

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**JOINT MOTION REQUESTING THE COURT TO CONDUCT  
A SETTLEMENT CONFERENCE AND FOR OTHER RELIEF**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**” or “**USAG**”), and the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “**Survivors’ Committee**”) jointly move this Court (the “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and (d) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and Local Rule B-9019-2, ordering certain parties to participate in a settlement conference conducted by this Court. In support of this Motion, the Debtor and the Survivors’ Committee respectfully state as follows:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. § 1408.

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 7871. The location of the Debtor’s principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

## BACKGROUND

2. From its start, the focus of USAG’s chapter 11 case has been to reach a mediated resolution of the claims of the Survivors. To accomplish that goal, on May 17, 2019, the Court entered an Order appointing the Honorable Gregg W. Zive as the mediator in this case. [Dkt. 514.] Judge Zive conducted multiple mediation sessions in 2019 and 2020. When discussions among USAG and USOPC’s insurance carriers bogged down, the Court authorized the participation in the mediation of a second mediator, Paul Van Osselaer, to mediate the intra-carrier insurance disputes.

3. On June 19, 2020, the Court entered a further Order in aid of the mediation directing that: (i) additional mediation sessions occur no later than August 14, 2020; (ii) the Survivors’ Committee, the United States Olympic and Paralympic Committee (“USOPC”), and the USAG and USOPC insurers submit “meaningful” settlement offers before such mediation, and (iii) the Debtor may file an amended plan and disclosure statement at any time up until August 27, 2020. [Dkt. 1145 at ¶¶ 2, 4.]

4. Judge Zive conducted mediations on August 11 and 12, 2020 with the participation of Mr. Van Osselaer. No settlement was reached. The members of the Survivors’ Committee attended the mediation sessions as did USAG’s Chief Executive Officer, Li Li Leung, and its Board Chair, Kathryn Carson. The insurers for USAG and USOPC did not bring their CEOs to the mediation session. Moreover, not all of the carriers brought persons with ultimate, unrestricted settlement authority.

5. The insurance carriers for USAG and USOPC did not comply with this Court’s June 19 Order to make meaningful settlement offers. USAG and the Survivors’ Committee consider the insurance carriers’ positions to be in violation of this Court’s June 19, 2020 Order and

believe that the carriers have acted in bad faith with the goal of delaying this case for their own economic benefit.

### **RELIEF REQUESTED**

6. By this Motion, USAG and the Survivors' Committee seek entry of an order directing the Committee, USAG, USOPC, and the insurance carriers for USAG and USOPC to attend a settlement conference to be conducted by this Court via teleconference. The Debtor and the Survivors' Committee further request that the Court direct each of the insurance carriers to bring their chief executive officers and all other persons necessary for final, unrestricted settlement authority to attend the settlement conference. USAG and USOPC should be directed to bring their leadership teams, including their chief executive officers and board chairs. The Debtor and the Survivors' Committee also request that the Court extend the deadline for filing an amended plan and disclosure statement to a date following such settlement conference.

### **BASIS FOR RELIEF**

7. This Court has broad authority to issue orders and manage the conduct of the cases before it. *See* 11 U.S.C. § 105; *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997) (“Section 105 grants broad powers to bankruptcy courts to implement the provisions of Title 11 and to prevent an abuse of the bankruptcy process”); *Citizens Gas & Coke Utility v. Matthews*, No. 03-2064, 2004 WL 2137637, at \*8 (S.D. Ind. Aug. 13, 2004) (same).

8. USAG filed its chapter 11 case to resolve the Survivors' claims equitably. Failure to reach a settlement benefits no one.

9. To date, no settlement has been reached. As a result of the mediations that occurred on August 11 and 12, 2020, USAG and the Survivors' Committee contend that the insurance carriers who participated did not do so in good faith and acted in violation of this Court's June 19,

2020 Order. Before launching another round of litigation on these and other issues, USAG and the Survivors' Committee believe that it is in everyone's best interests for this Court to conduct a settlement conference to determine if costly and protracted litigation can be avoided. This Court is uniquely positioned to conduct a settlement conference because it will never be called upon to try the Survivors' claims given that the district court will be required to withdraw the reference of any objection to the personal injury claims. *See* 28 U.S.C. § 157(b)(5).

