

## Nassar Victims' Payout Hangs On Fight With USAG's Insurers

By **Zachary Zagger**

*Law360 (February 13, 2019, 9:57 PM EST)* -- USA Gymnastics and its insurers are battling in bankruptcy court over coverage for up to \$150 million in sexual abuse claims, a dispute that will determine how much money abuse victims can recover and set the stage for similar insurance fights in sexual abuse scandals in other Olympic sports.

The national governing body for gymnastics and sponsor of the U.S. Olympic gymnastics teams filed for Chapter 11 bankruptcy in December, facing more than 100 lawsuits from 350 women alleging USAG allowed former Olympics team doctor Larry Nassar to abuse hundreds of victims.

USAG estimated in bankruptcy court filings that it is facing \$75 million to \$150 million in claims. With the organization having few assets beyond its insurance policies, the fate of the claims could come down to those policies. To that end, USAG on Feb. 1 filed a suit against 11 of its insurers asking the bankruptcy court to sort out its insurance coverage, alleging that many of the insurers are balking at paying claims.

"It may be that some of these insurers have outright denied coverage, some of them may have reserved their rights, or they may simply not have responded," said insurance coverage litigator Lorelie S. Masters, a partner at Hunton Andrews Kurth LLP. "But since [the insurance policies are] the primary asset of the bankruptcy, in order for them to resolve this bankruptcy they are going to have to resolve these claims, and they are going to have to have money to pay them."

USAG's status as a nonprofit clouds the situation for Nassar's victims. The organization has few assets and the nature of the allegations against it has created intense public pressure for the victims to be compensated.

USAG said in its filing that its "insurance policies are its greatest asset available to resolve these lawsuits."

"One of the big questions is whether they have enough coverage," said Robin Cohen, head of McKool Smith PC's insurance recovery practice. "They probably don't have enough coverage."

The organization is likely trying to limit its overall liability by fighting the merits of some of the claims to get it within their coverage limits, Cohen said. At the same time, the insurance fight is scrambling exactly how much coverage they may have to pay out the claims.

Furthermore, the potential ultimate payouts to the victims is complicated by the mix of negligence and fraud claims USAG faces. Fraud and other intentional conduct claims are usually not covered under typical general liability insurance policies, experts said. USA Gymnastics is suing over both comprehensive general liability policies and directors and officers policies, according to its complaint.

In addition to claims that they negligently supervised Nassar, many of the plaintiffs brought claims for intentional infliction of emotional distress and fraud for allowing Nassar to hold a position where he could sexually assault gymnasts despite receiving complaints of his abuse and by continuing to endorse him as a competent sports doctor.

Even then, experts say that typically, the obligations to defend and pay for claims is only cut off once there is a final finding that a policyholder committed fraud by a judge or jury. Therefore, USAG may be hard-pressed to reach a settlement with victims. Experts said insurers would likely fight having to pay to settle fraud claims they would otherwise have no duty to cover.

Standards are different for directors and officers policies, raising questions of whether the insurance proceeds should go toward paying the claims against the organization or against the officials covered by the D&O policies

At the end of the day, this is money that will go to sexual abuse victims, many of whom are former Olympic athletes and medalists, putting tremendous scrutiny on the carriers.

"There is going to be a lot of political and social pressure on the carriers to step up here," Cohen said.

Masters said the insurers are likely concerned as to how this gets sorted out as they could have similar policies with other nonprofit sports organizations or the like that could also be hit with sexual abuse suits.

It is not just USAG that has come under fire. Officials for several other Olympic sports have faced similar claims that they failed to address sexual abuse and assault claims against coaches and trainers, drawing lawsuits and scrutiny against national governing bodies and the U.S. Olympic Committee.

"It puts every similar kind of nonprofit on notice," Masters said. "They need to not only look at all of their policies and procedures but also that they have insurance policies that they adequately protect not only the entity but its directors and officers."

--Additional reporting by Jeff Sistrunk and Alex Wolf. Editing by Brian Baresch and Emily Kokoll.