

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.

**AMENDED¹ ASSIGNEE'S OPPOSITION TO MOTION TO
CONTINUE THE HEARING ON 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 affiliates² (collectively the “LSI Entities”), by and

¹ Amended only to remove the Exhibit B footer from all pages.

² 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

through his undersigned attorneys, opposes the motion (“**Motion to Continue**,” Dkt. 946) filed by Joe Samuel Bailey; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; and Laserscopic Spine Centers of America, Inc. (collectively, the “**Laserscopic Claimants**”), and joined by James St. Louis, EFO Laser Spine Institute, Ltd., and EFO Genpar, Inc. (collectively, “**Malpractice Plaintiffs**,” and together with the Laserscopic Claimants, “**Objectors**”), to continue the March 4, 2024 hearing on Assignee’s Motion (“**Motion to Approve**,” Dkt. 935) for Order Approving Settlement and Compromise of Claims Against Holland & Knight (the “**Settlement Agreement**,” Dkt. 935, Ex. A).

The Motion to Continue advances two purported justifications for continuing the March 4 hearing, which is scheduled to address the Motion to Approve: (1) to give Objectors time to file objections to the Motion to Approve, and (2) to give Objectors time to conduct discovery by deposing the Assignee. *See* Mot. to Continue at 3-4, 8; Malpractice Plaintiffs’ Not. of Joinder, Dkt. 979, at 2. The first purported justification is now moot—the Laserscopic Claimants and the Malpractice Plaintiffs both filed objections to the Motion to Approve on February 20, 2024. Dkt. No. 974 (the “**Malpractice Plaintiffs’ Objections**”), Dkt. No. 975 (the “**Laserscopic Claimants’ Objections**,” and together with the Malpractice Plaintiffs’ Objections, the “**Objections**”).

As for the second purported justification, Objectors fail to demonstrate that a deposition of the Assignee is relevant to any of their Objections. Objectors vaguely claim they need to depose the Assignee regarding the contents of the affidavit submitted in support of his Motion to Approve (the “**Affidavit**”). *See* Mot. to Continue at 3-4. But their Motion to Continue proves otherwise.

The Assignee submitted the Affidavit to explain his reasons for concluding that

Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (the “**Affiliated Companies**”).

(1) settlement with Holland & Knight LLP (“**H&K**”) was in the best interest of the assignment estate, and (2) settlement for the amount specified in the Settlement Agreement satisfied the standards set forth in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990). Objectors have not objected to either of these aspects of the Settlement Agreement. The Laserscopic Claimants expressly state in both their Motion to Continue and their Objection that they “do not object to the amount of the Settlement Agreement.” *Id.* at 2, n.1; *see also* Laserscopic Claimants’ Objections at 1 (“[T]his Objection does not contest the amount agreed to by the Assignee.”). Likewise, the Malpractice Plaintiffs state that they “do not object to the Assignee resolving his claims with H&K, the amount of the settlement, or the releases between them....” Malpractice Plaintiffs’ Objections at 5. The Affidavit therefore is relevant to the portions of the Settlement Agreement that Objectors admittedly are not challenging. Accordingly, there is no need for them to depose the Assignee.

The Assignee has never suggested that a deposition is proper. The Laserscopic Claimants misleadingly state that the Assignee’s counsel “provided depositions dates for the deposition of the Assignee.” Mot. to Continue at 4. But they omit that—as reflected in correspondence attached hereto as Exhibit A—the Assignee’s counsel expressly “question[ed] why discovery is necessary with respect to the approval of a settlement” and reserved the right to “dispute whether there is a basis for a deposition.” The Objections now on file confirm that, just as the Assignee anticipated, a deposition is entirely unnecessary.

The Objectors’ request for a deposition is also untimely. The Assignee filed the Motion to Approve on January 22, 2024. Dkt. No. 935. The Laserscopic Claimants negotiated briefing schedules with the Assignee that gave them significant extensions of the time to object to the Settlement Agreement. The Malpractice Plaintiffs agreed to a deadline of February 12, as shown in correspondence attached hereto as Exhibit B. The Assignee and the Laserscopic Claimants then

stipulated on February 5 to a revised deadline of February 20 for *all* potential objections, which also extended the Malpractice Plaintiffs' deadline even further. Dkt. No. 938.

If Objectors believed that a deposition was necessary, the time to speak up was during these negotiations, rather than concealing their intentions and agreeing to the schedules they now seek to extend. Instead, the Laserscopic Claimants did not approach the Assignee' counsel to request a deposition until February 14. *See* Ex. A. The Laserscopic Claimants thus waited more than 3 weeks after being served with the Motion to Approve to even request a deposition. And the Malpractice Plaintiffs *never* requested a deposition prior to filing their response to the Motion to Approve.

Objectors offer no plausible justification for their delay. They had all the necessary information on January 22, 2024 to assess whether to seek a deposition of the Assignee, yet they took no action for weeks—in fact, their actions by negotiating a longer briefing schedule were to the contrary. Indeed, Objectors do not claim that they learned anything after January 22 that prompted their belated request.

