

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:

Division L

Soneet Kapila,

Assignee

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**LASERSCOPIC CLAIMANTS' MOTION TO CONTINUE THE HEARING ON  
ASSIGNEE'S MOTION FOR ORDER APPROVING SETTLEMENT AND COMPROMISE  
OF CLAIMS AGAINST HOLLAND & KNIGHT**

Joe Samuel Bailey, Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc. (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file this Motion to Continue the Hearing on "*Assignee's Motion for Order Approving Settlement and Compromise of Claims Against Holland & Knight*" (Filing #190273860) (the "Motion") filed on January 22, 2024. In support of their Motion, the Laserscopic Claimants allege and state as follows:

1. The Motion is scheduled for hearing before this Court for approval on **March 4, 2024**. After the Motion was filed, the Laserscopic Claimants met and conferred with the Assignee’s counsel endeavoring to resolve certain objections to the language in the proposed Settlement Agreement and Mutual General Release attached as Exhibit “A” to the Motion.<sup>1</sup> In further attempts to address these objections, the Laserscopic Claimants submitted proposed revisions to the [Proposed] *Order Granting Assignee’s Motion for Order Approving Settlement and Compromise of Claims against Holland & Knight LLP* (“Proposed Order”) to the Assignee. While the Laserscopic Claimants are the largest unsecured creditors in this ABC Proceeding, holding a judgment that has ballooned to over \$450 million, the Assignee did not agree to any of the proposed modifications, which are predicated on significant issues with the language in the Settlement Agreement that are ambiguous and written in a way to create confusion as to who is being released, the specific parties who are “barred” and includes numerous factual statements sworn by the Assignee in an affidavit that are factually inaccurate and appear to have been drafted by HK.<sup>2</sup> At bottom, there are significant issues that will be more fully addressed in the of the Laserscopic Claimants’ objection and separate motion to strike.<sup>3</sup>

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<sup>1</sup> The Laserscopic Claimants do not object to the amount of the Settlement Agreement (although they believe it is far below the value of the claims), but rather the terms of the Settlement Agreement that exceeds the Assignee’s authority to the extent it purports to release parties the Assignee has no authority to release, or attempts to extinguish claims that the Assignee does not have the authority to bar – including claims owned by the US Bankruptcy Trustee, or attempts to waive attorney-client privilege the Assignee has no authority to waive..

<sup>2</sup> Certain statements in the Motion, drawn from the accompanying affidavit, are simply inaccurate. As the Court will see, however, the filing of the affidavit and inclusion of the statements in the Motion is unprecedented in this ABC Proceeding. Although the Assignee has on five or more occasions sought the approval of settlements, he has never submitted an affidavit in support of the same, much less one that purports to provide factual and legal conclusions by a non-lawyer. To the extent that the Assignee’s statements in the affidavit are those from his attorney, including the same in his affidavit is a waiver of the attorney client privilege and the Bailey Creditors should be able to obtain all of the communications as and between the Assignee and his counsel relating to the same.

<sup>3</sup> Despite requests by the Laserscopic Claimants to review any Settlement Agreement before it was finalized, the Assignee refused. This refusal to cooperate with the Laserscopic Claimants and to keep them reasonably apprised of all necessary information means that they are required to address issues that could clearly have been addressed on the front end before the Settlement Agreement was executed. Had they been permitted a review of the language contemporaneously and the Assignee considered the interests of the largest unsecured creditor, this might have eliminated some of the issues. The Court needs to be apprised as to why the Assignee is rushing the Motion through. Now, after the agreement is executed, the Laserscopic Claimants have been unfairly prejudiced.

2. More specifically, the Laserscopic Claimants discussed with counsel for the Assignee and provided a revised proposed order that eliminated their concerns, and asked that the Assignee advise by Friday, February 9, 2024, whether the proposed edits were acceptable so that any dispute relating to the Motion, its attachments and the Proposed Order could be resolved amicably and without the need for Court intervention. The Laserscopic Claimants followed up several times leading up to February 9, 2024, as they endeavored in good faith to avoid conducting unnecessary discovery and wasting the resources of this Court and the parties, and the limited assets collected in the ABC.

