

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

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

as Assignors,

Consolidated Case No:
2019-CA-2762

to:

SONEET KAPILA, Division L

Assignee.

**ASSIGNEE'S RESPONSE IN OPPOSITION TO FORMER LSI EMPLOYEES'
AND WARN ACT CLASS MEMBERS' MOTION TO ATTEND
MEDIATION IN "D & O LITIGATION"**

Assignee/Plaintiff, Soneet R. Kapila, in his capacity as the Assignee (“**Plaintiff or Assignee**”) of Laser Spine Institute, LLC (“**LSI**”), LSI Holdco, LLC (“**Holdco**”) and each of their affiliated entities (collectively, the “**Companies**”) respectfully submits this Assignee’s Response in Opposition to Former LSI Employees’ and Warn Act Class Members’ Motion to Attend Mediation in “D&O Litigation” (the “**Motion**”). The Motion should be denied because there is no authority for the Court to require the Assignee to mediate the movant’s case, which is a federal

court labor and employment dispute, with the D&O Litigation being prosecuted by the Assignee, which is also a federal court case.

On April 8, 2019, the Court entered an order consolidating the assignment cases. Thereafter, several of the directors and officers removed their cases to the United States District Court for the Middle District of Florida. All of those cases were assigned to Chief Judge Steven Merryday (“the D&O Litigation”).¹ In the D&O Litigation, Judge Merryday ordered mediation.² Pursuant to Judge Merryday’s Order, the parties have scheduled the mediation with Peter Grilli as mediator for June 22, 2020. The movants here, the WARN Act class members³, have separate litigation pending in federal court against the Companies (“the WARN Litigation”), which the Assignee is defending. No mediation has been ordered by Judge Merryday in the WARN Litigation.

Now, the movants, despite not being a party to any of the D&O Litigation cases, seek to attend the D&O Litigation mediation directed by the Orders entered by Judge Merryday. The movants have provided no legal authority for this Court to require the Assignee to mediate the movant’s federal court case contemporaneously with the federal court D&O Litigation, and there is no authority for granting such relief.

Notably, contrary to movant’s assertions, the rules governing mediation do not permit a non-party to attend a mediation. In fact, to do so would violate the Mediation Confidentiality and Privilege Act, and simply frustrate the mediation process. The Mediation Confidentiality and

¹The case styles for the D&O Litigation are as follows: *Kapila v. Esping*, 8:20-cv-00436-SDM-TGW; *Kapila v. Dempsey*, 8:19-cv-1802-SDM-TGW; *Kapila v. Lewis*, 8:19-cv-01800-SDM-TGW; *Kapila v. Andrzejewski*, 8:19-cv-02812-SDM-TGW.

² The Orders of referral to mediation are attached hereto as Composite Exhibit A. Although the Orders originally set a mediation deadline of March 31, 2020, those deadlines were extended, and the mediation is presently scheduled for June 22, 2020.

³ The case style for the WARN Litigation is *Ali v. Laser Spine Institute and Assignee Soneet Kapila, et al.*, 8:19-cv-00535-SDM-JSS, pending before Judge Steven Merryday.

Privilege Act (the “Act”) applies to any mediation ordered by this Court. § 44.402, Fla. Stat. (2019). Under the Act, a “mediation party” or “party” means “a person participating directly, or through a designated representative, in a mediation and a person who: (a) [i]s a named party; or (b) [i]s a real party in interest ...” § 44.403(3), Fla. Stat. (2019) (emphasis added). Thus, the Act specifically defines the mediation parties to mean a person who is named as a party and is a real party in interest. The movants are neither a party nor a real party in interest.

Moreover, under the Act, “all mediation communications are confidential,” and violations of the confidentiality provision are punishable under the Act. §§ 44.405(1), 44.406, Fla. Stat. (2019). Specifically, the Act provides:

A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney’s fees, and mediator’s fees.

§ 44.405(1), Fla. Stat. (2019).

The movants’ participation at the mediation would necessarily violate the provisions of the Act.

Additionally, and perhaps more importantly, the D&O Litigation mediation is scheduled pursuant to an Order in federal court, not an order of this Court. Federal court mediations are governed by Chapter 9 of the Middle District of Florida Local Rules. There is no Rule in Chapter 9 which allows for the court to require the parties to mediate with non-parties.⁴


⁴ Ultimately, any proposed settlement reached in the D&O Litigation will be presented to this Court for approval. At that time, the movants will have an opportunity to be heard.

CONCLUSION

Based on the foregoing, this Court should summarily deny the Motion.

Dated this 24th day of March, 2020.

