

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.

**ORDER REGARDING PROCEEDINGS ON 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 following motions:

- (1) *Assignee's Motion for a Protective Order Barring Deposition and Setting Non-Evidentiary Hearing on Motion to Approve Settlement*, Dkt. 994 ("**Motion for Protective Order**"); and
- (2) *Laserscopic Creditors' Request for Evidentiary Hearing Relating to Assignee's Motion for Order Approving Settlement and Compromise of Claims Against Holland & Knight LLP*, Dkt. 995

(“**Motion for Evidentiary Hearing**”). Responses in opposition to both motions were filed, Dkts. 998, 1000, as well as various joinders in connection with the foregoing. Dkts. 1016-1017. On March 4, 2024, the Motion for Protective Order and Motion for Evidentiary Hearing came to be heard, and the Court, after hearing argument of all counsel, having considered both motions and responses in opposition thereto, finds as follows:

A. On January 22, 2024, 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 submitted a Motion (“**Motion to Approve**,” Dkt. 935) for Order Approving Settlement and Compromise (the “**Settlement Agreement**,” Dkt. 935, Ex. A) of Claims Against Holland & Knight LLP (“**H&K**”). The Motion to Approve attached an affidavit by the Assignee (the “**Affidavit**,” Dkt. 935, Ex. B). The Assignee noticed a hearing on the Motion to Approve for March 4, 2024.

B. Between February 16 and 20, 2024, three sets of parties—(1) Joe Samuel Bailey; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; and Laserscopic Spine Centers of America, Inc. (collectively, the “**Laserscopic Claimants**”); (2) James St. Louis, EFO Laser Spine Institute, Ltd., and EFO Genpar, Inc. (collectively, “**Malpractice Plaintiffs**”); and (3) Robert P. Grammen and William Esping (together “**Grammen and Esping**”)—submitted or joined motions to continue the March 4 hearing (the “**Motions to Continue**,” Dkts. 946, 979, 981) seeking time to conduct a deposition of the Assignee and related discovery.

C. On February 20, 2024, the Laserscopic Claimants submitted a motion to strike (“**Motion to Strike**,” Dkt. 973), in which they asked the Court to strike the Affidavit as well as

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**”).

corresponding portions of the Motion to Approve. The same day, the Laserscopic Claimants and the Malpractice Plaintiffs (together, “**Objectors**”) each submitted objections to the Motion to Approve, Dkts. 974, 975. The Objectors and Grammen and Esping have each indicated, however, that they are not challenging the amount of the Settlement Agreement.

D. On February 26, 2024, the Court held a hearing on the Motion to Continue. At the hearing, the Court granted the Motion to Continue and granted the Objectors’ request to depose the Assignee regarding the Affidavit for no more than three hours and denied all other requested discovery.

E. On February 28, 2024, the Laserscopic Claimants submitted their Motion for Evidentiary Hearing, requesting an evidentiary hearing on the Motion to Approve. The same day, the Assignee submitted his Motion for Protective Order. In the Motion for Protective Order, the Assignee stated that he had submitted the Affidavit with the Motion to Approve to explain his reasons for concluding that (1) the Settlement Agreement 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). The Motion for Protective Order, noting that none of the parties objected to the settlement amount, therefore sought a protective order barring a deposition of the Assignee and requesting that the Court schedule a non-evidentiary hearing on the Motion to Approve.

F. On March 1, 2024, the Assignee and the Laserscopic Claimants each submitted oppositions in response to the Motion for Evidentiary Hearing and the Motion for Protective Order, respectively. Dkts. 998, 1000.

G. The Court held a hearing on both the Motion for Protective Order and Motion for Evidentiary Hearing on March 4, 2024.

H. WHEREFORE, having carefully considered the briefing and argument of all of the parties, the Court hereby FINDS and ORDERS as follows:

- (i) The Assignee stated that he submitted the Affidavit to explain his reasons for concluding that (1) the Settlement Agreement was in the best interest of the assignment estate, and (2) settlement for the amount specified in the Settlement Agreement satisfied the *Justice Oaks* factors.
- (ii) However, because no party objected to the amount specified in the Settlement Agreement or otherwise claimed that it was not in the best interest of the Assignee, the Assignee determined the Affidavit is moot and confirmed that he was willing to withdraw it to avoid litigating an unnecessary issue.
- (iii) Accordingly, the Affidavit is stricken for purposes of the Motion to Approve. The Court need not, and does not hereby, decide the merits of the allegations within the Motion to Strike or decide whether the Affidavit or any part thereof would have been admissible.
- (iv) The Court's prior decision to grant the Objectors' request to depose the Assignee was expressly limited to, and predicated on, the Assignee's Affidavit being part of the record for the Motion to Approve.
- (v) In light of the Court's decision to strike the Affidavit, there is no longer any need for a deposition of the Assignee or an evidentiary hearing. The Court therefore need not reach the question whether an evidentiary hearing would have been required if the Affidavit had remained a part of the record for the Motion to Approve.

- (vi) The Motion to Strike is GRANTED IN PART insofar as it requests that that the Affidavit be stricken, and is DENIED IN PART as to its request that the related statements in the Motion to Approve also be stricken. To the extent there are any remaining issues in the Motion to Strike, it is DENIED IN PART as moot.
- (vii) The Motion for Protective Order is GRANTED. In so doing, the Court modifies its prior order granting the Motion to Continue such that the Objectors may no longer depose the Assignee or seek any other discovery.
- (viii) The Motion for Evidentiary Hearing is DENIED, without prejudice to the Objectors' ability to argue that the Motion to Approve should not be granted based on the non-evidentiary nature of the hearing on the Motion to Approve.
- (ix) The non-evidentiary hearing on the Motion to Approve shall take place on April 3, 2024 from 10:30 am to Noon.

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

Electronically Conformed 3/15/2024
Darren D. Farfante

DARREN FARFANTE
Circuit Court Judge

Copies to: Counsel of record