3. February 9<sup>th</sup> came and went without a response from the Assignee to the proposed edits made by the Laserscopic Claimants and Texas Capital Bank, who is also a significant creditor.<sup>4</sup> Having not received any response, the Laserscopic Claimants advised that they would proceed with their objection and sought dates to take the deposition of the Assignee. The deposition is necessary to understand the specific analysis performed by the Assignee as to the settlement including and in particular the circumstances surrounding the attached affidavit, statements in the Motion and the language in the Settlement Agreement that is vague and subject to different interpretations, which will invariably create additional litigation (as opposed to resolve the claims of the Assignors, the only entities over which the Assignee has authority to settle claims). To that end, among other things, Laserscopic Claimants submit that it is necessary to inquire in detail of the Assignee the specific bases of the statements made in his affidavit and as noted above, the language in the Settlement Agreement.

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<sup>4</sup> The edits submitted to the Assignee were those of both the Laserscopic Claimants and Texas Capital Bank, which were included together in one revised draft.

4. Although the Laserscopic Claimants hoped that a resolution could be made, that was not the case. Today counsel provided deposition dates for the deposition of the Assignee—which he indicated still needed to clear with Holland & Knight (“HK”), the earliest date being February 20<sup>th</sup> and going further out in February. This would not allow Laserscopic Claimants sufficient opportunity to obtain the transcript and also to supplement its Objection that it intends to file on February 20<sup>th</sup> pursuant to an agreed order.

5. To ensure that this Court has a complete and accurate evidentiary record before ruling on the Motion, the Laserscopic Claimants seek an opportunity for limited discovery, including the deposition of the Assignee. As this Court is no doubt aware and as will be more fully outlined in the objection, the standard for this Court in analyzing the Motion are outlined in *Justice Oaks. In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990). Courts consider these factors to determine “the fairness, reasonableness and adequacy of a proposed settlement agreement.” *In re Chira*, 567 F.3d 1307, 1312 (11th Cir. 2009).

6. Given that the Assignee has set the hearing on this matter for March 4, 2024, the Laserscopic Claimants ask this Court to do the following: (1) move the scheduled hearing to accommodate the limited discovery necessary to include with their objection; and (2) either move the date on which the Laserscopic Claimants may submit their objection or allow them to supplement the same after the discovery has been conducted. This will enable them to be able to examine the Assignee’s statements under oath (including sufficient time to obtain relevant transcripts) so that this Court can ensure that the *Justice Oaks* factors are met. As more fully set forth in their objection, the Laserscopic Claimants submit that they have not based on the existing filing. That said, the Laserscopic Claimants provided revisions to the Assignee that would cure the deficiencies but he chose not to incorporate them without any explanation (or even a response).

7. While the Laserscopic Claimants regret having to seek this relief, it is necessary given that the current briefing schedule does not provide sufficient time and opportunity to complete the discovery and supplement the record.

8. There is no prejudice to the estate, and this is particularly true given that the Laserscopic Claimants are the largest unsecured creditor and thus the parties most likely to benefit from any settlement. The Assignee and his professionals have been paid *millions of dollars in fees* throughout this proceeding, which began in April of 2019. The Laserscopic Claimants have received nothing despite seeking remedies for wrongs that occurred 20 years ago on a judgment that was first entered in 2012.