Objectors' only professed excuse—that they were waiting until February 9 for the Assignee to accede to their proposed amendments to the Settlement Agreement, Mot. to Continue at 3—is unavailing. Objectors had no basis to assume that the Assignee and H&K would accede to their unilateral demand to modify the Settlement Agreement, so they should have proceeded as prudent lawyers do—by taking whatever steps they deemed necessary to respond to the Motion to Approve. Moreover, Objectors never explain why they waited 5 additional days after February 9 before requesting a deposition. Objectors' lack of diligence in timely requesting a deposition does not warrant a further modification of the schedules to which they each agreed weeks earlier.³

³ Two individuals, Robert Grammen and William Esping, also filed a motion on February 20, 2024 seeking to continue the hearing so that they may conduct unspecified “discovery ... from the Assignee” in support of as-yet-articulated objections to the Settlement Agreement. Dkt. 981, at 2 (“**Grammen and Esping Mot.**”). But unlike the Objectors,

For all of the foregoing reasons, the Court should deny the Motion to Continue.

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Special Counsel For Assignee

By: /s/ Scott A. Stichter

Scott A. Stichter (Fla. Bar No. 0710679)
Stichter, Riedel, Blain & Postler, P.A.

Grammen and Esping never contacted the Assignee to negotiate an extension of the default 10-day time for a response to the Motion to Approve. *See* L. Bus. Ct. R. 3.8. Nor did they serve any discovery, request a deposition on any topic, or file any objection to the Settlement either before that 10-day deadline expired or before the extended February 20 deadline negotiated by the Laserscopic Claimants. Instead, they remained silent throughout the extended four-week period for objections and waited until the last day objections were due to claim that they need discovery before potentially filing an objection. Their request for a continuance is thus untimely. And even now, they have not specified what discovery they are seeking, nor have they identified any basis for a continuance other than the cryptic request to “ensure that this Court has a complete and accurate evidentiary record before ruling on the Motion [to Approve].” Grammen and Esping Mot. at 2.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Amended Assignee's Opposition to Motion to Continue the Hearing on Assignee's Motion for Order Approving Settlement and Compromise of Claims Against Holland & Knight* has been furnished on this 23rd day of February, 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/ Scott A. Stichter
Scott A. Stichter

Scott A. Stichter

From: Jonathan Sbar <jsbar@rmslegal.com>
Sent: Friday, February 16, 2024 2:50 PM
To: Altman, Jennifer; Harley E. Riedel; Scott A. Stichter; Robert Rocke
Cc: Toby L. Gerber; Ray, III, Hugh M.; Rivaux, Shani; Dickinson, L. James
Subject: RE: Holland and Knight compromise order

Jennifer:

You first requested dates for Soneet's deposition on February 14 and today is February 16, so please don't send multiple emails after business hours on February 15 suggesting that we aren't being responsive. There is no need to subpoena Soneet as we will clear a date for his deposition (with the understanding that we question why discovery is necessary with respect to the approval of a settlement and may dispute whether there is a basis for a deposition). With that caveat, let me know if the morning or afternoon of February 26 or February 27 after 1:30 will work for a Zoom depo. I assume H&K will want to attend any deposition, so I will need to clear with their lawyers as well.

This will also confirm that we will not agree to postpone the hearing seeking approval and that we object to any motion seeking to continue the hearing. As you know, we previously agreed to a significant extension of the response deadline to accommodate your client.

We also do not consent to an extension of the page limits on the brief.

Thanks.

Jon

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(813) 769-5601 (FAX)
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Email: jsbar@rmslegal.com

From: Altman, Jennifer <jennifer.altman@pillsburylaw.com>
Sent: Thursday, February 15, 2024 10:51 PM
To: Harley E. Riedel <hriedel@srbp.com>; Jonathan Sbar <jsbar@rmslegal.com>; Scott A. Stichter <sstichter@srbp.com>; Robert Rocke <rrocke@rmslegal.com>

Cc: Toby L. Gerber <toby.gerber@nortonrosefulbright.com>; Ray, III, Hugh M. <hugh.ray@pillsburylaw.com>; Rivaux, Shani <shani.rivaux@pillsburylaw.com>; Dickinson, L. James <james.dickinson@pillsburylaw.com>
Subject: RE: Holland and Knight compromise order

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If you feel that the email is suspicious, please report it to Adtech IT Solutions.

Given the proximity of the hearing and not hearing back from you regarding the deposition, the Bailey Creditors ask that we move the hearing to give us sufficient opportunity to conduct limited discovery. Please advise before the close of business tomorrow whether you will agree to move the hearing allowing us to do so. We hope that you will agree to do so. If you will not agree to simply move the hearing, please advise whether you object to a motion to continue to the same. Separately, please advise whether you consent to allow an extension to the page limits on our brief.

