

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

**In re:**

**Champlain Towers South Collapse Litigation**

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**DEFENDANT CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.'S**

**(I) RESPONSE TO DEFENDANT 8701 COLLINS DEVELOPMENT, LLC'S  
UNOPPOSED MOTION FOR MODIFICATION OF THE COURT'S MARCH 11, 2022  
ORDER REQUIRING MEDIATION AND STAYING DISCOVERY AS TO MEDIATING  
DEFENDANTS**

**AND**

**(II) NOTICE TO THE COURT AND PARTIES REGARDING GREAT AMERICAN  
INSURANCE COMPANY'S WAIVER OF SUBROGATION RIGHTS AGAINST THE  
ASSOCIATION**

Defendant Champlain Towers South Condominium Association, Inc., through its Court-appointed Receiver Michael I. Goldberg (the "Association"), responds briefly to *8701 Collins Development, LLC's Unopposed Motion for Modification of the Court's March 11, 2022 Order Requiring Mediation and Staying Discovery as to Mediating Defendants* ("Motion"), which requests an order "(i) requir[ing] the Association's property insurer, Great American, and the Association's liability insurers, Arch, Endurance, James River, PIIC, QBE, and Fireman's Fund, to attend the April 27th and 28th mediation [and] (ii) requir[ing] Universal and any property insurer that has paid at least \$250,000.00, in the aggregate, of insurance proceeds to any owner (or owners), or tenant (or tenants), of a unit (or units) at Champlain Towers South for loss of personalty or damage to the unit to attend the April 27th and 28th mediation" of the claims against Defendants 8701 Collins Development, LLC, Terra Group, LLC, Terra World Investments, LLC (the "Terra Defendants"), and John Moriarty & Associates of Florida, Inc. ("JMA"). *Motion* at 3.

In response to the *Motion* and to provide Notice to the Court and all parties of information that the Association submits largely vitiates the concerns the Association understands gave rise to the *Motion*, the Association states:

1. While the Association did not oppose the *Motion* in discussions with the Terra Defendant's counsel when the issue was floated, the Association believes that the addition of multiple insurer representatives to the April 27-28 mediation of the claims by the Association and Plaintiffs against the Terra Defendants and JMA would unnecessarily complicate the mediation proceedings.<sup>1</sup>

2. The Association understands that the Terra Defendants' concern giving rise to the *Motion* is potential subrogation rights by insurers of parties other than the Terra Defendants and JMA; however, the Association believes no such subrogation rights exist.

3. In any event, as a January 19, 2022, letter from counsel for the Association's property insurer Great American Insurance Company ("GAIC") establishes (attached as **Exhibit A**), GAIC has kindly waived any such rights it may have had, stating:

After thorough and careful consideration of all of the facts and circumstances surrounding this tragic loss of life and property, GAIC had previously made the decision not to pursue subrogation as an accommodation to its insured and all of the victims of this tragedy.

4. The Association greatly appreciates GAIC's recognition of the enormity of this tragedy and would hope that any other involved insurer would similarly waive any subrogation rights it may believe it has for the same reasons as stated by GAIC.

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<sup>1</sup> The Association notes that involving a host of other insurer representatives would not only create logistical complications, but significant mediation privilege complications.

5. As to the *Motion*, the Association believes that GAIC's statement makes the concerns giving rise to the *Motion* largely moot and, accordingly, the relief requested is both unnecessary and risks interference with the mediation process with the Terra Defendants and JMA.

6. Accordingly, the Association believes that the goals of the April 27-28 mediation would best be served by not granting the relief requested, especially in view of GAIC's waiver of any subrogation rights it may have had.

Respectfully submitted,

Dated: April 4, 2022

**AKERMAN LLP**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the *Defendant Champlain Towers South Condominium Association, Inc.'s (I) Response to Defendant 8701 Collins Development, LLC's Unopposed Motion for Modification of the Court's March 11, 2022 Order Requiring Mediation and Staying Discovery as to Mediating Defendants and (II) Notice to the Court and Parties Regarding Great American Insurance Company's Waiver of Subrogation Rights Against the Association* was served through the Florida Court's E-Filing Portal to all counsel of record registered to receive service for this matter on this 4th day of April, 2022.

By: Christopher S. Carver  
Attorney

# Exhibit A

# MCLAUGHLIN & STERN, LLP

FOUNDED 1898

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January 19, 2022

## *Via Email*

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Re: Great American Insurance Company  
Insured: Champlain Towers South Condominium Association, Inc.  
Location of Loss: 8777 Collins Avenue, Miami Beach, FL 33154  
Nature of Loss: Building Collapse  
Date of Loss: June 24, 2021  
Policy Number: MACE6583590000  
Claim Number: A00371475


Dear Mark and Amanda:

This is in response to your letter of January 13, 2022.

After thorough and careful consideration of all of the facts and circumstances surrounding this tragic loss of life and property, GAIC had previously made the decision not to pursue subrogation as an accommodation to its insured and all of the victims of this tragedy.

Should you have other questions relative to this matter, please do not hesitate to contact me. Notwithstanding the foregoing, GAIC hereby reserves all rights, and claims, whether contractual, statutory, implied by law or equity, and nothing in this correspondence should be deemed a waiver of any such rights.

Very truly yours,



Nelson E. Canter

cc: Great American Insurance Company