

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

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER
(I) APPROVING PERSONAL INJURY AGREEMENT AND
(II) MODIFYING THE AUTOMATIC STAY, TO THE EXTENT NECESSARY, TO
PERMIT PAYMENT OF SETTLEMENT AMOUNT BY APPLICABLE INSURANCE**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**”), hereby moves (the “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), pursuant to sections 105(a), 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (i) approving the General Release and Settlement Agreement, in the form attached hereto as **Exhibit B** (the “Settlement Agreement”), by and between the Debtor on the one hand, and Caitlyn Cantello, also identified as Claimant No. 251 on the official claims register of the Debtor in the above-referenced chapter 11 case (“**Claimant**”) on the other hand, and (ii) modifying the automatic stay, to the extent necessary, to permit payment of the settlement amount referenced in the Settlement Agreement from applicable insurance. In further support of this Motion, the Debtor respectfully states as follows:

¹ The last four digits of the Debtor’s federal tax identification number are 7871. The location of the Debtor’s principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 362 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a).

BACKGROUND

4. On April 15, 2019, Claimant filed Claim No. 251 (the “**Claim**”) in connection with the Debtor’s chapter 11 case. By way of background, Claimant asserted that she suffered personal injuries at a gymnastics event in Maryland resulting in injuries to both ankles. Claimant has never filed suit for the injuries she allegedly suffered. Claimant’s ability to file suit was automatically stayed as to the Debtor when the Debtor filed for relief under chapter 11 of the Bankruptcy Code on December 5, 2018. *Id.* at ¶ 4.

5. During the course of the Debtor’s chapter 11 case, National Casualty Company (“**NCC**”), with the permission of the Debtor, began to engage with Claimant to see if the matter could be resolved without litigation. Otherwise, the rights of the Claimant, if any, with respect to the Claim would flow through the Debtor’s plan confirmation process; Claimant would be compelled to file suit within thirty (30) days of the effective date of any plan; and would have to litigate her claim to conclusion.

THE SETTLEMENT AGREEMENT

6. To avoid incurring potential litigation expenses in connection with a possible future lawsuit, the Claimant and NCC entered into good-faith and arm’s-length settlement negotiations.

As a result of those negotiations occurring over several months, Claimant has agreed to enter into the Settlement Agreement, subject to Court approval.

7. Pursuant to the terms of the Settlement Agreement, Claimant has agreed to release and waive any and all claims against the Debtor, the United States Olympic and Paralympic Committee (the “**USOPC**”), and their past and present agents, servants, representatives, affiliates, officers, directors, shareholders, members, employees, volunteers, insurers, attorneys, and successors; and all other persons, organizations, corporations, and entities, whether named or unnamed, (hereafter “**Releasees**”), of and from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, whether now known or unknown, presently existing or subsequently discovered by Releasor for personal injury, loss of use, pain and suffering, wage loss, property damage, medical bills or any other damages and including especially any and all claims arising out of alleged personal injuries sustained by Claimant in Maryland on or around April 8, 2017, which forms the basis of the Claim.

8. As a further material part of the Settlement Agreement, Claimant has agreed to withdraw, with prejudice, any and all claims (including but not limited to the Claim) filed against the Debtor in the Bankruptcy Case, and has agreed to waive and release any and all rights with respect to such claims, including Claim No. 251, and further including any rights as a Class 7 Claimant under the Debtor’s proposed chapter 11 plan.

9. In exchange for the releases described above, the Debtor’s insurer, NCC will pay Claimant the sum of \$50,000 (the “**Settlement Amount**”).

10. NCC issued the primary general liability insurance policy to the Debtor for the 2016- 2017 policy year.

11. The Settlement Agreement will become effective upon the Court's entry of an order approving this Settlement Agreement under Rule 9019 of the Federal Rules of Bankruptcy Procedure and this Court's order being a "final" order (the "**Effective Date**"). The Settlement Amount will be paid to Claimant within ten (10) days of the Effective Date.

