey Judgment; for the avoidance of doubt, the bar order would not preclude the Bailey Defendants (other than the LSI Defendants) from pursuing any pending claim predicated on the entry of the Bailey Judgment against themselves, so long as such claim is not predicated in any part on the entry of the Bailey Judgment against the LSI Defendants or the diminished value of the Assignors.

b. Any claim by any person or entity against the H&K Released Parties arising out of or predicated upon any claim brought by any of the Assignors or LSI Defendants against such person or entity.

Final resolution of all potential claims on behalf of or in relation to any duty H&K owed to the LSI Defendants related to the Representation, regardless of their merit, that might be brought not only by the Assignee but also by the LSI Defendants' past and present owners, members, investors, creditors, related entities, shareholders, or other representatives is a material component of this Agreement and the consideration for it and, in particular, for the extent of the Settlement Amount. Nonetheless, this Agreement shall remain binding even if the Florida Court does not agree to the entry of the proposed bar order.

9. Waiver of Privileges and Access to Individuals. The Assignee, on behalf of himself and the Assignors, expressly waives, to the fullest extent authorized by law, any attorney-client privilege, attorney work-product privilege, accountant-client privilege, mediation privilege, or other privilege, as well as any duty of loyalty or confidentiality or any other ethical duty owed to the Assignee and/or the Assignors (collectively, the "**Waived Privileges**")—with regard to:

a. any document or written or oral communication relating to the Bailey Lawsuit, *except*: (i) any document prepared in connection with the Parties' mediation that states the Parties' position on the Claims and/or the terms of any potential settlement; (ii) any communications made in connection with the Parties' mediation and thus protected by the mediation privilege—excluding any documents or written or oral communications that predate the mediation—that are between or among any combination of the following: (A) H&K, its attorneys, and its counsel (including Gibson, Dunn & Crutcher LLP), (B) the Assignee and his counsel, (C) the mediator; and (D) any party to the Bailey Judgment (including their respective counsel); (iii) any communications between the Assignee and other Bailey Defendants (including their respective counsel) that are protected by any mediation privilege; (iv) any communications between the Assignee and the Assignee's counsel; and (v) any communications made by or with the Assignee (or his counsel) after December 29, 2019 that are protected by any mediation privilege other than in connection with the Parties' mediation (the "**Remaining Privileged Communications**");

b. any document or written or oral communication, other than the Remaining Privileged Communications, that was previously produced and/or provided by the Assignee to the H&K Released Parties and/or their counsel (including Gibson Dunn & Crutcher) in connection with the Parties' mediation;

c. any document or written or oral communication in connection with the financial state, condition, and/or value of the LSI Defendants and/or their affiliates since they began operations;

d. any document or written or oral communication in connection with any decision whether to file a bankruptcy petition and/or commence an Assignment for the Benefit of Creditors proceeding for any of the LSI Defendants and/or their affiliates;

e. any document or written or oral communication in connection with any distribution of profits by the LSI Defendants and/or their affiliates;

f. any document or written or oral communication in connection with any investment or acquisition of an equity interest in the LSI Defendants and/or their affiliates, including any potential or actual investment or acquisition that was made, solicited, contemplated, or otherwise considered;

g. any document or written or oral communication in connection with any agreement or decision by the LSI Defendants and/or their affiliates to indemnify any individual for any liability in connection with the Bailey Lawsuit and/or any other lawsuit, including any actual or potential agreement or decision that was made, solicited, contemplated, or otherwise considered; and

h. any written or oral communication with James St. Louis, Michael Perry, EFO LSI, EFO Genpar, and/or EFO Holdings regarding any lawsuit brought against those individuals or entities by the Assignee and/or any other individual or entity that is not protected by any mediation privilege.

The Assignee, on behalf of himself and the Assignors, further agrees that they will not object to or otherwise impede H&K's ability to communicate directly with, or to take testimony of, individuals currently or formerly employed or retained by the Assignors or otherwise associated with the Assignors regarding the Representation or the Bailey Lawsuit. Nothing in this agreement shall preclude H&K from seeking the discovery of documents and information that are not specifically covered under this provision based on applicable law. Notwithstanding the foregoing, nothing herein shall be construed to require the disclosure of documents, communications or other information exchanged between the Assignee and third parties if such disclosure would violate Florida law or agreements with such third parties.

10. Access to Documents Held by the Assignee and Assignors. The Assignee, on behalf of himself and the Assignors, agrees to provide to H&K upon reasonable demand, without restriction, all documents and communications in its possession, custody, or control requested by H&K, other than the Remaining Privileged Communications, provided that H&K pays the reasonable cost of producing or reproducing the requested documents and, if appropriate, maintaining the electronic

data base. The Assignee will not object to any request for documents by H&K in its possession, custody, or control requested by H&K on the basis of privilege, relevance, burden, or otherwise. The Assignee, on behalf of the Assignors, expressly waives each of the Waived Privileges with respect to these documents, and consents to H&K's use of these documents for its own purposes, including but not limited to defending against any claims related to the Representation or the Bailey Lawsuit, subject to the terms of the Protective Order Regarding Confidentiality entered on July 20, 2022 in Case No. 2021-CA-008909 in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, attached as Exhibit 2 hereto. H&K acknowledges that nothing herein shall restrict the Assignee from providing documents to other litigants in connection with litigation related to the Representation or the Bailey Lawsuit.

11. Cooperation of the Assignee. The Assignee agrees to testify truthfully in connection with litigation related to the Representation or the Bailey Lawsuit and to cooperate with any efforts by H&K to certify the authenticity of any documents provided by the Assignee to H&K.

12. No Admission of Liability. It is understood and agreed by the Parties hereto that this Agreement and the consideration therefore is a full, final, and complete compromise and settlement of disputed claims and is not to be construed as an admission of liability. Solely to avoid the expense of litigation, the Parties have each concluded that it would be better to fully and finally resolve all disputes between them in the manner and upon the terms and conditions set forth herein rather than litigate the disputed claims. H&K, on behalf of itself and the H&K Released Parties, expressly denies any wrongdoing, and nothing in this Agreement shall be construed or interpreted as a concession by any of them that the Released Claims are valid in any way. The Assignee, on behalf of the Assignors, also expressly denies any wrongdoing, and nothing in this Agreement shall be construed or interpreted as a concession by any of them that any claims that H&K had against the Assignors or the Assignee, if any, are valid in any way. The Parties expressly agree that to the extent the Assignee does not obtain Florida Court Approval or Florida Court Approval is reversed on appeal, this Agreement shall be null and void, and this Agreement and any related court filings and statements shall not be admissible or utilized in any way in litigation between the Parties or otherwise; *except* that the Assignee will nonetheless waive the Waived Privileges with respect to any document or written or oral communication, other than the Remaining Privileged Communications, that was previously produced and/or provided by the Assignee to the H&K Released Parties and/or their counsel (including Gibson Dunn & Crutcher) in connection with the Parties' mediation. H&K shall be able to utilize such documents in litigation, subject to the confidentiality limitations identified in Paragraph 10.

13. Binding Nature of Agreement. This Agreement shall be binding upon and enforceable by all persons and entities released herein, as well as their assigns, predecessors, successors, managers, administrators, investors, members, spouses, heirs, trusts, trustees, liquidators, beneficiaries, officers, directors, employees, partners, associates, executors, representatives, insurers, and reinsurers.

14. Cooperation/Facilitation. The Parties agree to cooperate fully and execute and deliver any and all supplementary documents and to take all additional actions which reasonably may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement without the receipt of further consideration.

15. Integration/Entire Agreement. This Agreement constitutes a single integrated contract expressing the entire agreement between the Parties. No promise, inducement, or agreement other than that expressed herein has been made by any of the Parties. The Parties represent, understand, and expressly agree that this Agreement sets forth all of the agreements, covenants, and understandings of the Parties, superseding all other prior and contemporaneous oral and written agreements, discussions, or promises, if any. The Parties agree that no other agreements or covenants will be binding upon the Parties unless set forth in a writing signed by the Parties or their authorized representatives, and that each of the Parties is authorized to make the representations and agreements herein set forth by or on behalf of each such Party. This is a fully integrated agreement.

