

EXHIBIT J

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*ADMITTED IN WASHINGTON

September 28, 2022

Via Email to WBock@kqrlaw.com

William Bock
Kroger Gardis & Regas, LLP
111 Monument Circle, Suite 900
Indianapolis, IN 46204

Re: ***Taliyah Brooks v. USA Track & Field, Inc.***
Pre-Suit Matter
Our File No. 13728-0653

Dear Mr. Bock:

My apologies for the oversight in not providing you what responsive documents are in the possession, custody, or control of USATF sooner. There was no plan to “refuse” production of documents which would be discoverable in any eventual lawsuit, which obviously, we all hope we can avoid.

Below, I will discuss the individual document requests sent both to Norman Wain, of USA Track and Field (“USATF”), and Carrie Hernandez, of Philadelphia Indemnity Insurance Company (“Philadelphia”). Most of these requests are overlapping. The below discussion does not, in any way, waive any objections to the discoverability or admissibility of documents should this matter get to litigation. Further, nothing below represents that any document that could potentially be responsive to your requests exists or does not exist. Unless specifically noted as not being discoverable, if documents are not being produced by USATF, it has done so because they are not known to exist by USATF or are outside the possession, custody, or control of USATF.

- Wetbulb Globe Temperature Measurements: USATF is not in possession, custody or control of such documents. To the extent they exist, they would most likely be in the possession of Dr. Greenleaf, the chief medical officer for the trials. Dr. Greenleaf was retained by TrackTown Events, LLC, the local organizing committee.
- Internal communications regarding WetBulb temperatures: USATF has no responsive documents in its possession, custody, or control.
- Policies and procedures for cancellation or postponement: Other than USATF’s Competition Rules, USATF does not have any specific responsive documents to

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this request. However, I have included a copy of the TrackTown Events bid proposal and the contract between it and USATF for the trials.

- Policies and procedures for heat protection: Other than USATF's Competition Rules, USATF is not in possession, custody or control of any responsive documents.
- Policies, procedures, and internal communications: USATF is not in possession, custody, or control of any written communications responsive to this request.
- Communications reviewed in investigating cancellation or postponement decisions: This request appears to request protected work product, and there are no non-privileged documents which would be responsive to this request.
- Records from Dr. Jackson and Sean Gately: USATF has no medical records prepared or kept by these individuals. As noted, Dr. Greenleaf was the Chief Medical Officer, retained by TrackTown Events; Dr. Greenleaf, we believe, retained Dr. Jackson and Mr. Gately. Neither Dr. Jackson nor Mr. Gately is an employee of USATF.
- Statements from Dr. Jackson or Sean Gately would be considered work product and not discoverable. Without waiving those protections, USATF has none.
- Treatment/monitoring records for Ms. Brooks at the trials: USATF does not have any medical records in its possession, custody, or control.
- Liability waiver: Attached
- Training materials re heat issues: Other than USATF's Competition Rules, USATF has no responsive documents within its possession, custody, or control.
- Requests to cancel or postpone: USATF has no documents within its possession, custody, or control.
- USATF is not in possession, custody, or control of any of Ms. Brooks' medical records from any treatment she received at the trials.
- Documents provided to, and individuals interviewed by Philadelphia are work product prepared in anticipation of litigation and will not be produced.

Finally, I would point out to you that the case cited to Philadelphia in your email to Kelly Bellinghausen on April 4, 2022, *Burr v. United Farm Bureau*, is a *first party* insurance case, *not a third-party* claim, which is what we have in this instance. That is, an insured in a first party bad faith claim brought a motion to compel the insurer's claim file covering her own claim. Therefore, the theory that USATF's insurer, Philadelphia,

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must turn over investigative documents to your client, a third party making a claim against their insured is not covered by *Burr*, and neither USATF, nor Philadelphia waives protections afforded by the work product doctrine or attorney-client privilege.

If there are other documents you wish to seek, or would like to discuss these further, please let me know.

Sincerely,

SCHULTE, ANDERSON, DOWNES,
ARONSON & BITTNER P.C.

/s/ Matthew K. Sorensen

Matthew K. Sorensen

MKS:kb
cc: Clients