RELIEF REQUESTED

12. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (i) approving the Settlement Agreement and (ii) modifying the automatic stay, to the extent necessary, to permit NCC to pay the Settlement Amount.

BASIS FOR RELIEF REQUESTED

I. Legal Standard.

A. Approval of Settlements.

13. Section 105(a) and Bankruptcy Rule 9019 authorize the Court to approve settlements of claims. Section 105(a) provides, in relevant part, that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Bankruptcy Rule 9019 provides that, upon notice and a hearing, the Court "may approve a compromise or settlement." FED. R. BANKR. P. 9019(a).

14. Settlements and compromises are favored in bankruptcy proceedings as a means of "minimiz[ing] litigation and expedit[ing] the administration of a bankruptcy estate." *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). The Court should exercise its discretion to approve a settlement or compromise where it is "fair, reasonable, and in the interest of the estate." *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). The Court need only "canvass the issues in order to determine whether the settlement "falls below the lowest point in the range of reasonableness."

In the Matter of Rimsat, Ltd., 224 B.R. 685 (Bankr. N.D. Ind. 1997), citing *In re Goldstein*, 131 B.R. 367, 370 (Bankr. S.D. Ohio 1991). In determining whether a settlement or compromise should be approved, courts consider a number of factors, including “(1) the probability of success in the litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d at 393.

15. The Debtor asserts that the proposed settlement amount is within the range of reasonableness. While Claimant has asserted that her injuries were severe, the Debtor and its insurer believes there are substantial defenses, including that it was not responsible for placement of protective equipment at the competition, that Claimant may have signed a release prior to the competition, and the fact that Claimant may have been contributorily negligent which, under the laws of the State of Maryland, may preclude any recovery on the Claim altogether.

B. The Automatic Stay.

15. Upon the filing of a bankruptcy case, section 362 of the Bankruptcy Code automatically stays, among other things, the commencement or continuation of any proceeding against the debtor “to recover a claim against the debtor that arose before the commencement of the case.” 11 U.S.C. § 362(a). The automatic stay serves a number of important purposes that protect both debtor and creditor interests, including, among other things, “to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it” and “to avoid interference with the orderly liquidation or rehabilitation of the debtor.” *In re Rexene Prods. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (quotations omitted).

16. Section 362(d) authorizes the Court to grant relief from the automatic stay for cause. 11 U.S.C. § 362(d). Although the Bankruptcy Code does not define “cause,” courts in this

District often consider whether (i) the debtor will suffer “any great prejudice” from the continuation of the civil suit,” (ii) the prejudice to the non-bankrupt party by maintenance of the stay considerably outweighs the prejudice to the debtor if the stay is lifted, and (iii) the nonbankrupt party “has a probability of prevailing on the merits.” *Id.*; *see also In re Scarborough St. James Corp.*, 535 B.R. 60, 67–68 (Bankr. D. Del. 2015).

II. Argument.

17. The Settlement Agreement should be approved because it fairly and efficiently resolves the Claimant’s Claim with minimal burden to the estate. The Settlement Amount will be paid solely from proceeds of the NCC policy for the August 1, 2016 to August 1, 2017 policy year. The settlement, moreover, will avoid the uncertainty and expense of potentially litigating with the Claimant and eliminate the potential for additional expenses and the risk of an unfavorable judgment in any claim determination or future lawsuit. In addition, under the Settlement Agreement, USAG, USOPC and others will receive a full and complete release from all liability in connection with the subject matter of the Claim thereby eliminating any liability under a plan of reorganization. Accordingly, the Debtor submits that the Settlement Agreement is reasonable and in the best interests of the Debtor’s estate, creditors and other parties in interest. *In re Louise’s, Inc.*, 211 B.R. at 801.