Thank you in advance for your professional courtesy.

jga

From: Altman, Jennifer <jennifer.altman@pillsburylaw.com>
Sent: Thursday, February 15, 2024 6:28 PM
To: Harley E. Riedel <hriedel@srbp.com>; Jonathan Sbar <jsbar@rmslegal.com>; Scott A. Stichter <sstichter@srbp.com>; Robert Rocke (rrocke@rmslegal.com) <rrocke@rmslegal.com>
Cc: Toby L. Gerber <toby.gerber@nortonrosefulbright.com>; Ray, III, Hugh M. <hugh.ray@pillsburylaw.com>; Rivaux, Shani <shani.rivaux@pillsburylaw.com>; Dickinson, L. James <james.dickinson@pillsburylaw.com>
Subject: RE: Holland and Knight compromise order

Following up on the below. Is it your preference that we simply subpoena the Assignee for a date that works for us or do you intend to provide us with dates?

jga

From: Altman, Jennifer <jennifer.altman@pillsburylaw.com>
Sent: Wednesday, February 14, 2024 10:32 AM
To: Harley E. Riedel <hriedel@srbp.com>; Jonathan Sbar <jsbar@rmslegal.com>; Scott A. Stichter <sstichter@srbp.com>; Robert Rocke (rrocke@rmslegal.com) <rrocke@rmslegal.com>
Cc: Toby L. Gerber <toby.gerber@nortonrosefulbright.com>; Ray, III, Hugh M. <hugh.ray@pillsburylaw.com>; Rivaux, Shani <shani.rivaux@pillsburylaw.com>; Dickinson, L. James <james.dickinson@pillsburylaw.com>
Subject: RE: Holland and Knight compromise order

Harley,

Please provide dates in advance of the hearing for Soneet's deposition. Thanks.

jga

From: Altman, Jennifer
Sent: Friday, February 9, 2024 9:56 AM
To: 'Harley E. Riedel' <hriedel@srbp.com>; Jonathan Sbar <jsbar@rmslegal.com>; Scott A. Stichter <sstichter@srbp.com>; Robert Rocke (rrocke@rmslegal.com) <rrocke@rmslegal.com>
Cc: 'Toby L. Gerber' <toby.gerber@nortonrosefulbright.com>; Hugh M. Ray, III <hugh.ray@pillsburylaw.com>; Rivaux, Shani <shani.rivaux@pillsburylaw.com>; Dickinson, L. James <james.dickinson@pillsburylaw.com>
Subject: FW: Holland and Knight compromise order

Harley,

Please get back to us today regarding your position on the edits from my clients and TCB to the proposed order. Thanks.

jga

Scott A. Stichter

From: Damien Prosser x5291 <DProsser@ForThePeople.com>
Sent: Thursday, February 1, 2024 12:22 PM
To: Scott A. Stichter; Harley E. Riedel
Cc: Benjamin Webster x5228; Meghan McManus x23166
Subject: RE: *EXT* FW: SERVICE OF COURT DOCUMENT CASE NUMBER 292019CA002762A001HC Laser Spine Institute, LLC vs Kapila, Soneet

Thanks. How's your Monday?

From: Scott A. Stichter <sstichter@srbp.com>
Sent: Wednesday, January 31, 2024 10:16 AM
To: Damien Prosser x5291 <DProsser@ForThePeople.com>; Harley E. Riedel <hriedel@srbp.com>
Cc: Benjamin Webster x5228 <BWebster@ForThePeople.com>; Meghan McManus x23166 <mmcmanus@forthepeople.com>
Subject: RE: *EXT* FW: SERVICE OF COURT DOCUMENT CASE NUMBER 292019CA002762A001HC Laser Spine Institute, LLC vs Kapila, Soneet

CAUTION:Use caution when clicking on links or opening attachments in this external email.

We are agreeable to a ten day extension. Let's talk about your concerns when you get a chance.

Scott A. Stichter
Attorney at Law
Stichter Riedel Blain & Postler P.A.
813-229-0144

From: Damien Prosser x5291 <DProsser@ForThePeople.com>
Sent: Wednesday, January 31, 2024 10:07 AM
To: Harley E. Riedel <hriedel@srbp.com>; Scott A. Stichter <sstichter@srbp.com>
Cc: Benjamin Webster x5228 <BWebster@ForThePeople.com>; Meghan McManus x23166 <mmcmanus@forthepeople.com>
Subject: FW: *EXT* FW: SERVICE OF COURT DOCUMENT CASE NUMBER 292019CA002762A001HC Laser Spine Institute, LLC vs Kapila, Soneet

Harley, Scott—

Hope you fellas are well.

We just received the motion and NOH on the compromise with H&K.

We plan to file a limited objection.

Under the local rules, our deadline is tomorrow.

Are you agreeable to a 10-day extension?

The hearing isn't until March 4 and we're happy to confer next week as much of our objection shouldn't be too thorny.

Thanks.

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
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