16. Voluntary Agreement. This Agreement is freely and voluntarily executed by the Parties. The Parties expressly acknowledge and represent that: (a) they have carefully and thoroughly read this Agreement; (b) they have obtained the advice of counsel with respect to this Agreement and its legal interpretation and implications; (c) they fully understand the terms of this Agreement and their significance; (d) they have had a full and complete opportunity to review this Agreement and to make suggestions or changes; (e) they have executed this Agreement willingly and without acting under duress; and (f) the terms of this Agreement have been bargained for after arms-length negotiations between the Parties. The Parties expressly acknowledge that no person or entity has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce such Parties to execute this Agreement, and further acknowledge that they are not executing this Agreement in reliance upon any promise, representation, or warranty not expressly contained herein.

17. Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires: (a) whenever the words "include," "includes," or "including" are used, they are deemed to be followed by the words "without limitation"; (b) references to any statute, rule, regulation, or ordinance are to the statute, rule, regulation, or ordinance as amended, modified, supplemented, or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under said statutes) and to any section of any statute, rule, regulation, or ordinance include any successor to said section; (c) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms; (d) the use of "or" or "nor" is not intended to be exclusive unless expressly indicated otherwise; (e) words importing the singular include the plural and vice versa and words importing gender include all genders; and (f) the headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

18. No Prejudice to the Drafter. This Agreement shall not be construed against any Party or Parties preparing it, but shall be construed as if all Parties, and each of them, jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one Party.

19. Authority and Capacity. The Parties expressly represent, warrant, and covenant that they have the authority and capacity to execute this Agreement, to perform each of the respective obligations required of the Parties, and to provide the releases set forth herein. Each Party represents that the individual executing this Agreement is authorized to do so on behalf of such Party. The Parties further represent, warrant and covenant that they own or control all of the claims that they are releasing.

20. No Assignment or Transfer. The Parties represent, warrant, and covenant that they have not, and never have, assigned, sold, transferred, conveyed, hypothecated, pledged, or otherwise disposed of any of the Released Claims or any portion thereof or any interest therein that is being released by this Agreement. The Parties further represent, warrant, and covenant that they will not assign, sell, convey, transfer, hypothecate, pledge or otherwise dispose of any rights, claims, or remedies or any portion thereof or any interest therein that are being released by this Agreement. To the extent any claims by one Party against another are, for any reason whatsoever, not released by this Agreement, those claims are forfeited, waived, renounced, and extinguished fully, finally, and forever. The Assignee and Assignors, on the one hand, and H&K, on the other hand, and both of their respective counsel, further represent, warrant, and covenant that they are not aware of the existence of any other claim or potential claim against the other beyond the Released Claims.

21. Choice of Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Florida, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Florida.

22. Dispute Resolution. In the event of any dispute concerning the validity, interpretation, enforcement, or alleged breach of this Agreement, the Parties agree that any such dispute shall be resolved by a confidential arbitration pursuant to the internal laws of the State of Florida, that the legal seat of the arbitration shall be the State of Florida, that the physical location of any arbitration hearing shall be in Tampa, FL, and that the then existing rules of JAMS (the latter of which shall supersede Florida law wherever such laws and rules are in conflict) shall apply. The arbitration shall be presided over by a single Arbitrator who is a retired United States federal court judge affiliated with JAMS and chosen by the parties, or if the parties cannot agree on such an Arbitrator, selected in accordance with the JAMS rules. Judgment upon any arbitration award may be entered by any United States state or federal court, or any court of competent jurisdiction, including but not limited as such courts having jurisdiction over a Party. The Arbitrator's decision in any such arbitration shall be final and binding on the Parties, and shall state the reasons for the award. The Parties intend this arbitration provision to be valid, enforceable, irrevocable, and construed as broadly as possible, and to be governed by, construed under, interpreted in accordance with, and enforced under the Federal Arbitration Act (notwithstanding any other choice of law provision in this Agreement). The Parties delegate to the Arbitrator any and all disputes regarding the arbitrability and/or enforceability of this arbitration provision to the fullest extent permissible under the Federal Arbitration Act. In the event of arbitration between the Parties to enforce or interpret any provision of this Agreement, the prevailing Party shall be entitled to all reasonable costs, attorneys' fees incurred by the prevailing Party, and all arbitration costs, as well as pre-judgment interest on any award at the prevailing statutory rate under Florida law. Any such arbitration shall be conducted without any discovery, and the evidentiary hearing shall not be more than one day, unless the Arbitrator decides otherwise based on a strong showing of need. The evidentiary hearing by the Arbitrator shall take place within ninety (90) days of the appointment by JAMS of the Arbitrator. The Arbitrator shall issue a Final Award, which shall be a reasoned award, no later than thirty (30) days thereafter.

23. Attorneys' Fees and Costs. The Parties each shall bear their own attorneys' fees and costs with regard to all matters preceding this Agreement and in connection with the negotiation and

consummation of this Agreement, except as set forth in the Dispute Resolution paragraph above or as separately agreed to in writing.

24. No Personal Liability of the Assignee. H&K hereby acknowledges and agrees that (a) the Assignee is executing this Agreement on behalf of the Assignors solely in his capacity as the duly appointed assignee for the Assignors, and (b) nothing in this Agreement shall give rise to any personal liability of the Assignee.

25. Use of this Agreement. This Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted for, upon, or in respect of any of the Released Claims. The Parties agree that any such proceeding would cause irreparable injury to the Party against whom it is brought and that any court of competent jurisdiction may enter an injunction restraining prosecution thereof. The Parties further agree that this Agreement may be pleaded as necessary for purposes of enforcing this Agreement. Nothing in this paragraph is intended to modify the requirements of the Dispute Resolution procedures set forth above.

26. Severability. The Parties agree not to challenge this Agreement as illegal, invalid, or unenforceable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts of this Agreement.

27. Termination/Modification. This Agreement can be amended, changed, revised, modified, or terminated only by a writing signed by all of the Parties to this Agreement.

28. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument at such time as counterparts are executed which shall, in total, contain the signatures of all the Parties hereto.

29. Facsimile, Copy, and PDF Signatures. A facsimile, copy, or PDF signature on this Agreement shall have the same force and effect as an original signature thereto. This Agreement, regardless of whether it has original, facsimile, copy, or PDF signatures, shall be binding and enforceable upon the affixing of such signatures by the Parties to this Agreement.

30. Notices. All notices and other communications required by or relating to this Agreement shall be in writing and shall be deemed given when delivered by a nationally recognized overnight courier service to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided that a notice of change of address(es) shall be effective only from the date of its receipt by the other Parties). The Parties agree that they will contemporaneously e-mail to counsel for the opposing Parties (at the respective address set forth below), a courtesy copy of any notices or communications sent concerning this agreement.

a. If to H&K, then to:

Holland & Knight LLP
100 N. Tampa St. # 4100
Tampa, FL 33602
Attention: Jason H. Baruch
Email: jason.baruch@hklaw.com

With a copy to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
Attention: Kevin S. Rosen
Email: krosen@gibsondunn.com

b. If to the Assignee, then to:

Soneet Kapila
1000 South Federal Highway, Suite 200
Fort Lauderdale, FL 33316
Email: skapila@kapilamukamal.com

With a copy to:

Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, Florida 33602
Attention: Scott A. Stichter
Email: sstichter@srbp.com

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates opposite their respective signatures.