10. The Survivors' Committee and the Debtor believe that this Court's participation in a settlement conference will ensure that all parties come to the table with meaningful offers as previously directed and may help to avoid the delay tactics that have plagued the prior mediations.

11. To ensure that all parties participate fully, the Survivors' Committee and the Debtor further request that the insurance carriers be ordered to bring their chief executive officers and all persons necessary for final, unrestricted settlement authority to the settlement conference. USAG and USOPC should be directed to bring their leadership teams, including their chief executive officers and board chairs. The Seventh Circuit has held that courts have the authority to issue such orders and doing so would be appropriate here given the gravity of the claims that the Survivors have made. *See, e.g., G. Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648, 652-53, 656 (7th Cir. 1989); *accord ARAC Roof It Forward v. Nationwide Mut. Ins. Co. of Am.*, No. 17-CV-4468, 2019 U.S. Dist. LEXIS 94077 (S.D. Ind. June 5, 2019) (ordered CEO of Nationwide Insurance to attend settlement conference). As a district court in this Circuit explained, “[n]umerous courts have found authority under Federal Rule 16 to order a party's insurance carrier to attend court-ordered settlement conferences.” *Neal v. Target Corp.*, No. 13 C 5907, 2016 WL 3365432, at \*3 (N.D. Ill. June 15, 2016) (collecting cases). Indeed, the “authority of a federal court

to order attendance of attorneys, parties, and insurers at settlement conferences and to impose sanction for disregard of the court's orders is so well established as to be beyond doubt.” *Id.*

12. If the Court is willing to hold the settlement conference, the Debtor and the Survivors’ Committee also suggest that the Court hold a pre-conference to address how the settlement conference should be conducted.

13. The Debtor also asks that the deadline for filing an amended plan and disclosure statement be moved to a date after the settlement conference.

WHEREFORE, the Debtor and the Survivors’ Committee respectfully request that the Court enter the proposed order substantially in the form annexed hereto as Exhibit A granting the relief requested herein and such further relief as is just and proper.

Dated: August 20, 2020

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**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**ORDER SETTING SETTLEMENT CONFERENCE AND GRANTING OTHER RELIEF**

This matter came before the Court on the *Joint Motion Requesting The Court To Conduct A Settlement Conference And For Other Relief* (the “**Motion**”), filed by USA Gymnastics as debtor and debtor in possession (the “**Debtor**”), and the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “**Survivors’ Committee**”) for the entry of an order pursuant to section

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105(a) and (d) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532, and Local Rule B-9019-2; and this Court having reviewed the Motion and upon consideration of the record and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Motion should be GRANTED.

IT IS THEREFORE ORDERED:

1. **Motion Granted.** The Motion is granted.
2. **Objection Overruled.** All objections to the Motion, to the extent not withdrawn or resolved, are hereby overruled for the reasons stated on the record.
3. **Settlement Conference.** The Court will conduct a settlement conference on \_\_\_\_\_, 2020 by video conference. The Debtor, the United States Olympic and Paralympic Committee (“USOPC”), the insurance carriers for the Debtor and USOPC, and the Survivors’ Committee are ordered to appear at the settlement conference to be conducted by this Court. The Court will hold a pre-conference on \_\_\_\_\_, 2020 with the parties to discuss how the settlement conference will be conducted. The insurance carriers for USAG and USOPC are ordered to bring to the settlement conference their Chief Executive Officers and anyone necessary to have final, unrestricted settlement authority. USAG and USOPC shall bring their leadership teams to the settlement conference, including their chief executive officers and board chairs.
4. **Amended Plan.** The Debtor may file an amended plan and disclosure statement at any time up until \_\_\_\_\_, 2020.

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