9. Further, as outlined in the Motion and in the accompanying Affidavit of Soneet Kapila, the Assignee has been engaged in settlement discussions with HK for several years. Given the protracted settlement discussions between the Assignee and HK, lasting several years, there is absolutely no prejudice if there is a delay of the hearing on the Motion for a month or so to allow the Laserscopic Claimants to conduct limited discovery. They would have conducted the discovery immediately following the filing of the Motion, but they conferred without the Assignee's counsel, outlined their concerns and provided a modified order, which was joined by Texas Capital Bank. Hearing nothing, the Laserscopic Claimants followed up several times and ultimately requested that they receive a response by February 9<sup>th</sup>. They heard nothing on February 9<sup>th</sup> and thus advised that they now need to conduct the discovery.

10. It would have been a waste of time and resources to conduct discovery if the parties could reach an agreement. For this reason, the Laserscopic Claimants endeavored to do so in order to also not waste judicial resources (including more costs and attorneys' fees from the Assignee and his paid professionals).

11. As will be more detailed in the Laserscopic Claimants' objection, there are significant prejudicial issues with the Settlement Agreement and the Motion, which based on the confusing language chosen creates potential issues with interpretation that will result in further litigation. The opposite of what a settlement is intended to do. Further, the factual statements in the Motion and accompanying Kapila Affidavit and, by extension, the Proposed Order that then accepts the same, creates various issues that need to be corrected. As will be outlined in a separate motion to strike, the Assignee's affidavit is based on nothing more than speculation and "belief" and "understanding" and hearsay, all of which is improper and cannot be considered. An affidavit must be based on personal knowledge and these qualified terms are not personal knowledge and therefore result in nothing more than incompetent evidence that the Court cannot rely upon in approving the settlement. If this Court were to accept the facts as declared by the Assignee and approve the Motion, Kapila Affidavit and Settlement Agreement as framed it would result in error as well as continued litigation. Further, as is clear from a review of the filings of the Assignee, the gratuitous affidavit and much of the issues in the Settlement Agreement have no relationship to any business judgment of the Assignee or what is in the best interest of the creditors. Rather, they appear to be carefully crafted statements and settlement terms that HK is attempting to use to create ambiguity to use in other pending cases against HK. This is improper.

12. Some of the significant errors contained in the Assignee's submission that negatively and prejudicially impact the Laserscopic Claimants and other third parties not before this Court including the Trustee in *In Re EFO Holdings LP's* bankruptcy are currently pending in the Northern District of Texas include:<sup>5</sup>

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<sup>55</sup> The Trustee is not on the service list and was not served by the Assignee with a copy of the Motion or its attachments despite the fact that the Trustee, Scott Seidel, owns the claims of debtor EFO Holdings, LP.

- (a) Using language that may be read to impact the rights of third parties who were defendants in the *Bailey* Litigation<sup>6</sup> who have asserted direct and independent claims for professional negligence against HK pending in this Court;
- (b) The affidavit submitted by the Assignee improperly includes rank hearsay and evidential material contrary to the facts and record evidence;<sup>7</sup>
- (c) Including a release and bar order language that is so overly broad and ambiguous that creates confusions and purports to include third parties that are not signatories released their claims against HK when in fact the record shows they did not and cannot; and,
- (d) Purports to “waive potentially applicable privileges” that do not belong to the ABC estate and over which the Assignee has no authority to waive, and certainly cannot do so as to any of the co-defendants that were jointly represented by HK.

13. The above are just some of the issues. As will be more fully outlined in a filing by the Laserscopic Claimants, the Settlement Agreement should not be approved before evidence is provided so that this Court has a fully record on which to evaluate the proposed settlement. To do otherwise, given the confusing and vague language that lends itself to ambiguity and unintended consequences (presumably at least by the Assignee) will result in further unnecessary litigation that the Laserscopic Claimants would prefer to avoid.