DATED: Jan 19, 2024

Laser Spine Institute, LLC

By: Soneet Kapila

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgical Center, LLC

By: Soneet Kapila

Its Assignee

DATED: Jan. 19, 2024

CLM Aviation, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

LSI HoldCo, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

LSI Management Company, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Institute Consulting, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of Arizona, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of Cincinnati, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of Cleveland, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of Oklahoma, LLC

By: _____

Its Assignee

DATED: Jan. 19 2024

Laser Spine Surgery Center of Pennsylvania, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of St. Louis, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Laser Spine Surgery Center of Warwick, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Medical Care Management Services, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Spine DME Solutions, LLC

By: _____

Its Assignee

DATED: Jan. 19, 2024

Total Spine Care, LLC

By: _____

Its Assignee

DATED: January 19, 2024

Holland & Knight LLP

By: _____

Its: Claims Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: January 19, 2024

Gibson, Dunn & Crutcher LLP

By: _____

DATED: _____

Stichter, Riedel, Blain & Postler, P.A.

By: _____

DATED: _____

Holland & Knight LLP

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____

Gibson, Dunn & Crutcher LLP

By: _____

DATED: 11/19/24

Stichter, Riedel, Blain & Postler, P.A.

By: _____

Exhibit 1

Exhibit 1 to the Settlement Agreement is the Compromise Motion which was filed with the Court.

Exhibit 2

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

EFO LASER SPINE INSTITUTE, LTD., EFO GENPAR, INC., and EFO HOLDINGS, L.P.,

Plaintiffs,

vs.

HOLLAND & KNIGHT, LLP, BRADFORD D. KIMBRO, JOSEPH H. VARNER, III, STACY D. BLANK, and W. KEITH FENDRICK,

Defendants.
_____/

CASE NO. 2021-CA-008909

DIVISION I

PROTECTIVE ORDER REGARDING CONFIDENTIALITY

Plaintiffs, EFO LASER SPINE INSTITUTE, LTD., EFO GENPAR, INC., and EFO HOLDINGS L.P. (collectively, "Plaintiffs"), and Defendants, HOLLAND & KNIGHT, LLP, BRADFORD KIMBRO, JOSEPH H. VARNER, III, STACY BLANK and W. KEITH FENDRICK (collectively, "Defendants") (each a "party" and collectively the "parties"), seek to protect the confidentiality of certain information that may be the subject of discovery in this action, while at the same time seeking to expedite the exchange of relevant information. To that end, the terms and conditions of this Protective Order ("Order") shall govern the parties throughout this action.

A. General Provisions

1. The term "Confidential" may include non-public information that is treated in good faith as confidential by its owner, including but not limited to trade secrets, business plans, financial information, marketing information or plans, testing or research information, pricing information, private contract terms, information regarding executives and employees, and

producible information that would otherwise have remained confidential under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or protection. The term "Confidential" also includes any personally identifiable information as defined in the Freedom of Information Act, including Social Security Numbers; driver's license or other identification numbers; or personal financial information such as tax information, bank account numbers, credit card numbers, insurance claim numbers, or insurance policy numbers.

2. Any party (or any third party that is subpoenaed by a party) may designate as Confidential any exhibits, papers, things, representations of facts, discovery material (including answers to interrogatories, responses to requests for production, and responses to requests for admissions) and sworn testimony (including affidavits and depositions), or any portion thereof, produced or given in the course of the above-captioned action that the party contends in good faith contains or reflects confidential information which is not in the public domain ("Confidential Information").

3. Nothing in this Order may be taken to (a) indicate that any information that would qualify for designation under Paragraph 1 is relevant, discoverable, or admissible or (b) preclude a party or non-party from objecting to producing such information and seeking protection from disclosure of any such information.

4. This Order shall not include Protected Health Information ("PHI"). If necessary, the parties agree that they will jointly seek a separate protective order regarding PHI and that such information has been and will continue to be treated confidentially.

B. Designating Materials

5. To designate discovery materials as Confidential pursuant to this Order, the producing party shall mark or stamp the document or item with the word "Confidential." To designate electronically stored information ("ESI") as Confidential, the producing party shall

include the letter "C" in the file name and, unless the ESI is produced in native format, shall label the documents themselves "Confidential." If a physical medium (e.g., hard drive, CD) is used to transmit ESI designated as Confidential, the producing party will label the physical medium "Confidential."

6. To designate testimony as Confidential, the testifying witness (or his or her counsel) may announce on the record at any time during the testimony, including at the end of such testimony, to indicate its Confidential nature pursuant to this Order. Alternatively, the testifying witness (or his or her counsel) may designate the Confidential testimony in any written form within 10 days after receipt of a copy from the court reporter. Unless otherwise agreed, a transcript is to be treated as Confidential during the 10 days following receipt of the transcript.

C. Prohibition on Disclosure

7. Confidential Information given in this action shall be held in confidence and shall not be used, reproduced, distributed, transmitted, disclosed, transferred, reverse engineered, decompiled, or disassembled, directly or indirectly, in any form, by any means, or for any purpose other than to assist counsel of record in the prosecution, defense, or settlement of the above-captioned action, *EFO Laser Spine Institute, Ltd. et. al. v. Holland & Knight, LLP et. al.*, In the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Case No. 21-CA-008909, Division I ("EFO Action"); and *Michael Perry v. Holland & Knight, LLP et al.*, In the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, Case No. 21-CA-008937, Division A ("Perry Action"), and any other litigation, adversary action, mediation, or other informal effort to resolve any and all claims against H&K involving H&K's representation of the defendants in *Bailey, et al. v. St. Louis, et al.*, Case No. 06-CA-008498 (Fla. 13th Cir.). Except as set forth herein, the parties are prohibited from using or disclosing Confidential Information for any other purpose.

8. Confidential Information shall not be made available or disclosed by the receiving party to anyone other than the following:

a) Any party, attorneys for any party, and the partners, associates, secretaries, paralegal assistants, vendors, and employees of such an attorney to the extent reasonably necessary;

b) In-house counsel, insurers, and insurers' counsel for any party;

c) Current or former officers, directors, and employees of a party to whom disclosure is reasonably necessary;

d) The Court, the Court's staff attorney(s), and judicial assistants of the Court;

e) Any mediator or settlement officer (and their staff) appointed by the Court or retained by the parties to assist with settlement discussions;

f) Court reporters and videographers who record testimony in connection with the above-captioned action or any other action described in Paragraph 7;

g) Persons or organizations shown on the face or metadata of the document to have authored or received it, or from whose files the document was produced, and any lawyers for those persons or organizations;

h) Experts or consultants retained by any party to whom disclosure is reasonably necessary;

i) Any testifying witness, before the witness testifies or during the witness's testimony, on the condition that the witness agrees to keep the Confidential Information confidential and not to disclose it to any other person; and

j) Any other person designated by written agreement between the parties or by subsequent order of the Court after reasonable notice to all parties.

9. In the event that Confidential Information is produced without having been previously marked "Confidential," the producing party must promptly upon discovery of its oversight, provide written notice of the error and produce substitute documents that are appropriately designated. The party that has received improperly designated documents must make reasonable efforts to retrieve them from any persons not authorized to access those documents, but shall have no liability for, or with respect to, any pre-designation dissemination of such documents or the information contained therein.

10. In the event that a party receiving Confidential Information produces that information to any person not authorized to receive it, then, as soon as the unauthorized disclosure is discovered, the receiving party must immediately (a) inform the person that the Confidential Information is protected by the Order, and (b) inform the producing party of the unauthorized disclosure. Upon request by the producing party, the receiving party must make reasonable efforts to secure the return or destruction of Confidential Information that was disclosed without authorization.

D. Use of Confidential Information

11. Confidential Information can be used at depositions, hearings, or trial, without waiving the rights and obligations under this Order.

12. Witnesses at depositions taken during the above-captioned action or any other action defined in Paragraph 7 may be shown any Confidential Information without restriction during the course of their deposition and a party's ability to use, exhibit, or disclose Confidential Information at depositions taken in this action shall not be limited. Whenever Confidential Information is to be discussed or disclosed in a deposition, any party which produced the Confidential Information may require the exclusion from the room of any person who is not

entitled to receive the Confidential Information under this Order, except the witness, his or her counsel, the court reporter, and if applicable, the videographer.

