

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

In re

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

Re: Docket No. 1553, 1567

Hearing: Oct. 4, 2021 at 10:30 a.m. (ET)

**NON-COMMITTEE CLAIMANTS' OBJECTION TO USA GYMNASTICS'  
DISCLOSURE STATEMENT FOR FIRST AMENDED JOINT CHAPTER 11 PLAN OF  
REORGANIZATION PROPOSED BY USA GYMNASTICS AND THE ADDITIONAL  
TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS**

Dr. Erin Kaufman, M. Doe, Kelly Doe, Rylee Daugherty, John J. Ferreira, and Jacqueline Combs (collectively, the "Non-Committee Claimants"), by and through their undersigned bankruptcy counsel, object to *USA Gymnastics' Disclosure Statement for First Amended Joint Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* [Docket No. 1567] (the "Disclosure Statement") filed by USA Gymnastics (the "Debtor" or "USAG") in connection with the *First Amended Joint Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* [Docket No. 1566] (the "Plan").<sup>2</sup> In addition, the Non-Committee Claimants join the objections filed by Terin Humphrey [Docket No. 1578] (the "Humphrey Objection") and the United States Trustee [Docket No. 1580] (the "UST Objection").

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan and Disclosure Statement. Unless otherwise indicated, bolding has been omitted from quotations from the Plan and Disclosure Statement.

## I. PRELIMINARY STATEMENT

1. The Disclosure Statement as currently drafted fails in its central purpose, which is to provide Abuse Claimants (including Future Claimants – two of whom are Non-Committee Claimants) with the information necessary to meaningfully evaluate their proposed treatment under the Plan. It cannot be approved in its current form.

2. Most critically, the Disclosure Statement omits the Allocation Protocol, which is the single most important facet of the Plan for voting creditors. The Allocation Protocol dictates how much each creditor will receive on account of his or her Abuse Claim, yet it is nowhere to be found in the Plan or Disclosure Statement currently on file. The version of the Plan filed last month included an empty Exhibit H (“Allocation Protocol [To Be Supplemented]”), and the revised version filed just seven days prior to the objection deadline now promises to provide the missing Allocation Protocol “Prior To The Disclosure Statement Hearing.” Plan Ex. H. This unjustified delay deprives creditors of the opportunity to meaningfully evaluate the adequacy of disclosures regarding the Allocation Protocol. Abuse Claimants should have at least 28 days to review the complete Plan and Disclosure Statement – including the all-important Allocation Protocol – prior to Court’s approval of solicitation and voting.

3. The Disclosure Statement is also inadequate with respect to Future Claims and Future Claimants. It fails to quantify or estimate the potential number and amount of such claims, or even acknowledge the indisputable fact that certain of the Abuse Claims that were filed after the Bar Date (but are nonetheless actually on file) qualify as Future Claims. Nor does the Disclosure Statement provide any explanation or justification for reserving just 1% of available funds for Future Claimants – and certainly no showing that such a small reserve will in fact suffice to provide Future Claimants the same compensation as other Abuse Claimants. In addition, Future Claimants appear to be subject to a separate (and presumably unequal)

Allocation Protocol, and are excluded from the important and potentially highly valuable right to participate in litigation against Non-Settling Insurers, all without any explanation or justification for such exclusion.

4. Finally, the liquidation analysis is incomplete and misleading. It asserts that in a hypothetical chapter 7 liquidation there would be no net assets available to make distributions to holders of Abuse Claims or Future Claims, even though there is in fact ample insurance coverage. Nor does the liquidation analysis account for the fact that in a hypothetical chapter 7 case, there would be no channeling injunction and hence no bar on the pursuit of culpable third parties – including, in particular, the USOPC. If the channeling injunction is truly as valuable as it is represented to be, then the Disclosure Statement should include an estimate of what creditors are giving up if they provide the votes to confirm the Plan and thereby implement the channeling injunction.

5. For all these reasons, and as set forth in more detail below, the Motion should be denied unless and until the foregoing infirmities are remedied.

## II. FACTUAL BACKGROUND

### A. The Debtor's Protracted Plan Process

6. On December 5, 2018, the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code. More than a year into the case, on January 30, 2020, the Debtor filed a *Chapter 11 Plan of Reorganization Proposed by USA Gymnastics* [Docket No. 905], followed on February 21, 2020 by a *First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics* [Docket No. 928] and accompanying *Disclosure Statement for First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics* [Docket No. 930]. No disclosure statement was approved for either plan.

7. On August 31, 2021, the Debtor filed the *Joint Chapter 11 Plan of Reorganization Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* [Docket No. 1551], *USA Gymnastics' Disclosure Statement for Joint Chapter 11 Plan of Reorganization Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* [Docket No. 1552], and *Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* [Docket No. 1553] (the "Procedures Motion"). The Procedures Motion represented that key information missing from these filings – specifically, the Plan exhibits comprising the Allocation Protocol and the Debtor's and Survivors' Committee letters in support of the Plan – would be filed by "September 22, 2021, at 11:59 p.m. E.T." Procedures Motion ¶ 11.

