



E-FILED
CNMI SUPERIOR COURT
 E-filed: Mar 23 2022 01:17PM
 Clerk Review: Mar 23 2022 01:17PM
 Filing ID: 67418318
 Case Number: 19-0076-CV
 N/A

By order of the Court, Associate Judge Wesley M. Bogdan

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**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

JAMES QUITUGUA REYES,)	CIVIL ACTION NO. 19-0076
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING MOTION FOR
)	FURTHER MEDIATION
COMMONWEALTH OF THE)	
NORTHERN MARIANA ISLANDS,)	
)	
Defendant.)	
)	

I. INTRODUCTION

This matter was before the Court on January 11, 2022 at 10:00 a.m. for a hearing on Plaintiff James Quitugua Reyes’s (“Plaintiff”) Motion for Further Mediation in Courtroom 223 of the Guma’ Hustisia, Iimwal Aweewe, CNMI Superior Court. Plaintiff appeared in person with his counsel, Joseph E. Horey. The Commonwealth of the Northern Mariana Islands (“Commonwealth”) appeared remotely through Assistant Attorney General Charles Reyes.

II. BACKGROUND AND FACTS

On February 26, 2019, Plaintiff filed a Complaint and Demand for Jury Trial against the Commonwealth. The Complaint alleges negligence on behalf of the Commonwealth and stems from an assault that Plaintiff suffered on or around March 10, 2017 while staying at the Verona Hotel on the Island of Guam. At that time, Plaintiff was acting as a family escort for his brother-in-law, Garabed O. Mirzoian, who was referred to Guam for medical treatment through the Commonwealth’s Medical Referral Program.

The Complaint alleges that the Medical Referral Program arranged the travel and accommodations for Plaintiff and his brother-in-law while in Guam, including their lodging at the

1 Verona Hotel. The Complaint further alleges that Plaintiff was the victim of criminal assault and was
2 injured, while accompanying his brother-in-law, at or near the Verona Hotel.

3 On January 17, 2020, the Commonwealth filed a Motion to Dismiss pursuant to NMI R. CIV.
4 P. 12(b)(6), alleging that Plaintiff's Complaint fails to state a claim for which relief can be granted.
5 That Motion was denied by this Court on August 18, 2020; an Answer (and Amended Answers) was
6 then filed and the parties were thereafter ordered to mediation.

7 On March 3, 2021, the Superior Court, through Presiding Judge Robert Naraja, proceeded
8 with mediation.¹ Present were the above-captioned parties—Mr. Horey for Plaintiff and then
9 Assistant Attorney General Jose Mafnas Jr. (“Mr. Mafnas”) for the Commonwealth.

10 Mediation was unsuccessful and the matter was returned to pre-trial proceedings. On April
11 12, 2021, Plaintiff filed the instant Motion for Further Mediation, which is opposed by the
12 Commonwealth.

12 III. LEGAL STANDARD

13 Several provisions of the recently revised Commonwealth Rules of Alternative Dispute
14 Resolution relate to the instant motion. They provide, in pertinent part, that mediation may be initiated
15 by parties' agreement “or court order.” NMI R. ADR 4. Additionally, “[t]he court *may refer a case*
16 *to mediation without party input and over a party's objection . . .*,” although the right for a party to
17 request relief from mediation is preserved in Rule 16. NMI R. ADR 7 (emphasis added).

18 With respect to the actual process, the revised rules provide in pertinent part:

19 (a) **Mediation Procedure.** When the order for mediation is issued, the parties
20 shall contact the mediator and determine the schedule and who should attend
21 the mediation, establish mediation procedures, and do all things reasonably
22 necessary to ensure that the mediation is completed by the mediation
23 completion date.

21

22 (e) **Mediation Attendance.** All parties, their representatives, insurers, and all other
23 persons from whom settlement authority is *required* shall personally attend the

24 ¹ The mediation was originally set for February 17th, 2021, and was continued to March 3rd, 2021.

1 mediation, unless excused by the mediator or the court based upon a showing
2 of good cause, and shall arrive at the mediation in a timely manner.

3 **(f) Mediation Participation.** All parties, their representatives, and counsel shall
4 participate in the mediation in good faith and exert their best efforts to facilitate
5 a resolution of the issues in dispute.

6 NMI R. ADR 19 (emphasis added).

7 With particular attention to the status of the present case, the revised rules provide in pertinent
8 part that at a Post-Mediation Case Management Conference, the court shall determine, among other
9 things, *whether further mediation should be ordered*. NMI R. ADR 29 (emphasis added).

10 IV. DISCUSSION

11 The instant motion presents an interesting issue. Unfortunately, the recently revised CNMI
12 Rules for Alternative Dispute Resolution do not provide a clear answer, but do suggest that this Court
13 is certainly authorized to grant the requested relief. As noted earlier, on March 3, 2021, the mediation
14 was attended by Mr. Horey and by Mr. Mafnas on behalf of the Commonwealth. As was confirmed
15 by the parties during the hearing on the motion, at the mediation the Commonwealth was represented
16 by Mr. Mafnas—whose basic position at that time was that he had been authorized to offer \$500.00
17 to settle the case and that he was not authorized to offer any additional compensation or relief without
18 the approval of the Attorney General.