13. For hearings and trial, a party desiring to use Confidential Information shall ask the Court to take any measures appropriate and available to protect Confidential Information from unnecessary disclosure.

14. In the event a party deems it necessary to reference or cite Confidential Information with the Court, the filing party must attempt to describe the Confidential Information in the filing in a manner which protects the confidential nature to the extent possible, and then can provide a copy of the Confidential Information to the court at any hearing.

15. In the event that any party is served any judicial process, subpoena, court order, and/or administrative or regulatory order to compel production or disclosure of any Confidential Information, that party shall inform the other parties at least 10 business days before the date of the deposition or production, so that the producing party can take whatever steps it deems necessary to protect the disclosure of Confidential Information.

16. Nothing in this Order precludes (a) a producing party from using its own documents or information; or (b) any party from using documents or information that are public or that are obtained from a source other than a producing party.

E. Challenging Designations.

17. Any party may challenge the designation of any material or testimony as "Confidential" by providing written notice of the challenge to the designating party. The parties will have 10 days from the designating party's receipt of the written notice to negotiate in good faith over the confidential designation and whether all or part of the document may be de-designated. If after 10 days, the good faith negotiations are unable to resolve the de-designation request, then the designating party will have 10 additional days to move the court for appropriate

relief. While any such motion is pending, all parties in possession of the Confidential Information at issue must continue to treat the Confidential Information with the level of designation assigned to it by the designating party. If the designating party fails to file a motion within the 10 additional days after the initial 10-day good faith negotiation period, the material or testimony will no longer be deemed Confidential.

18. A party shall not be obligated to challenge the propriety of a designation by another party of material or testimony as Confidential at the time such designation is made; a failure to make any such challenge shall not preclude a subsequent challenge by such party to such designation.

F. Conclusion of this Action.

19. Within 60 days after the conclusion of this action (including all appeals, if any), any Confidential Information (including all extracts, summaries and reproductions) shall be delivered to the producing party or destroyed. Notwithstanding the foregoing, outside counsel may retain a complete set of all papers filed in this matter and all correspondence generated in connection with this Action, and may retain their attorney work product, and legal memoranda, correspondence, deposition, and trial exhibits, expert reports, and consultant and expert work product, even if such materials contain Confidential Information. Any materials that contain or constitute Confidential Information remain subject to this Order.

DONE and ORDERED in Chambers in Tampa, Florida on this ____ day of July, 2022.

Electronically Conformed 7/20/2022
Paul Huey

Honorable Paul Huey
Circuit Court Judge

Copies to:
Counsel of Record

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	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.	

_____/

AFFIDAVIT OF SONEET R. KAPILA IN SUPPORT OF ASSIGNEE'S MOTION TO APPROVE SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST HOLLAND & KNIGHT, LLP

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, the undersigned authority, personally appeared Soneet R. Kapila, who after being duly sworn, deposes and says:

1. I am the assignee ("**Assignee**") for the benefit of the creditors for Laser Spine Institute, LLC ("**LSI**") and fifteen (15) of LSI's affiliates[1] (collectively, the "**LSI Entities**").

2. I am an experienced insolvency professional. I have served as an assignee in other assignment cases under Chapter 727, as a Chapter 11 trustee, as a Chapter 11 examiner, as a liquidating trustee and plan administrator in Chapter 11 cases, as a chief restructuring officer and as a financial advisor in Chapter 11 cases, as a receiver, as a financial consultant in receivership cases, and as a Federal Court-approved and SEC-appointed Corporate Monitor. I have served as a Federal Bankruptcy Trustee on the panel of U.S. Bankruptcy Trustees in the Southern District of Florida from approximately 1992 through the current time. I hold designations of Certified Public Accountant, Certified Fraud Examiner, and Certified Insolvency and Restructuring Advisor, and am Certified in Financial Forensics. I am a Fellow of the American College of Bankruptcy and currently serve as President of the American Bankruptcy Institute. In these various capacities, I have regularly investigated distressed businesses and their failures, investigated the financial affairs of debtors, evaluated asset recoveries, and investigated, directed the prosecution of, and settled numerous claims and causes of action against third parties. My role routinely includes tracing assets, assessing for possible fraud and evaluating claims against successor businesses. Over my career, I have investigated and pursued numerous causes of action against professionals, and my duties have extended to evaluating, bringing, overseeing, and settling such litigation claims. Such claims have included tort litigation against professionals and directors and officers. I have been qualified as an expert dozens of times in federal and state courts.

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[1] LSI's affiliates are: 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.

3. I currently work at 1000 South Federal Highway, Suite 200, Fort Lauderdale, FL 33316. I am over the age of 18, and, if called as a witness, I could and would testify competently to the statements in this Affidavit based on my personal knowledge and experience, as well as based on the information I have obtained from others during my investigation, including the professionals who represent me in this matter, all of which constitutes the basis for my decision to enter into and recommend the proposed settlement with Holland & Knight, LLP ("**H&K**"). I am providing this Affidavit in support of the concurrently filed Motion to Approve Settlement and Compromise of Claims Against Holland & Knight, LLP (the "**Motion**"). The factual statements in the Motion are true and correct to the best of my knowledge, information and belief. Nothing herein or in the Motion constitutes the waiver of any attorney-client, work product, mediation, or other privilege.

THE ASSIGNMENT, INVESTIGATION, AND MEDIATION

4. On March 14, 2019, LSI executed and delivered to me an assignment for the benefit of creditors. I filed a Petition with the circuit court on March 14, 2019, commencing an assignment (the "**Assignment Estate**") for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the "**LSI Assignment Case**").

5. Simultaneous with the filing of the LSI Assignment Case, I filed fifteen other Petitions commencing the assignment for the benefit of creditors proceedings for the other LSI Entities.

6. As noted elsewhere, I was not serving as the Assignee for the LSI Entities or otherwise involved in the litigation between Joe Samuel Bailey ("**Bailey**") and certain LSI Entities (the "**Bailey/LSI Dispute**") during most of its pendency. I am not a lawyer. This affidavit is based on my understanding of the Bailey/LSI Dispute and H&K's participation as counsel on

behalf of certain LSI Entities that I obtained after the fact in connection with the evaluation of the merits of a potential lawsuit against H&K. This "after the fact" situation is not unusual for fiduciaries involved in insolvency proceedings, and, in fact, is almost always the case. Moreover, it is typical for fiduciaries, in the exercise of their business judgment, to rely upon information obtained from professionals employed to represent the fiduciary in connection with advice on the settlement of litigation claims, especially claims against professionals for malpractice.

7. Following my appointment, I employed legal counsel (see paragraph 8), and they and I conducted an initial investigation (the "**Investigation**") of any claims and causes of action that I might have as Assignee on behalf of Assignors and their affiliates, including a potential action against H&K (the "**LSI Claims**") in connection with its representation (the "**Representation**") of LSI; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC (collectively the "**LSI Defendants**") in a separate lawsuit, *Bailey, et al., v. St. Louis, et al.*, Case No. 06-08498 (Fla. 13th Cir. Ct.) (the "**Bailey Lawsuit**").

8. I employed the law firm of Stichter, Riedel, Blain & Postler, P.A. ("**SRBP**") to serve as my general counsel. As special litigation counsel, I employed the firms of Rocke, McLean, & Sbar ("**RMS**") and Genovese, Joblove, & Battista, P.A. (now Venable LLP) ("**Venable**").

9. The extensive Investigation included a review of various records in the Bailey Lawsuit, a review of LSI's files related to the Bailey Lawsuit and the Representation, and interviews with former employees of LSI, including LSI's former General Counsel.

10. During my initial investigation, Jennifer Altman Esq. of Pillsbury Winthrop Shaw Pittman LLP ("**Pillsbury**"), trial counsel for the Bailey Parties, indicated a willingness to assert and pursue a claim as my special counsel for professional negligence against H&K.