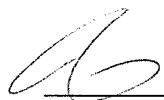
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically via the Florida Courts E-Filing Portal system on the 24th day of March, 2020, to:



Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:19-cv-1802-T-23TGW

SHAWN DEMPSEY,

Defendant.

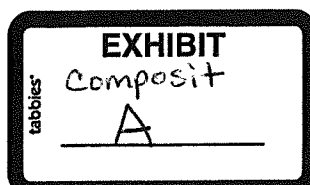
ORDER

(a) Referral to Mediation: This action is referred to mediation. **Peter J. Grilli**, 3001 West Azele Street, Tampa, Florida 33609, (813) 874-1002, is the mediator.

(b) Conduct of Mediation: The mediator must conduct the mediation in accord with this order and the Local Rules. Compliance with this order is not satisfied by any other attempt by the parties to resolve this matter through mediation or by another mechanism for dispute resolution.

(c) Scheduling Mediation: The parties must mediate no later than **MARCH 31, 2020**.

(d) Designation and Responsibility of Lead Counsel: **Robert Rocke** is designated as lead counsel and must consult both the mediator and other counsel to co-ordinate the day and time of the mediation. Within **SEVEN** days after this order,



lead counsel must file a notice of mediation that states the agreed day and time of mediation. When the notice is filed, the agreed day for the mediation replaces the deadline in paragraph (c). Extension of the mediation deadline requires a court order and is increasingly disfavored as the mediation deadline approaches. Before moving for an extension of the mediation deadline, the movant must consult both the mediator and opposing counsel to determine an agreed day and time for the rescheduled mediation. Under Local Rule 3.01(g), a motion for an extension of the mediation deadline must certify that the movant has conferred with opposing counsel and must state whether counsel agrees to the resolution of the motion.

(e) General Rules Governing the Mediation: Although mediation is governed by Chapter Nine of the Local Rules, the following additional requirements apply:

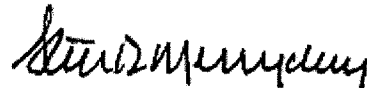
- (1) *Case Summaries*: At least five business days before the scheduled mediation, each party must mail directly to the mediator and to opposing counsel a brief written summary of the facts and issues of the action. The mediator and the parties must treat each summary as a confidential communication and must not disclose the summary or the summary's content.
- (2) *Authority of the Mediator*: The mediator may confer privately with any counsel, an individual party, a corporate or municipal representative, or a claims professional for any proper purpose in the mediator's discretion. The mediation must continue until adjourned by the mediator. No participant may compel the early conclusion of a mediation because of travel or another engagement. Only the mediator may declare an impasse or end the mediation. To co-ordinate the mediation, the mediator may set an abbreviated scheduling conference before the mediation.

- (3) *Attendance*: Absent leave of court, which is granted only in an extraordinary circumstance, each attorney acting as lead counsel and each party (or the designated representative with full authority to settle) must attend the mediation in person.
- (4) *Structure*: In a track three case, another complex or protracted case, or a case with many parties, the mediator is authorized to conduct the mediation in sequential sessions with fewer than all the parties present.

(f) Compensation of the Mediator: The parties must compensate the mediator at the mediator's prevailing hourly rate, which, unless otherwise agreed by counsel, the parties must bear equally and pay immediately after the mediation. When moving to tax other costs, the prevailing party may move to tax the mediator's compensation as a cost. The parties must comply with any reasonable cancellation policy established by the mediator.

(g) Objections: A party waives as to this order any objection not asserted within ten days and in writing.

ORDERED in Tampa, Florida, on November 18, 2019.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:19-cv-1802-T-23TGW

SHAWN DEMPSEY,

Defendant.

_____ /

MEDIATION REPORT

In accord with the mediation order, a mediation occurred on

_____, 20____.

(a) The following individuals, parties, corporate representatives, and claims professionals attended and participated in the mediation, and each possessed the requisite settlement authority:

_____ All individual parties and their respective trial counsel.

_____ Designated corporate representatives.

_____ Required claims professionals.

(b) The following individuals, parties, corporate representatives, and claims professionals failed to appear or participate:

(c) The result of the mediation:

_____ The action completely settled. In accord with Local Rules 3.08 and 9.06(b), lead counsel must notify the court of settlement within ten days of the mediation by filing a notice or memorandum of agreement signed by the parties and the mediator.

Comments:

_____ The action partially resolved. Lead counsel must file within ten days a joint stipulation resolving the settled claims. The following issues remain:

Comments:

_____ The action neither settled nor failed to settle.

Comments:

____ The parties failed to settle.

Comments:

Reported on _____, 20____, in _____, Florida.

Signature of Mediator

Name (PRINTED) of Mediator

Mediator's Mailing Address and
Telephone Number

Cc: Counsel of Record and
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:20-cv-436-T-23AAS

WILLIAM ESPING,

Defendant.