19 Technically then, as argued during the hearing, Mr. Mafnas' statements suggests that, since
20 the Attorney General was not physically present, Mr. Mafnas did not have real negotiation ability and
21 thus the possibility of a meaningful mediation was greatly restricted.² In other words, as presented, it
22 does not appear that Mr. Mafnas was in any way able to consider further options or change the offer
23 according to the arguments and negotiation stances that play out during mediation.

24 This unreasonable constriction of the mediation process is unlikely to fulfill the revised rules'
requirement for a good faith participation. NMI R. ADR 19(f). Moreover, as noted above, the revised
Commonwealth Rules of Alternative Dispute Resolution clearly grant the Court the ability to order
further mediation. NMI R. ADR 29(a).

² This is especially true because Rule 19(e) expressly requires that all other persons from whom settlement authority is required shall personally attend the mediation, unless excused by the mediator.

1 Accordingly, in the interest of judicial efficiency and the conservation of legal resources, this
2 Court believes the better approach under the circumstances is to order additional mediation. When
3 used early, before substantial discovery has begun and other litigation expenses have been incurred,
4 the alternative dispute resolution process greatly reduces costs in time and money and also reduces
5 the backlog of cases burdening the courts. Meaningful mediation is necessary to obtain these benefits.

6 In support, this Court notes that decisions from other jurisdictions have required, among other
7 considerations, actual attendance at a mediation by someone with settlement authority from within
8 an organization. *See In re A.T. Reynolds & Sons, Inc.*, 452 B.R. 374, 384 (S.D.N.Y. 2011) (finding
9 that “good faith” requires “compliance with orders to attend mediation, provide pre-mediation
10 memoranda, and, in some cases, produce organizational representatives with sufficient settlement
11 authority”). *Nick v. Morgan's Foods, Inc.*, clearly explains the importance of having someone with
12 real settlement authority present because “[m]eaningful negotiations cannot occur if the only person
13 with authority to actually change their mind and negotiate is not present [T]he whole purpose of
14 the mediation is lost, and the result is an even greater expenditure of the parties’ resources, both time
15 and money, for nothing.” 99 F. Supp. 2d 1056, 1062-63 (E.D. Mo. 2000).

16 However, while requiring in person attendance from the Attorney General, if the Attorney
17 General is the only individual with settlement authority, would be possible in the abstract (as argued
18 by Plaintiff), this Court believes a more practical approach, also utilized in other jurisdictions, is to
19 require as a minimum that the Attorney General (or, someone with real settlement authority) be
20 available by phone during the mediation period, prepared to discuss the merits of the case and to
21 entertain and make appropriate settlement offers. *See In re United States*, 149 F.3d 332, 334 (5th Cir.
22 1998) (recommending the court consider ordering the Attorney General to have the person or persons
23 identified as holding full settlement authority be fully prepared and available by telephone to discuss
24 settlement at the time of mediation) (Dennis J. concurring). Such an approach would satisfy the
requirement for the attendance of a person with settlement authority and prevent the unnecessary
waste of judicial resources. *Id.*

1 For all these reasons, this Court believes additional mediation appropriate under the facts of
2 this case. The parties shall prepare for and attend a second mediation in good faith—and the
3 Commonwealth shall have someone *with settlement authority* who is prepared to discuss the case
4 attend the mediation personally, or be available during mediation via telephone.³

5 Accordingly, this matter will be referred to the chambers of the Presiding Judge. It is
6 respectfully requested that Presiding Judge Roberto C. Naraja assign this matter to another judge of
7 the CNMI Superior Court to conduct a Mandatory Settlement Conference in accordance with NMI
8 R. ADR 16(3)(c).

9 **V. CONCLUSION**

10 For the foregoing reasons, Defendant's Motion for Further Mediation is **GRANTED**. The
11 parties are **ORDERED TO FURTHER MEDIATION** subject to the following provisions:

- 12 1. During mediation, the Commonwealth shall have someone with full settlement authority
13 and prepared to discuss the particulars of this case available in person or, at minimum,
14 available via telephone.
- 15 2. The parties shall inform the Court of the completion of the Mandatory Settlement
16 Conference.
- 17 3. This civil action is hereby stayed pending the completion of mediation.

18 **IT IS SO ORDERED** this 23rd day of March 2022.

19 /s/
WESLEY M. BOGDAN, Associate Judge

20 _____
21 ³ This Court will not at this stage address the Commonwealth's arguments that this matter is outside the scope of the
22 Government Liability Act (GLA), that the CNMI Medical Referral Office is not authorized to make medical referrals,
23 that the Commonwealth cannot be held liable for negligence when offering a medical referral because they are not legally
24 required to do so, and that the Complaint requires the name of a specific employee. It is enough to say at this point that
Plaintiff is claiming negligence resulting from the Commonwealth's inspections and/or use of the Verona Hotel through
Commonwealth agents or employees as admitted in Paragraph 12 of the Commonwealth's Answer and therefore the claim
at this stage appears facially within the plausible scope of the GLA. 7 CMC §2202(a). The same is true for the questions
of whether the Commonwealth can be held liable for something it is not legally obligated to provide and whether certain
parties are indispensable and must be added for damages resulting from organizing referrals to Guam. These are untimely
legal arguments and the Court declines to make any decisions about them at this time.