UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

OBJECTION OF GREAT AMERICAN ASSURANCE COMPANY TO THE JOINT MOTION REQUESTING THE COURT TO CONDUCT A SETTLEMENT CONFERENCE AND FOR OTHER RELIEF

Great American Assurance Company ("Great America"), a party in interest in this chapter 11 case, respectfully submits this objection to the Joint Motion Requesting the Court to Conduct a Settlement Conference and For Other Relief (the "Motion") (Aug. 20, 2020) [D.I. 1230]. The Motion is a cynical attempt to cast the insurers as acting in bad faith and to punish the insurers by requiring the extraordinary measure of requiring CEOs to appear for a settlement conference before the same Court that has been asked to resolve coverage issues.

Great American has worked hard towards an appropriate settlement throughout the mediation process, and Great American remains willing to engage in that process. But the terms that Debtors and the TCC have proposed are aimed at gaining leverage for litigation; they are neither reasonably calculated to advance settlement prospects nor are they appropriate under these circumstances. The Court should not grant the relief in the form that Movants have requested here.

BACKGROUND

1. Mediation of this case has so far proven unsuccessful. From the Motion, it is apparent that Movants tact is to blame the insurers, accusing them -- including Great American --

of failing to act in good faith. That accusation is easy to level here, where Great American is bound *not* to discuss details of the mediation, but Movants' allegations are irresponsible and inaccurate.[1] In fact, Great American has consistently mediated in good faith to try to reach a consensual resolution in this chapter 11 case.

2. Movants repeatedly mischaracterize the mediation in this case to try to portray Great American and other insurers in a bad light.[2] For example, the Motion implies that Great American did not take the mediation seriously and did not have appropriate personnel at the mediation because its CEO was not present. *See* Motion ¶ 4.

3. The order directing this case to mediation, however, did not require corporate CEOs to attend, nor would there be any reason to do so. The parties were required to "arrange for a representative, with binding authority to settle, to be physically present for the duration." *See* Order Scheduling Mediation at 2 (May 24, 2019) [D.I. 522]. Great American complied with that requirement in full.

4. Dating back to the first pre-petition mediation in April 2018, Great American has now participated in at least nine mediation sessions, many of which occurred over multiple days. With the exception of the first pre-petition mediation (more than two years ago), Great American has been represented at every session, including the August 11 and 12 meetings in this case, by a

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[1] The Court's mediation order specifies that all "communications, information, and evidence exchanged within the mediation shall be treated confidentially by all parties and shall remain confidential following the mediation's conclusion." *See* Order Granting Debtor's Motion to Refer Sexual Abuse Claims and Insurance Coverage Disputes to Mediation and to Appoint the Honorable Gregg W. Zive as Mediator ¶ 5 (May 17, 2019) [D.I. 514].

[2] Some of those assertions, such as the contention that Mr. Van Osselaer was brought on solely to mediate "intra-carrier insurance disputes" that "bogged down" the mediation are demonstrably incorrect because they are contradicted by the Court's orders in this case. *See, e.g.,* Supplemental Order Re Appointment of Additional Mediator ¶ 2 ("Mediation Order") (Sept. 26, 2019) [D.I. 798] ("The Debtor and the United States Olympic Committee, along with their insurance carriers are ordered to participate in such mediations as either Judge Zive or Mr. Van Osselaer may direct.").

Senior Vice President who is closely involved with all details of this case and who has had full authority to bind the company, as well as by additional claims professionals and counsel. Notably, over the fifteen-month period since the Court entered its initial mediation order, neither the mediators nor USAG nor anyone else ever suggested that Great American failed to comply with this obligation.

5. Other contentions in the Motion are similarly disturbing and untrue. Chief among these are the assertions that the insurance carriers, apparently including Great American, "did not comply with this Court's June 19 Order to make meaningful settlement offers" and did not participate in good faith. Motion ¶ 5. That contention is baseless and untrue, but Great American respects this Court's strict confidentiality order. Great American will not violate this Court's order nor attempt to waive the mediation privilege by laying out the specific measures it has taken both during the last round of meetings and throughout this entire process.

6. Great American did not walk away from the mediation following the August 11 and 12 mediation sessions, nor did it refuse to negotiate further. On the contrary, Great American remains committed to continued good faith discussions. The settlement conference that the Motion proposes, however, is neither the appropriate means for continued discussions nor is it likely to lead to a successful result.

ARGUMENT

7. Although Great American agrees that a successful settlement would be the best result for all parties in interest, the format that Movants have proposed for a Settlement Conference is not the appropriate vehicle to see whether that is achievable for at least two reasons.