11. Initially, therefore, I retained Ms. Altman and Pillsbury to investigate, report on, and pursue (if warranted) an action against H&K on a contingency fee basis. I entered into a retention and contingency fee arrangement with Pillsbury that was memorialized by letter dated November 25, 2019 and approved by order of the circuit court dated January 27, 2020.

12. H&K and I agreed to undertake a pre-suit mediation (the "**Mediation**") with a sophisticated, evaluative mediator, Edward Dobbs, Esq. (the "**Mediator**"), in an effort to resolve any potential LSI Claims prior to the initiation of litigation. I, my general counsel SRBP, and my special litigation counsel, RMS, and Venable (and initially Pillsbury) participated in the extensive mediation proceedings, including significant internal analyses of the facts and law related to any potential LSI Claims and extensive discussions and correspondence with both the mediator and H&K's counsel. That Mediation remains ongoing to this day.

13. Concurrently with the Mediation, H&K turned over to me its client files from the Bailey Lawsuit. Ultimately, H&K produced more than 18,000 electronic documents and a significant number of hard copy documents. During the course of the mediation, the Investigation continued with my direct participation and that of my counsel under my direction as additional documents were reviewed and as the mediation-privileged discussions and exchanges identified additional strengths and weaknesses of the parties' respective positions.

14. Pillsbury ceased to represent me as the Assignee and the interests of the Assignment Estate in July 2022, although RMS and Venable continued to represent all of those interests in connection with the LSI Claims.

THE SETTLEMENT

15. After engaging in very prolonged, lengthy, arms-length, and good faith settlement discussions, including with the benefit of the active participation of the Mediator, between my counsel and I, on the one hand, and H&K and its counsel on the other, H&K and I reached an

agreement on the terms of a settlement and compromise of the LSI Claims (the "**Settlement Agreement**").

16. The key terms of the Settlement Agreement are as follows: (i) H&K shall pay the sum of $5,475,000 in cash (the "**Settlement Amount**") upon the entry of a final order approving the Motion; (ii) the parties to the Settlement Agreement shall provide mutual general releases to each other and their respective beneficiaries, other than obligations expressly reserved under the terms of the Settlement Agreement; and (iii) my counsel and I will cooperate (at no cost to the assignment estates) with H&K to preserve records; and (iv) the Assignors and I will waive potentially applicable privileges as detailed in the Settlement Agreement.

17. After carefully considering the advice and analyses of my counsel, the facts and potential evidence, the positions advanced by H&K, and the thoughts and insights of the impartial and sophisticated Mediator, I believe that the exercise of sound business judgment as a fiduciary compels me to seek approval of the Settlement Agreement. In so doing, I have come to the following conclusions in my capacity as a fiduciary in the Assignment Cases.

I. FACTUAL BACKGROUND

18. In connection with the Bailey/LSI Dispute, on September 20, 2006, Bailey, individually and on behalf of the other Bailey Plaintiffs—Laserscopic Spinal Centers of America, Inc. ("**Laserscopic Spinal**"); Laserscopic Medical Clinic LLC; Laserscopic Diagnostic Imaging and Physical Therapy, LLC; Laserscopic Spinal Center of Florida, LLC; and Laserscopic Spine Centers of America, Inc. ("**Laserscopic Spine**") (collectively, "**Laserscopic**")—filed the Bailey Lawsuit against the LSI Defendants; as well as certain of LSI's equity holders and employees (James St. Louis ("**St. Louis**"); Michael Perry ("**Perry**"); EFO Laser Spine Institute, Ltd. ("**EFO LSI**"); EFO Genpar, Inc. ("**EFO Genpar**"), and EFO Holdings, L.P. ("**EFO Holdings**," and

together with EFO LSI and EFO Genpar, "**EFO**")) (collectively, the LSI Defendants, James St. Louis, Michael Perry, and EFO, defined as the "**Bailey Defendants**").

19. I understand that the Bailey Plaintiffs essentially alleged that the Bailey Defendants destroyed and stole Laserscopic's competing spinal surgery business through their formation and operation of the LSI Defendants and their affiliates. In the Bailey Lawsuit, the Bailey Plaintiffs brought claims for breach of fiduciary duty and the duty of loyalty, defamation, slander per se, violation of the Florida Deceptive and Unfair Trade Practices Act, conspiracy, tortious interference, violation of Florida's Trade Secrets Statute, and unjust enrichment. Pursuant to the complaint in the Bailey Lawsuit, the Bailey Plaintiffs sought compensatory and special damages, disgorgement of profits, and declaratory relief.

20. Beginning in 2009, several years into the Bailey Lawsuit, I understand that H&K undertook the Representation as co-counsel with Brooks Miller and Louis Amato for the LSI Defendants and the other Bailey Defendants in the Bailey Lawsuit. At that time, I understand that Brooks Miller represented St. Louis, Perry, and the LSI Defendants, while Louis Amato represented EFO.

21. Trial testimony in the Bailey Lawsuit began before the Honorable Richard Nielson in July 2010 and concluded in May 2011. The trial resulted in the entry of a 130-page order and a judgment. While the circuit court found all Bailey Defendants liable, it expressly rejected the Bailey Plaintiffs' expert's damages calculations—except as to Laserscopic Spine's out-of-pocket losses—and therefore declined to award damages for destruction of Laserscopic Spinal's business, Laserscopic Spinal's lost profits, and disgorgement of all of LSI's profits. The circuit court therefore limited recovery to $1.6 million (the "**First Judgment**")

22. During the trial, and continuing post-trial, LSI's board of directors included Robert Grammen, who was also a representative of EFO, Dr. St Louis, and Dr. Perry. Under standard principles of corporate governance, as I understand them, these directors, who were also defendants, had the ability to request information from management related to the Bailey Litigation and the ability to offer input to LSI management and (directly or indirectly) H&K as to trial issues. Thus, I understand that all of the Bailey Defendants had at least indirect access to H&K in their corporate capacities, through their own independent counsel, and as parties. I am unaware of any complaints or objections lodged by any of the Bailey Defendants to H&K taking its direction from LSI with respect to the Bailey Lawsuit.

23. I am not aware of any material events or issues regarding the Representation that were not communicated to LSI.

24. The Bailey Plaintiffs appealed, and the LSI Defendants cross-appealed. On February 3, 2016, the Second District Court of Appeal reversed and remanded the First Judgment for further circuit court proceedings (the "**2016 Appellate Decision**").[2] The appellate court held that the circuit court had not adequately explained the nature and basis of its damages award, including why the court limited recovery for out-of-pocket expenses and whether and to what extent the court was awarding disgorgement damages. The appellate court also concluded that the facts provided a basis for awarding punitive damages and instructed the circuit court on remand to calculate punitive damages.

25. Following remand, the circuit court again rejected the Bailey Plaintiffs' expert's damages calculations and reaffirmed its original damages calculations while adding $5.75 million

[2] *Bailey v. St. Louis*, 196 So. 3d 375 (Fla. 2d DCA 2016).

in punitive damages. Thus, the total judgment amount remained less than $8 million (the "**Second Judgment**").

26. The Bailey Plaintiffs again appealed, and the District Court of Appeals ultimately reversed and adopted the Bailey Plaintiffs' theory of disgorgement, holding that the Bailey Plaintiffs were entitled to disgorgement based on LSI's full value as of 2009, as well as all profit distributions prior to that date. The appellate court thus instructed:

> Specifically, the court should enter an award *based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009* [between $264,000,000 and $265,000,000]. We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172."[3]

27. Based upon these instructions, the circuit court entered judgment in favor of the Bailey Plaintiffs on July 3, 2019 (the "**Final Bailey Judgment**") for more than $275 million (approximately $368 million including interest) against certain of the Bailey Defendants, including the LSI Defendants.

28. By the time of the Final Bailey Judgment, the LSI Defendants had already ceased all of their business operations and assigned all of their assets to me as their Assignee, and the Assignment Cases were well under way.