18. Additionally, the automatic stay should be modified, to the extent necessary, to permit NCC to pay the Settlement Amount. If the automatic stay does apply, cause exists under these circumstances to the permit NCC to pay the Settlement Amount for the reasons that follow.

19. **First**, the Claimant’s claim is not a sexual abuse claim, and has been separately classified from sexual abuse claims in the chapter 11 plan proposed by the Debtor. The payment of Claimant’s claim will have no bearing or effect upon any resolution of sexual abuse claims

under the proposed *Second Amended Joint Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics And The Additional Tort Claimants Committee of Sexual Abuse Survivors* [Dkt. 1601] (the “**Plan**”).

20. **Second**, the Settlement Agreement will fully and finally resolve the Claim against the Debtor and others, and will allow the Debtor to eliminate substantial portions of the plan that have been created just to address the uncertainty of the Claim asserted by the Claimant.

21. **Third**, approval of the Settlement and granting relief from the automatic stay to permit NCC to pay the settlement will result in no prejudice to the Debtor or any other creditor of the debtor’s estate.

22. **Fourth**, the Settlement will—under the Full or Partial Settlement Alternative (as defined in the Plan)—allow NCC to buy-back their insurance policies without excepting the Claimant (referred to in the Plan as the “Personal Injury Claimant”) from those provisions.

23. Accordingly, there is no prejudice, and indeed material benefit, to the Debtor if the Settlement Agreement is approved and the stay is modified to permit NCC to pay the Settlement Amount.

NOTICE

24. The Debtor will provide notice of this Motion and any order entered hereon by email and first class mail on counsel for the Claimant, and in accordance with the *Order Granting Debtor’s Motion For Order Establishing Certain Notice, Case Management, And Administrative Procedures* [Dkt. 213] and Local Rules 9006-1(d) and 9006-1(e). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Order attached hereto as **Exhibit A**, (ii) approve the Settlement Agreement attached hereto as **Exhibit B**,

(iii) authorize the Debtor and its claims agent to take all necessary steps to have Claim No. 251 marked as withdrawn, with prejudice, (iv) authorize the Debtor to remove all references to the Claimant and the Personal Injury Claim and Personal Injury Policy from the Debtor's proposed Plan and disclosure statement; and (v) modify the automatic stay for the purpose of permitting National Casualty Company to make the Settlement Payment.

Dated: October 10, 2021

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Catherine Steege

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Counsel for the Debtor

EXHIBIT A

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

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF AN ORDER
(I) APPROVING PERSONAL INJURY AGREEMENT AND (II) MODIFYING THE
AUTOMATIC STAY, TO THE EXTENT NECESSARY, TO PERMIT PAYMENT
OF SETTLEMENT AMOUNT BY APPLICABLE INSURANCE**

The present matter came before the Court on the Debtor's *Motion for Entry of an Order (I) Approving Personal Injury Agreement and (II) Modifying the Automatic Stay, to the Extent Necessary, to Permit Payment of the Settlement Amount by Applicable Insurance* (the "**Settlement**

¹ The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.

Motion)”²; the Court finds that it has jurisdiction over the Settlement Motion pursuant to 28 U.S.C. § 1334; and after due deliberation, the Court hereby determines the Settlement Motion should be granted as set forth herein.

IT IS HEREBY ORDERED:

1. The Settlement Motion is granted as set forth herein.
2. The Settlement Agreement attached to the Settlement Motion is approved, and the Debtor is authorized to enter into the Settlement Agreement.
3. The automatic stay imposed by 11 U.S.C. §362(a) is hereby modified to permit National Casualty Company to make the Settlement Payment described in the Settlement Motion and Settlement Agreement.
4. Pursuant to the Settlement Agreement, the Claimant (i) is deemed to withdraw Claim No. 251 filed against the Debtor, with prejudice, (ii) is deemed to have waived any and all claims against the Debtor and others, and (iii) is deemed to waive any and all rights provided to the Personal Injury Claimant pursuant to the Debtor’s proposed chapter 11 plan, including any rights under the Personal Injury Policy described in the proposed chapter 11 plan.
5. The Debtor is authorized to revise the plan and disclosure statement to remove any references to the Personal Injury Claim, the Personal Injury Policy or any Class 7 Claimant.
6. The Debtor’s claims agent, Omni Agent Solutions, is hereby authorized and directed to mark Claim No. 251 relating to the Claimant as withdrawn with prejudice.

