

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

In re:)	
)	Chapter 11
USA Gymnastics,)	
)	Case No. 18-09108-RLM-11
Debtor.)	
)	Dkt. Ref. No. 1230

**OBJECTION OF NATIONAL CASUALTY COMPANY TO
JOINT MOTION REQUESTING THE COURT TO CONDUCT
A SETTLEMENT CONFERENCE AND FOR OTHER RELIEF**

On August 20, 2020, USA Gymnastics (the “Debtor”) and the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Committee”) filed a Joint Motion Requesting the Court to Conduct A Settlement Conference and for Other Relief [D.I. 1230] (the “Motion”). National Casualty Company, as one of the insurance companies who issued certain insurance policies to the Debtor (“NCC-USAG”), and National Casualty Company, as one of the insurance companies who issued certain insurance policies to the United States Olympic and Paralympic Committee (“NCC-USOPC” and collectively with NCC-USAG, “NCC”), through its respective undersigned counsel, hereby respond to the Motion as follows:

1. Having previously entrusted the mediation of the sexual abuse claims and related coverage disputes to the the Court-appointed mediators, The Honorable Gregg W. Zive and Paul Van Osselaer, this Court should deny the Debtor and the Committee’s inflammatory and objectionable Motion.

2. By way of its May 17, 2019 Order [D.I. 514] (the “Appointment Order”), this Court appointed Judge Zive to serve as mediator for the Sexual Abuse Claims Mediated Matters, defined in the motion seeking Judge Zive’s appointment [D.I. 452], to include “the Sexual Abuse Claims;

the resolution of any disputes relating to the applicability of the Debtor's insurance coverage to the Sexual Abuse Claims and the Debtor's insurance carriers' obligations to fund distributions on the Sexual Abuse Claims, and related defense costs; and the resolution of any other matters necessary to equitably determine the rights of, and allocate recoveries to, survivors holding allowed Sexual Abuse Claims [D.I. 452]. The Appointment Order noted that Judge Zive would "control all procedural aspects of the mediation." By way of its September 26, 2019 Order, this Court appointed Mr. Van Osselaer as a second mediator to work with Judge Zive and deal "principally with the insurance coverage and related issues."¹ [D.I. 798.]

3. The Appointment Order made clear that "[a]ll communications, information, and evidence exchanged within the mediation shall be treated confidentially by all parties and shall remain confidential following the mediation's conclusion." [D.I. 514, ¶5.] Additionally, the Appointment Order provided that any periodic reports submitted by Judge Zive to the Court "shall not disclose any information deemed confidential and should only inform the Court and parties about the general status and schedule of the mediation proceedings." [D.I. 514, ¶7.]

4. Since appointed by this Court, both Judge Zive (for more than a year) and Mr. Van Osselaer (for nearly a year) have ably and commendably served as mediators. Yet, throwing the Appointment Order and related confidentiality provisions to the wind, the Debtor and the Committee filed a Motion requesting that *this Court* interject itself anew into the mediation process and schedule a settlement conference, based on false, unfounded, and/or self-serving characterizations that breach this Court's confidentiality orders.

¹ The Motion erroneously characterizes Mr. Van Osselaer's mediation functions as confined to "intra-carrier insurance disputes." Suffice it to say that NCC disagrees with the Motion's characterizations as to why Mr. Van Osselaer was appointed and any insinuations as to the issues in which he has been involved.

5. NCC disputes the Motion's stated basis. For example, the Motion asserts factually that the "insurers . . . did not bring their CEOs to the mediation session" and further that "not all of the carriers brought persons with ultimate, unrestricted settlement authority." However, no order of this Court, nor direction of Judge Zive, required attendance of any insurer's CEO. Additionally, the Motion does not explain which insurers are alleged to have failed to bring persons with authority to bind such insurers. No such assertion or concern has been raised with NCC-USAG or NCC-USOPC by any party or any mediator at any time. In fact, both NCC-USAG's and NCC-USOPC's duly authorized corporate representatives, with binding authority to settle, have personally attended and participated in each mediation session, including the session ordered by this Court in its June 19 Order.

6. Moreover, NCC denies any assertion that it has not made meaningful settlement proposals, and denies any characterization that it has not participated in each mediation session in the utmost good faith. To that end, the Debtors' and Committee's motion is baseless as to NCC. In accordance with, and in deference to, this Court's confidentiality orders, NCC will stop there in order to avoid disclosing privileged and/or confidential mediation information outside of the mediation and on the docket.

7. Further, if Judge Zive were of the opinion that any party's proposals were not meaningful, were proposed in bad faith, or that any particular insurer needed someone else present at the mediation, Judge Zive was given authority *by this Court* to direct any party to do anything he believed was necessary to meaningfully address any perceived shortcoming. The Appointment Order vested Judge Zive with the following authority:

Judge Zive shall control all procedural aspects of the mediation, including:

- a. setting dates, times, and places for conducting sessions of the mediation;
- b. requiring the submission of confidential statements;

- c. requiring the attendance of representatives of each party with sufficient authority to negotiate and settle all disputed issues and amounts;
 - d. designing and conducting the mediation sessions; and,
 - e. establishing a deadline for the parties to act upon a settlement proposal.
- All parties and their respective counsel are ordered to comply with all instructions and directions issued by Judge Zive with respect to the mediation unless otherwise ordered by this Court.

[D.I. 514].

8. The Appointment Order vested Judge Zive with the authority to require the very relief requested by the Debtor and the Committee in the Motion. If Judge Zive deemed such relief necessary to facilitate further discussions, he could require it. To NCC's knowledge, he has not done so, and neither the Committee nor the Debtor assert in the Motion that they asked Judge Zive to do so. Accordingly, it is simply improper for the Debtor and the Committee to cast the mediators' year-long efforts aside, and seek the intervention of this Court (i.e. the trial court) in the mediation process. NCC respectfully submits that, after appointing Judge Zive to oversee the mediation process, having this Court directly involve itself in the settlement process will undoubtably raise concerns given that this Court has been and/or may be asked to adjudicate some of the very issues being mediated.

9. Accordingly, NCC believes that the Motion should be denied as to it. It has acted at all times in good faith as participant in the mediation process. Appropriate representatives with binding settlement authority, have appeared, in person, at every mediation session. To the extent the Court has questions, NCC respectfully requests that the Court confer with Judge Zive before ruling on the Motion.

Respectfully submitted,

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