29. The non-LSI defendants in the Bailey Lawsuit have separately brought lawsuits alleging legal malpractice claims against H&K related to the Representation. *See St. Louis v. Holland & Knight, LLP*, Case No. 21-CA-008456; *EFO Laser Spine Institute, Ltd. v. Holland & Knight, LLP*, Case No. 21-CA-008909; *Perry v. Holland & Knight, LLP*, Case No. 21-CA-008937. Those cases were filed over two years ago and remain pending and unresolved; no depositions have yet been taken; and no trial date has been set.

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[3] *Bailey v. St. Louis*, 268 So. 3d 197, 202 (Fla. 2d DCA 2018) (emphases added).

II. ASSESSMENT OF THE LSI CLAIMS

30. Based on the Investigation of the LSI Claims in coordination with my counsel and my participation in the Mediation process, it is my business judgment that it is in the best interest of the Assignment Estate to settle the LSI Claims against H&K pursuant to the terms of the Settlement Agreement. The primary underlying premise of the LSI Claims against H&K is that the amount of the Bailey Judgment was hundreds of millions of dollars greater than it would (and should) have been absent negligence on the part of H&K. In other words, "but for" the H&K negligence, the Bailey Judgment would have been much lower, and the damage suffered by the LSI Defendants was the delta between the $275 million Final Bailey Judgment and the amount that the trial court would have awarded had H&K not committed malpractice, as determined in the "trial within a trial" mechanism utilized by Florida courts. Based on my experience and analysis and the assessment of the merits of the potential claims against H&K by my experienced counsel, I have determined that the LSI Claims ultimately are each unlikely to succeed in any litigation and/or unlikely to result in net damages in excess of the Settlement Amount. Moreover, any litigation would be protracted, highly complex, risky, and very costly to the Assignment Estate given the fact intensive nature of the disputes, including because of the need to engage costly experts.

A. The LSI Claims Are Unlikely To Succeed In Litigation

31. Even though I am not a lawyer, I understand that a legal malpractice action in Florida has three elements, all of which must be met: 1) the attorney's employment; 2) the attorney's neglect of a reasonable duty; and 3) the attorney's negligence as the proximate cause of loss to the client. *See* Motion ¶ [13]. I also understand that the doctrine of judgmental immunity protects attorneys from professional negligence claims based on either a good faith tactical decision, including a decision such as which witnesses to call, or the attorney's determination of

fairly debatable points of law that have not been settled by the Florida Supreme Court. My decision to settle the LSI Claim against H&K does not rest on any single factor, but rather on the difficulty of carrying the burden of proof and overcoming H&K's defenses on all of the disputed issues—negligence, causation, damages, and judgmental immunity—coupled with the cost, expense, risk, and delay of litigation.

32. In investigating the LSI Claims, among other things, the following theories of professional negligence were identified during the extensive Investigation and mediation process and/or were raised against H&K in litigation brought by other Bailey Defendants, and it was contended that each of these was the proximate cause of damages suffered by LSI and was not subject to defenses that H&K might assert at trial:

a. Whether H&K breached its duties by failing to adopt a reasonable strategy for defending against the damages sought by the Bailey Plaintiffs, including in making the strategic judgment not to call an expert witness or provide an alternative damages model to rebut the damages model advocated by the Bailey Plaintiffs' expert witness;

b. Whether H&K had a conflict of interest by jointly representing all of the Bailey Defendants and thus breached its duties;

c. Whether H&K had a conflict of interest by representing Texas Capital Bank in an extension of credit to LSI in 2015 and thus breached its duties;

d. Whether H&K breached its duties by failing to properly assess the LSI Defendants' potential exposure, evaluate the law on disgorgement, or advise the LSI Defendants to settle or otherwise resolve the claims in the Bailey Lawsuit prior

to judgment, including through purchasing Bailey's interest in those claims during the personal bankruptcy that Bailey individually filed;

e. Whether H&K breached its duties by failing to seek a new trial on damages following remand from the appellate court; and

f. Whether H&K breached its duties by unreasonably pursuing, to the detriment of the LSI Defendants, a declaratory judgment action on behalf of other Bailey Defendants claiming that they owned a majority share of Laserscopic Spinal.

33. At the outset, it is noteworthy that all of the liability issues are hotly disputed, and fact driven. This is not the case of a trial lawyer allowing a default to be entered or missing a deadline, or of a transactional lawyer failing to record a deed. In lay terms, there is no "smoking gun." As to the other elements, I note that the LSI Defendants, with H&K as counsel, as well St. Louis, Perry and EFO, prevailed *twice* before a trial judge in the court's business division and succeeded on both occasions in keeping damages well under $10 million.

34. I have concluded that none of these theories is likely to prevail or to result in net damages in excess of the Settlement Amount. In specific response to the above six allegations of malpractice against H&K, I have considered the following:

35. *First*, the primary initial complaint made to me about H&K's conduct was that, had H&K adopted a reasonable damages strategy, including its decision not to call an expert witness or to put forth an alternative damages model, the Final Bailey Judgment would have been much less. To the extent that a malpractice lawsuit challenged decisions made by H&K at trial, it would involve an in-depth examination of the handling of a complex commercial dispute that was tried by lawyers with excellent reputations over a ten-month period under the supervision of sophisticated client representatives. Under my lay person's understanding of the "trial within a

trial" rule, I would not only have to put on evidence of damages in an amount less than the amount of the Bailey Judgment (requiring the retention of an expert to develop a damage theory lower than the original expert) but also prove that a reasonable judge would have accepted that evidence and rejected the testimony of the original expert of the Bailey Parties.

36. I have determined that H&K's damages strategy, including its decision not to call an expert witness or to put forth an alternative damages model, was reasonable and therefore may be protected under judgmental immunity. The Bailey Plaintiffs' sole damages expert presented a damages model based on business destruction and lost profit. H&K apparently advised LSI that these theories lacked merit and would not prevail at trial. That advice proved correct, as the circuit court declined to award business destruction damages or lost profits, and that decision was affirmed on appeal. While the expert's valuation of LSI later became the basis for the disgorgement damages awarded by the Final Bailey Judgment, there was no strategic reason to designate an expert to rebut that theory during the period when H&K could have done so as disgorgement was not the basis of the expert's damage model. Further, H&K apparently had advised LSI, based on the law as it existed at the time, that the Bailey Plaintiffs would be unable to recover the full amount of LSI's value. Given that advice, there would have been no need to rebut their damages expert's valuation of LSI.

37. As explained in the Motion, ¶¶17-20, moreover, the valuation opinion of the Bailey Plaintiffs' expert was lower than other valuation evidence in the record—including an analysis by J.P. Morgan Chase valuing LSI at $320 million and another by Goldman Sachs valuing LSI's equity at $430 million—and was based on his self-acknowledged conservative assumptions that H&K questioned by deposition and at trial. An expert opinion of LSI's placing its value substantially lower would thus have contradicted other valuations commissioned by LSI. Further,

I understand that there are strategic reasons why presenting an alternative damages model may have been counterproductive. In light of these considerations, H&K's strategy as I understand it—challenging the Bailey Plaintiffs' expert's theory of damages, rather than his valuation—appears to me to have been reasonable. I am unaware of any client objections to this approach at the time. That strategy was successful twice before the trial court prior to the District Court of Appeal adopting a different interpretation of disgorgement law.

38. Ultimately and based on my experience in overseeing litigation, including with input from my professionals, I conclude that H&K's damages strategy represented a good faith tactical decision. As discussed above, I also understand that such decisions are likely subject to judgmental immunity. Further, because it appears unlikely that calling an expert witness or presenting an alternative damages model would have changed the results of the Bailey Lawsuit, I conclude that a malpractice claim challenging H&K's damages strategy would likely fail for lack of significant proof of breach of duty, causation, and/or damages.