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² Capitalized terms used herein but not defined shall have the meanings given to them in the Settlement Motion.

EXHIBIT B

GENERAL RELEASE AND SETTLEMENT AGREEMENT

KNOW ALL BY THESE PRESENTS THAT Caitlyn Cantello (“Releasor”), for and in consideration of the sum of Fifty Thousand Dollars (\$50,000.00) (the “Settlement Amount”), does hereby remise, release and forever discharge USA Gymnastics, the United States Olympic and Paralympic Committee, and their past and present agents, servants, representatives, affiliates, officers, directors, shareholders, members, employees, volunteers, insurers, attorneys, and successors; and all other persons, organizations, corporations, and entities, whether named or unnamed, (hereafter “Releasees”), of and from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, whether now known or unknown, presently existing or subsequently discovered by Releasor for personal injury, loss of use, pain and suffering, wage loss, property damage, medical bills or any other damages and including especially any and all claims arising out of alleged personal injuries sustained by Releasor in Maryland on or around April 8, 2017 (hereinafter the “accident” or the “incident”), which forms the basis of proof of claim no. 251 filed with the U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”) in the matter captioned In Re USA Gymnastics, Case No. 18-09108-RLM-11 (the “Bankruptcy Case”).

It is further understood and agreed that Releasor does for herself, her heirs, successors, assigns and next of kin, covenant to defend, indemnify, and save harmless the Releasees from any and every claim or demand of any kind or character arising from said accident, incident, casualty or event, which has been or which may ever be asserted. This includes by way of specification and without limitation any claim by any provider of

medical treatment or care, any provider of wage benefits, or workmen's compensation benefits, or any insurance carrier.

It is understood and agreed that this settlement is a compromise of a disputed claim and that the payment made is not to be construed as an admission of liability on the party or parties hereby released, and that said Releasees deny liability therefore and intend merely to avoid litigation and buy their peace.

Releasor hereby declares and represents that the injuries Releasor sustained are or may be permanent and progressive, and in making this release it is understood and agreed that Releasor relies wholly on Releasor's belief and knowledge of the nature, extent, effect, and duration of said injuries and liability. Therefore, said Release is made without reliance upon any statement or representation of the party or parties hereby released, or their representatives, or by any physician or surgeon by them employed.

Releasor further declares and represent that no representation not herein expressed has been made to or relied upon by Releasor and that this General Release and Settlement Agreement contains the entire agreement between the parties hereto and the terms of this Release are contractual and not a mere recital.

Releasor expressly agrees to be fully and solely responsible for and to pay all bills, costs and/or liens (including but not limited to any liens by Medicare, Medicaid, Department of Public Welfare, or any other applicable lien). Releasor further agrees to indemnify and hold harmless Releasees from any and all claims, actions, demands or liens relating to or arising out of the accident or incident, including but not limited to any claim for medical care or treatment (or reimbursement therefore) and all liens presently existing and to be incurred in the future against Releasor by any person, entity, or corporation

including, but not limited to any Department of Public Welfare, Medicaid/Medicare, Social Security, or other liens. Releasor agrees to defend, indemnify, and hold the Releasees free and harmless from any cost, including attorneys' fees, loss, damage, or liability incurred by or imposed on Releasees, or their insurance carriers, by reason of any unsatisfied or outstanding liens, letters of protection, subrogated interest or bills.