8. First, Great American respectfully submits that, to the extent a settlement conference is to be conducted by a judicial officer, that Your Honor should not conduct the

conference but rather should appoint another officer. A settlement conference before Your Honor is likely to harden the parties' positions, not bring the case closer to resolution.

9. Movants' request rests on the false premise that this Court is not involved in resolving issues in dispute because trials of the underlying cases could only take place in the district court. *See* Motion ¶ 9. But settlement involves not just the underlying claims, but also the insurers' alleged coverage obligations for those claims.

10. These coverage disputes are hotly contested and are directly before this Court in the adversary proceeding, *USA Gymnastics v. ACE American Insurance Co. et al.*, Adv. Pro. No. 19-50012. The Debtor has a pending summary judgment motion to recover alleged defense costs, and resolution of that issue is likewise necessary for any settlement.

11. Debtor's other claims in the adversary proceeding seek comprehensive declarations of the insurers' obligations to pay for abuse claims brought against USAG. *See* Complaint for Breach of Insurance Policy and Declaratory Judgment of Coverage ¶ 5 (Feb. 1, 2019) [D.I. 1]. This includes adjudication of the insurers' defenses to coverage. For example, many claimants who allege sexual abuse during any of the Great American policy periods allege that such abuse occurred only while at Michigan State. The plain language of the Great American policies, however, includes an endorsement providing that the policies apply only to damages on account of liability for bodily injury arising from, "All events sanctioned by and all activities conducted by USAG." Many claimants never had any contact with USAG events or activities. The adversary proceeding before this Court, in other words, raises substantial issues that are at the heart of what Great American and other insurers are contractually obligated to pay.

12. Moreover, the coverage issues are directly before this Court at USAG's request; not only was a previous suit in the district court raising these same issues dismissed, but USAG opposed the insurers' request to withdraw the reference to the district court.

13. Nor is this Court entirely deprived of jurisdiction with respect to the underlying claims in any event, as the Motion appears to suggest. While trial of personal injury claims is reserved for the district court, this Court retains jurisdiction in the first instance to consider claim objections. The Court may rule on legal issues that one or more claims present, and likewise may estimate claims for purposes of plan confirmation. *See* 28 U.S.C. § 157(b)(2)(B).

14. Accordingly, many issues that are at the heart of this case -- insurance issues as well as underlying liability issues -- are before this Court. The parties cannot be fully honest in discussing both the strengths and weaknesses of their positions here, when Your Honor may be asked to rule on these questions (and some issues are already being briefed here). Accordingly, Great American submits that, if the Court concludes that settlement discussions should proceed other than through Judge Zive and Mr. Van Osselaer, then the Court should call upon a different judicial officer.

15. Second, the call for insurers to produce their CEOs for a settlement conference in this case is an unnecessary and inappropriate effort to punish the insurers for taking positions that the Movants do not like.

16. Unlike the Debtor or USOPC, Great American's CEOs has not been closely involved with this case.[3] Great American receives many claims, and employs experienced claim professionals to analyze and adjust them. Great American has assigned professionals to this case

[3] If USAG and/or USOPC want their executive officers to attend the mediation, there is nothing barring them from doing so. It appears that the heads of those organizations have been closely involved in this chapter 11 case.

who are closely involved with all developments in this case, have experience in making coverage decisions and, at the appropriate level, have the authority necessary to enter into a binding settlement (contingent upon this Court's approval).

17. That is what the current mediation order requires, namely, that corporate entities, including Great American and the other insurers, attend mediation discussions with a representative armed with "binding authority to settle." *See* Mediation Order at 2. That authority was sufficient for the duration of the mediation, and it is sufficient for any settlement conference.

18. Great American's delegation for the mediation was adequate and appropriate. As noted above, Great American consistently had in attendance professionals, including at the Senior Vice President level, with sufficient authority to bind the company. Other than serving to harass the insurers, Movants have not made any showing that requiring the attendance of corporate CEOs who have not had day-to-day involvement in this case would serve any meaningful purpose or assist resolution in any way. The Court accordingly should decline to do so.

CONCLUSION

Great American respectfully requests that the Court deny the Motion as stated and that, to the extent the Court intends to order a settlement conference, that it do so consistent with the concerns that Great American has outlined above.

Respectfully submitted,

Dated: August 24, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, a copy of the *Objection of Great American Assurance Company To The Joint Motion Requesting The Court To Conduct A Settlement Conference And For Other Relief* was filed electronically. Notice of this filing will be sent to the parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Dated: August 24, 2020

/s/ Joshua D. Weinberg
Joshua D. Weinberg