39. *Second*, I am persuaded that H&K's joint representation of all of the Bailey Defendants did not present an actionable conflict of interest or adversely impact the LSI Defendants. As an initial matter, the Bailey Defendants' interests were aligned in their defense of the Bailey Litigation because there were indemnification agreements in place pursuant to which LSI would have paid for any settlement or judgment entered against any of the Bailey Defendants. Even setting those agreements aside, I am not aware of any adversity of interests among the Bailey Defendants in defending against liability in the Bailey Lawsuit, and believe the Bailey Defendants had a joint interest in maintaining a united front against the claims in the Bailey Lawsuit. In fact, the Bailey Plaintiffs maintained that the LSI Defendants were vicariously liable to them for the acts of the other Bailey Defendants. The LSI Defendants therefore had a strong common interest

in defending both against the claims of primary liability levied at the other Bailey Defendants, as well as the claim that they could be held vicariously liable. Although ultimately unsuccessful, H&K vigorously defended the Bailey Defendants, including the LSI Defendants, on both fronts, and I am unaware of any reason why H&K's litigation strategy would have differed had it represented only the LSI Defendants or that a different law firm would have pursued a different strategy. As a result, I conclude that a claim against H&K based on an alleged conflict of interest would likely fail due to lack of sufficient evidence of breach of duty, causation, and/or damages.

40. *Third,* I see no reason why work for Texas Capital Bank ("**TCB**") by certain H&K attorneys uninvolved in the Representation in connection with TCB's extension of credit to LSI and LSI's related recapitalization in any way affected H&K's representation of the Bailey Defendants, including the LSI Defendants, in the Bailey Lawsuit. Indeed, the extension of credit to LSI was completed *before* the 2016 Appellate Decision.

41. *Fourth*, I am not persuaded that H&K failed to adequately advise the Bailey Defendants of any material settlement or resolution opportunities or of the risks and merits of those opportunities.

42. More precisely, I am not persuaded that the Bailey Defendants could have acquired control of the Bailey Plaintiffs' claims for a reasonable price by outbidding Bailey in his Chapter 7 bankruptcy proceedings (the "**Bailey Bankruptcy**") for the purchase of Bailey's personal defamation claim against the Bailey Defendants and his ownership share in Laserscopic (together, the "**Bailey Assets**"). Instead, I understand that the Bailey Plaintiffs' engagement letter with their attorneys—which the Chapter 7 Trustee (Jill Jacoway) ratified at the beginning of Bailey's bankruptcy—provided that if the Bailey Assets were sold to anyone other than the Bailey Plaintiffs, the Bailey Plaintiffs' attorneys would have been entitled to recover 50% of the gross proceeds plus

the attorneys' out-of-pocket expenses before any profit could be realized for the estate. H&K and LSI both became aware of these limitations on Jacoway's ability to sell the assets to the Bailey Defendants. Accordingly, it appears to me that to acquire the Bailey Assets in the Bailey Bankruptcy, the Bailey Defendants would have to pay a premium far above Bailey's own bid. Even then, the Bailey Plaintiffs and their attorneys had a strong incentive to counterbid given the much larger amounts of money they were seeking for a global settlement. As a result, I am not persuaded that the Bailey Defendants could have acquired the Bailey Assets through the Bailey Bankruptcy at a reasonable price. Moreover, I understand that even if the LSI Defendants had acquired Bailey's shares of Laserscopic, any effort to voluntarily dismiss the Bailey Lawsuit may have been subject to challenge on the basis that the LSI Defendants would have owed fiduciary duties to Laserscopic's minority shareholders and creditors.

43. Given the lack of a reasonable opportunity for resolving the Bailey Lawsuit through the separate Bailey Bankruptcy, there is no plausible claim that H&K committed malpractice by not adequately advising of a potential resolution through the Bailey Bankruptcy. Further, I do not understand how H&K could be found to have breached any duty by relying on other counsel (Treece and Amato) to assess any opportunities for resolution that may have existed through the bankruptcy.

44. As for other settlement opportunities, I understand that H&K engaged in regular dialogue with representatives of the Bailey Defendants during settlement negotiations with the Bailey Plaintiffs throughout the Bailey Lawsuit, including pre-trial, post-trial, and following the 2016 Appellate Decision. As indicated in their joint representation agreement with H&K, all Bailey Defendants agreed that H&K would take its direction from LSI with respect to the Bailey Lawsuit. H&K regularly apprised LSI's in-house attorneys of the material events and issues

regarding the Representation, and those attorneys provided regular updates to LSI's Board of Directors. I understand that H&K advised its clients of risks associated with the suit. I understand that significant exposure to the Bailey Defendants came from statements made or actions taken by LSI representatives such as Mr. Gramman and Dr. St. Louis, statements and actions of which they were well aware. Recognizing this, I understand that H&K reminded its clients that there were some "bad facts."

45. I understand that H&K also advised LSI that even if the Bailey Plaintiffs were to prevail, the Bailey Defendants were unlikely to obtain full business destruction or lost profit damages, and any other damages were likely to be significantly less. Several factors suggest to me that it would be difficult to establish at trial that H&K acted negligently in assessing damages.

a. H&K was correct that the Bailey Defendants were unlikely to prevail at trial before a trial judge in the court's business division on their business destruction and lost profit theories, as the circuit court twice rejected those theories and the related testimony of the Bailey Plaintiffs' damages expert. The trial court also accepted H&K's position that disgorgement would more likely be limited to LSI's earnings during a small "head start" period.

b. Emails from during the litigation and my own discussions with LSI's former in-house counsel confirm that several other attorneys shared H&K's conclusion that the Bailey Plaintiffs were unlikely to prevail in obtaining disgorgement damages as to LSI's full value. I am not aware of any defense attorney who assessed the Bailey Lawsuit while it was being litigated in the circuit court who concluded that the Bailey Plaintiffs were likely to succeed in obtaining the damages that they ultimately obtained.

46. In addition, I am unaware of evidence supporting the theory that the LSI Defendants or the other Bailey Defendants would have been able or willing to settle for any amount requested by the Bailey Plaintiffs. Pre-trial, I understand that the lowest definitive settlement offer by a representative of the Bailey Plaintiffs with settlement authority was $19 million, and none of the Bailey Defendants demonstrated a willingness or ability to settle for any amount greater than $10 million. Following trial, and after the first remand, I understand that the Bailey Plaintiffs offered to settle the case for $95 million. I am not aware of any lower offer during that period. Given the size of the demand, I do not believe it is reasonably possible to prove that the LSI Defendants would have ever settled for the amount demanded by the Bailey Plaintiffs, even if H&K had advised the LSI Defendants differently. Ultimately, then, the evidence does not support any breach of duty or causation as to this theory of liability against H&K.

47. *Fifth*, H&K did not act unreasonably in connection with a possible new trial on damages following the 2016 Appellate Decision, which faulted the circuit court for not providing an adequate explanation of its ruling. On remand, I believe it was reasonable for H&K to believe that the circuit court would—as it did—provide that additional explanation based on the arguments H&K had made previously while leaving the damages award mostly intact with only a slight increase for punitive damages. And, it was reasonable for H&K to believe if the circuit court provided that additional explanation, the result would be affirmed on appeal. Indeed, former District Court of Appeal judge Chris Altenbernd (who had been retained by the LSI Defendants as a consultant) and LSI's in-house counsel Chris Knopik expressed their contemporaneous view that the trial court's order on remand was a victory for LSI, with Judge Altenbernd stating that affirmance was the probable result. Moreover, for the same reason that I found it reasonable for

H&K not to present an alternative damages model at trial, I also conclude that it was reasonable for H&K not to seek a new trial on remand for the purposes of presenting alternative evidence.

48. *Sixth*, I have no reason to believe that H&K's pursuit of a separate declaratory judgment action on behalf of other Bailey Defendants—claiming that they owned a majority share of Laserscopic Spinal—had any effect on the result in the Bailey Lawsuit. Additionally, H&K discussed the declaratory judgment action with the LSI Defendants' general counsel on behalf of the LSI Defendants, with whom H&K communicated regularly.