The Releasor affirmatively represents that she is not a Medicare beneficiary, that she has not applied for Social Security benefits associated with the aforementioned accident, that she does not anticipate becoming eligible for Medicare benefits within 30 months, and that Medicare has made no payments for her medical care associated with the aforementioned accident. Pursuant to 42 CFR 411.46 and 42 CFR 411.47, the Medicare Intermediary Manual and the Medicare Carrier's Manual, the parties to this settlement believe that any rights or interests Medicare may have in this settlement have been adequately considered and protected. It is not the intention of the parties to this settlement to shift responsibility of future medical benefits to Medicare.

Releasor understands that the effectiveness of this General Release and Settlement Agreement is subject to approval of the Bankruptcy Court in the Bankruptcy Case. Releasor also agrees and understands that unless and until this General Release and Settlement Agreement is approved by the Bankruptcy Court, such General Release and Settlement Agreement shall not be effective.

Releasor further understands and agrees that, upon approval of this General Release and Settlement by the Bankruptcy Court and payment of the Settlement Amount, Releasor shall be deemed, without further action by Releasor, (i) to withdraw, with prejudice, proof of claim no. 251 filed in the Bankruptcy Case; (ii) to waive and release any rights, if any,

as a creditor, including as a Class 7 creditor, in connection with the Bankruptcy Case; and (iii) to authorize the claims agent in the Bankruptcy Case to mark proof of claim no. 251 as withdrawn, and (iv) to waive any and all rights, if any, in connection with the Bankruptcy Case. Releasor understands that USAG will promptly file a motion in the Bankruptcy Court seeking to approve this General Release and Settlement Agreement.

Releasor further hereby declares that (i) she has had the opportunity to review this General Release and Settlement Agreement and the Notice of Withdrawal of Proof of Claim Number 251 attached hereto, (ii) she has had the opportunity, in her discretion, consult with legal counsel or not, (iii) she relies solely upon her own judgment, belief and knowledge, (iv) she has carefully read this agreement before signing it, and (v) that the terms are fully understood and voluntarily accepted. Releasor states that she has not been influenced to any extent whatsoever in executing the General Release and Settlement Agreement by any other party hereto or by any person representing such other party.

Releasor agrees to execute the Notice of Withdrawal of Proof of Claim Number 251, attached hereto.

Releasor further understands that each of the provisions herein constitutes a material provision of this General Release and Settlement Agreement. However, if any court of competent jurisdiction holds any provision of this General Release and Settlement Agreement invalid or unenforceable, Releasor agrees that all other provisions of this General Release and Settlement Agreement are construed to remain fully valid, enforceable, and binding.

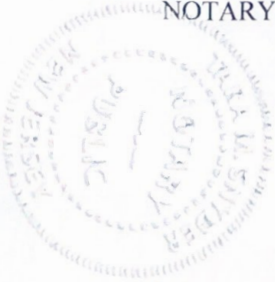
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IN WITNESS WHEREOF, and intending to be legally bound hereby, I have hereunto set
my hands this 9 day of October, 2021.

Caitlyn Cantello
Caitlyn Cantello, Releasor

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 9 DAY,
OF October, 2021.

Tara M. Snyder
NOTARY PUBLIC



TARA M. SNYDER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 9/24/2024

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

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

NOTICE OF WITHDRAWAL OF PROOF OF CLAIM NUMBER 251

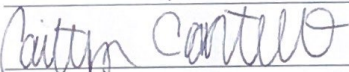
Creditor Name:	Caitlyn Cantello
Claim Number:	251
Claim Date:	April 15, 2019
Claim Amount:	\$3,000,000.00

I, the undersigned, am the above-referenced creditor. I hereby withdraw the above-referenced claim, Claim Number 251, and authorize the Clerk of this Court, or their duly appointed claims agent, Omni Agent Solutions, to reflect this withdrawal on the official claims register for Debtor USA Gymnastics, Inc.

Dated:

10/9/21

Signed:



Caitlyn Cantello

¹ The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.