14. Although the Laserscopic Claimants proposed remedial language after receiving the executed Settlement Agreement, all of their proposed adjustments were rejected. The

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<sup>6</sup> In addition to having a judgment against the LSI related entities before this Court, the Laserscopic Claimants have claims against the EFO Defendants, EFO Holdings L.P., EFO GP Interests, Inc, f/k/a EFO GenPar, Inc. and EFO Laser Spine Institute LLC. Further, the Laserscopic Claimants still have an outstanding judgment against James S. St. Louis (“St. Louis”). The Laserscopic Claimants have resolved their judgment against Michael Perry (“Perry”). The EFO Defendants, St. Louis and Perry have all brought claims against HK. The claims of EFO Holdings, L.P. have already been adjudicated to belong to the Trustee in EFO Holdings, L.P.’s bankruptcy and the Trustee has every intention of pursuing its claims as well. The judgment, with accruing interest, has soared to over \$450 million, with nearly \$100,000 per day in interest.

<sup>7</sup> By example, the Affidavit of Soneet Kapila attached as Exhibit B to the Motion, in virtually every paragraph, begins with or includes the phrase “I understand.” See Affidavit of Kapila at ¶¶19, 20, 22, 31, 35, 37, 38, 44 and 45. Similarly, in various places the Assignee attests that he “believes” or has “reasons to believe” (and often that he is not aware of certain facts) and makes factual statements that are contrary to the established record in the *Bailey* Litigation. Indeed, the Affidavit begins on the faulty premise that it is “true to the best of [his] knowledge, information and belief.” All of these statements must be stricken from the record. It is axiomatic that an affidavit must be based on direct and personal knowledge, facts that would be admissible in evidence and must establish the affiant’s competency to testify about the information contained in the affidavit. *Rodriguez v. Avatar Property & Casualty Ins. Co.*, 290 So. 3d 560 (Fla. 2d DCA 2020).

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

15. This Motion is not interposed for any improper purpose or to create undue delay, and the granting of this relief will not only benefit the Laserscopic Claimants, but all unsecured creditors of this estate, and not just those represented by the undersigned counsel. It will also protect the interests of third parties—including a U.S. Trustee. Although the Assignee was asked to consent to the relief sought in this motion, he refused despite their being no prejudice and none was identified.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court that:

1. Grants this Motion and continuing the currently scheduled hearing to allow the unsecured creditors to conduct necessary discovery related to the proposed settlement, and to otherwise provide more time to negotiate more neutral language that does not harm the estate, that would protect their valuable interests and avoid undue prejudice, avoid wasting court resources, and potential years of follow-on litigation, and appeals, over the meaning of the Agreement. The failure to grant this relief and to approve the Settlement Agreement will severely and unfairly prejudice the largest unsecured creditors and a U.S. Bankruptcy Trustee, deprive them of their ability to present evidence at the evidentiary hearing, and reward the wrongdoers (HK) who created an ambiguous and flawed Settlement Agreement, even before it has been approved.
2. The Laserscopic Claimants also ask that the Court either extend the time for filing their objection until after the discovery is conducted or allow them to supplement once discovery has been taken.

3. Because the hearing is slated for March 4, 2024, the Laserscopic Claimants respectfully requested an expedited hearing and briefing schedule for this matter;<sup>8</sup> and
4. Finally, there also being that this Court could treat the existing hearing as a scheduling conference and schedule discovery and further evidentiary hearings in the interests of justice.

Dated: February 16, 2024.

Respectfully submitted,

/s/ Jennifer G. Altman

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<sup>8</sup> The Laserscopic Claimants were reticent to style this as an emergency motion but given the circumstances believe that it requires expedited treatment.

**CERTIFICATE OF CONFERRAL**

The undersigned counsel conferred with counsel for the Assignee in an effort to obtain agreement to the relief sought herein but counsel objects and does not agree to the same.

/s/ Jennifer G. Altman  
Jennifer G. Altman

**CERTIFICATE OF SERVICE**

I CERTIFY that on February 16, 2024, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Court's e-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record or electronic mail to the parties listed on the Master Limited Notice to Parties attached.

/s/ Jennifer G. Altman  
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MASTER LIMITED NOTICE SERVICE LIST

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