49. In light of these conclusions, it is very unlikely that I, as Assignee, could prevail in any litigation brought by me on the LSI Claims.

B. Litigation Would Necessarily Be Complex And Expensive, And Would Result In Significant Delay

50. Over the past three years, my counsel and advisors and I have expended substantial fees and costs investigating the LSI Claims and exploring pre-litigation resolution. Litigation of those claims through pleadings, motions to dismiss, discovery, motions for summary judgment, trial, and likely appeals would require exponentially more time and expense.

51. My view that the litigation of the LSI Claims would take significant time and resources is confirmed by the lawsuits filed by the other Bailey Defendants against H&K in Hillsborough County state court. Those lawsuits have been pending for over two years and are still in the early stages of written and document discovery. And as the filings in those cases show, the parties anticipate those cases to involve tens of thousands of documents, more than 20 third-party fact witness, and at least 3 expert witnesses. *See, e.g.*, Joint Mot. to Transfer to the Complex Business Litigation Division 3, 6, *St. Louis v. Holland & Knight, LLP*, 21-CA-008456 (Fla. 13th Cir. Ct. Jan. 11, 2022). In addition, resolving the malpractice claims will require a detailed analysis of the Bailey Lawsuit, which itself lasted 13 years, involved more than three dozen depositions,

involved thousands of documents, thirty trial witnesses, twenty-eight days of trial over a two-year period and multiple appeals. *Id.* at 4. Litigation of the LSI Claims would likely involve even greater complexity and expense.

C. The Proposed Settlement Is Reasonably Beneficial To The Estate

52. In light of the uncertainty, complexity, and ongoing costs that I would face in litigating the LSI Claims, and the likely negative outcome at the end of that process, I have concluded based on my analysis, experience, business judgment, and the advice of my counsel, that the Settlement Agreement with H&K is reasonably beneficial to the Assignment Estate by providing $5,475,000 in guaranteed recovery on the LSI Claims discussed in this Affidavit while avoiding expensive, protracted litigation that is very unlikely to result in any recovery to the Assignment Estate, while at the same time depleting the limited resources of the Assignment Estate.

FURTHER AFFIANT SAYETH NOT.

Soneet R. ~~Kapila~~

Sworn and subscribed before me this 19 day of ~~December~~ JANUARY, ~~2023~~ 2024, by Soneet R. Kapila, who is personally known to me.

Catherine D Murchison

Print Name: CATHERINE D. MURCHISON

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

CATHERINE D. MURCHISON
Commission # HH 421170
Expires August 1, 2027

Exhibit C

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 GRANTING ASSIGNEE'S MOTION FOR ORDER APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS AGAINST HOLLAND & KNIGHT LLP

THIS CASE came before the Court for consideration upon the *Assignee's Motion for Order Approving Settlement and Compromise of Claims Against Holland & Knight*

[1] On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases 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 "**Assignment Estates**").

LLP (the "**Compromise Motion**") filed by Soneet R. Kapila as Assignee.[2] The Compromise Motion was filed on January 22, 2024, and was served by negative notice to all parties on the master service list. No objection to the Motion was filed. The Court finds that under the circumstances of these cases, due and sufficient notice of the Compromise Motion 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 Compromise Motion, the Settlement Agreement, and the record in the Assignment Cases, finds and concludes as follows:[3]

A. This Court has jurisdiction to hear and consider the Compromise Motion, the proposed settlement, and the compromise and related relief contained therein.

B. Notice has been provided to those creditors and parties in interest as set forth on the master service list maintained by the Assignee in these Assignment Cases.

C. Due, proper, and sufficient notice of the Compromise Motion and of the hearing on the Compromise Motion was given to those creditors and parties in interest set forth on the master service list maintained by the Assignee in the Assignment Cases. Such notice was proper, adequate, and satisfied the requirements of Sections 727.109(7) and 727.111(4), Florida Statutes and prior order of this Court.

D. The settlement and compromise embodied in the Settlement Agreement falls within the reasonable range of possible litigation outcomes and reflects the Assignee's

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[2] Capitalized terms not defined in the Order shall have the meaning set forth in the Compromise Motion or Settlement Agreement, as applicable.

[3] The findings of fact and conclusions of law stated in this Order shall constitute the Court's findings of fact and conclusions of law. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed. To the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

appropriate exercise of his business judgment.

E. The settlement and compromise embodied in the Settlement Agreement is in the best interests of creditors and the Assignment Estates because the settlement will generate a significant recovery for the Assignment Estates and will avoid the substantial risk, delay, and expense associated with the continued litigation and likely appeals of the claims being settled.

F. The terms of the Settlement Agreement, including without limitation, the Settlement Amount and mutual releases provided for in the Settlement Agreement, fall well above the lowest level in the range of reasonableness and in all respects satisfy the standards set forth in *Wallis v. Justice Oaks II, Ltd.* (*In re Justice Oaks II, Ltd.*), 898 F.2d 1544, 1549 (11th Cir. 1990), for approval of a compromise of a controversy on behalf of the Assignment Estates.

Based on the findings above and for the reasons stated in the Compromise Motion and on the terms of the Settlement Agreement, which shall constitute the decision of the Court, it is

ORDERED as follows:

1. The Compromise Motion is granted.

2. The Settlement Agreement is approved in all respects. The failure to specifically describe or include any particular provision of the Settlement Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Settlement Agreement be approved and so ordered in its entirety.

3. The Parties are authorized and directed to implement and comply with the terms and conditions of the Settlement Agreement.

4. Settlement Amount. H&K agrees to pay the Settlement Payment pursuant to the terms of the Settlement Agreement.

5. Releases and Covenant Not to Sue. The Releases set forth in paragraphs 4, 5, and 6 of the Settlement Agreement and the Covenant Not to Sue set forth in paragraph 7 of the Settlement Agreement shall become effective upon the latest of (1) the time for appealing this Order has expired without an appeal being taken, (2) this Order is affirmed on appeal and the time for seeking Florida Supreme Court review expires without such review being sought, or (3) fourteen (14) days from the date H&K is notified of final disposition by the Florida Supreme Court declining review or affirming the Order (the "Effective Date"). Any release or covenant conditioned on receipt of the Settlement Amount shall not be effective until the Settlement Amount is received.

6. Bar Order. This Court also finds that the Bar Order is fair and equitable under the prevailing law in the Eleventh Circuit, *In re Munford*, 97 F.3d 449 (11th Cir. 1996) and its progeny. The below Bar Order shall become effective on the Effective Date. Accordingly, this Court orders as follows:

> All persons and entities are, barred, enjoined, and restrained, in any and all jurisdictions, including any federal or state court, and any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, to the maximum extent permitted by law, the commencement, prosecution, or assertion against the H&K Released Parties of all claims, cross-claims, counterclaims, and third-party claims or actions that are Released Claims, whether arising under state, federal or foreign law, including but not limited to:
>
> a. Any claim against the H&K Released Parties arising out of or predicated in any way on the entry of the Bailey Judgment or based on any allegation of diminished value of the Assignors or the LSI Defendants as a result of the Representation, the Bailey Lawsuit, or the Bailey Judgment; for the avoidance of doubt, this Bar Order does not preclude the Bailey Defendants (other than the LSI Defendants) from pursuing any pending claim predicated on the entry of the Bailey Judgment against themselves, so long as such claim is not predicated in any part on the entry of the Bailey Judgment against the LSI Defendants or the diminished value of the Assignors.

b. Any claim by any person or entity against the H&K Released Parties arising out of or predicated upon any claim brought by any of the Assignors or LSI Defendants against such person or entity.

7. Retention of Jurisdiction. The Court retains jurisdiction to enforce this Order, to give effect to the compromise, and to resolve any issues or claims that arise out of or impact this Order or compromise.

DONE AND ORDERED in Hillsborough County, Florida, on January ____, 2024.

_____
DARREN FARFANTE
Circuit Court Judge

Copies to: Counsel of record