ORDER

- (a) Referral to Mediation: This action is referred to mediation. **Peter J. Grilli**, 3001 West Azeele Street, Tampa, Florida 33609, (813) 874-1002, is the mediator.
- (b) Conduct of Mediation: The mediator must conduct the mediation in accord with this order and the Local Rules. Compliance with this order is not satisfied by any other attempt by the parties to resolve this matter through mediation or by another mechanism for dispute resolution.
- (c) Scheduling Mediation: The parties must mediate no later than **JUNE 30, 2020**.
- (d) Designation and Responsibility of Lead Counsel: **Robert Rocke** is designated as lead counsel and must consult both the mediator and other counsel to co-ordinate the day and time of the mediation. Within **SEVEN** days after this order,

lead counsel must file a notice of mediation that states the agreed day and time of mediation. When the notice is filed, the agreed day for the mediation replaces the deadline in paragraph (c). Extension of the mediation deadline requires a court order and is increasingly disfavored as the mediation deadline approaches. Before moving for an extension of the mediation deadline, the movant must consult both the mediator and opposing counsel to determine an agreed day and time for the rescheduled mediation. Under Local Rule 3.01(g), a motion for an extension of the mediation deadline must certify that the movant has conferred with opposing counsel and must state whether counsel agrees to the resolution of the motion.

(e) General Rules Governing the Mediation: Although mediation is governed by Chapter Nine of the Local Rules, the following additional requirements apply:

- (1) *Case Summaries*: At least five business days before the scheduled mediation, each party must mail directly to the mediator and to opposing counsel a brief written summary of the facts and issues of the action. The mediator and the parties must treat each summary as a confidential communication and must not disclose the summary or the summary's content.
- (2) *Authority of the Mediator*: The mediator may confer privately with any counsel, an individual party, a corporate or municipal representative, or a claims professional for any proper purpose in the mediator's discretion. The mediation must continue until adjourned by the mediator. No participant may compel the early conclusion of a mediation because of travel or another engagement. Only the mediator may declare an impasse or end the mediation. To co-ordinate the mediation, the mediator may set an abbreviated scheduling conference before the mediation.

- (3) *Attendance*: Absent leave of court, which is granted only in an extraordinary circumstance, each attorney acting as lead counsel and each party (or the designated representative with full authority to settle) must attend the mediation in person.
- (4) *Structure*: In a track three case, another complex or protracted case, or a case with many parties, the mediator is authorized to conduct the mediation in sequential sessions with fewer than all the parties present.

(f) Compensation of the Mediator: The parties must compensate the mediator at the mediator's prevailing hourly rate, which, unless otherwise agreed by counsel, the parties must bear equally and pay immediately after the mediation. When moving to tax other costs, the prevailing party may move to tax the mediator's compensation as a cost. The parties must comply with any reasonable cancellation policy established by the mediator.

(g) Objections: A party waives as to this order any objection not asserted within ten days and in writing.

ORDERED in Tampa, Florida, on March 5, 2020.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:19-cv-436-T-23AAS

WILLIAM ESPING,

Defendant.

_____ /

MEDIATION REPORT

In accord with the mediation order, a mediation occurred on

_____, 20____.

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____ The parties failed to settle.

Comments:

Reported on _____, 20____, in _____, Florida.

Signature of Mediator

Name (PRINTED) of Mediator

Mediator's Mailing Address and
Telephone Number

Cc: Counsel of Record and
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:19-cv-1800-T-23TGW

JONATHAN LEWIS,

Defendant.

ORDER

(a) Referral to Mediation: This action is referred to mediation. **Peter J. Grilli**, 3001 West Azeele Street, Tampa, Florida 33609, (813) 874-1002, is the mediator.

(b) Conduct of Mediation: The mediator must conduct the mediation in accord with this order and the Local Rules. Compliance with this order is not satisfied by any other attempt by the parties to resolve this matter through mediation or by another mechanism for dispute resolution.

(c) Scheduling Mediation: The parties must mediate no later than **MARCH 31, 2020**.

(d) Designation and Responsibility of Lead Counsel: **Robert Rocke** is designated as lead counsel and must consult both the mediator and other counsel to co-ordinate the day and time of the mediation. Within **SEVEN** days after this order,

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ORDERED in Tampa, Florida, on November 18, 2019.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SONEET R. KAPILA,

Plaintiff,

v.

CASE NO. 8:19-cv-1800-T-23TGW

JONATHAN LEWIS,

Defendant.

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MEDIATION REPORT

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Signature of Mediator

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Mediator's Mailing Address and
Telephone Number

Cc: Counsel of Record and
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