8. On September 22, 2021, the Debtor filed the current Plan and Disclosure Statement. The exhibits comprising the Allocation Protocol are still absent, except now there is a note that they will be provided "Prior To The Disclosure Statement Hearing." Plan Ex. H. The promised Debtor's and Survivors' Committee letters in support of the Plan have never been filed.

**B. The Non-Committee Claimants**

9. Dr. Erin Kaufman is the holder of an Abuse Claim (Proof of Claim No. 546) filed on June 21, 2019 in an unliquidated amount. On July 15, 2019, Dr. Kaufman filed the *Creditor's Motion to File Claim After Bar Date* [Docket No. 657], seeking to have her claim deemed timely filed. The Court granted that motion by order entered on September 17, 2019, rendering her claim deemed timely filed [Docket No. 773].

10. M. Doe is the holder of an Abuse Claim (Proof of Claim No. 534) timely filed on April 29, 2019 in an unliquidated amount.

11. Kelly Doe is the holder of an Abuse Claim (Proof of Claim No. 529) timely filed on April 29, 2019 in an unliquidated amount.

12. Rylee Daugherty is the holder of an Abuse Claim (Proof of Claim No. 281) timely filed on April 25, 2019 in an unliquidated amount, and thereafter amended (Proof of Claim No. 281-1) on April 6, 2020.

13. John J. Ferreira is the holder of an Abuse Claim (Proof of Claim No. 559) filed on September 8, 2020 in an unliquidated amount. Mr. Ferreira's claim was time-barred as of March 1, 2019, but was subsequently revived by legislation enacted in the State of New York, where Mr. Ferreira was abused. Accordingly, Mr. Ferreira is a Future Claimant under the Plan.

14. Jacqueline Combs is the holder of an Abuse Claim (Proof of Claim No. 560) filed on September 11, 2020 in an unliquidated amount. Ms. Combs' claim was time-barred as of March 1, 2019, but was subsequently revived by legislation enacted in the State of New York, where Ms. Combs was abused. Accordingly, Ms. Combs is a Future Claimant under the Plan.

### III. ARGUMENT

#### A. The Absence of an Allocation Protocol Precludes Disclosure Statement Approval

15. The most basic task of the Disclosure Statement is to “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting [a] distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). “Creditors not only rely on the disclosure statement to form their ideas about what sort of distribution or other assets they will receive but also what risks they will face.” *In re Radco Properties, Inc.*, 402 B.R. 666, 682 (Bankr. E.D.N.C. 2009). To be adequate, a disclosure statement must therefore contain, at a minimum, “simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible [Bankruptcy Code] alternatives ....” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988). *See also* UST Obj. at 3–6 (comprehensively setting out the statutory and decisional standards in this regard).

16. The most important piece of information the Abuse Claimants will look for in the Disclosure Statement is the amount they can expect to receive if the Plan is approved and their claims are allowed. That amount will be dictated by the Allocation Protocol that is supposed to be attached as Exhibit H to the Plan. At present, however, that exhibit states as follows:

Allocation Protocol

[To Be Supplemented Prior To The Disclosure Statement Hearing]

17. This objection is being filed on the Procedures Motion's objection deadline, yet to date no Allocation Protocol has been filed. By waiting until after the objection deadline to reveal the Allocation Protocol, the Debtor apparently seeks to insulate the Allocation Protocol from all scrutiny as to the adequacy of disclosure concerning what is likely the most important facet of the Plan. If the Allocation Protocol is filed shortly before the Disclosure Statement hearing and the Plan is thereafter immediately sent out for a vote (as the Procedures Motion contemplates), creditors will have no opportunity to provide any input whatsoever, and there will be no dialogue. Instead, the votes will be tallied and then the Debtor will claim it is too late to modify the Allocation Protocol, as that would require re-solicitation.

18. Especially given that this case has been pending for more than 36 months, there is no excuse for this delayed disclosure. The U.S. Trustee is correct that the Debtor's "failure to file documents central to the terms of the Joint Plan, Disclosure Statement, and Procedures Motion result in the failure to give all parties adequate notice of the terms of those documents and therefore proper notice has not been provided under Rule 3017." *United States Trustee's Objection to Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* [Docket No. 1579] at 8. Consistent with the centrality of this information to the Disclosure Statement and in accordance with Bankruptcy Rule 2002(b),

Abuse Claimants should have at least 28 days to review the Allocation Protocol before the Court approves any Disclosure Statement.

**B. There is Inadequate Information About Future Claims and Future Claimants**

19. The Disclosure Statement asserts that there are 15 late-filed Abuse Claims on file, and both the Plan and Disclosure Statement state that none of those Abuse Claimants will be compensated. *See* Disclosure Statement § I.B.1; Plan § 3.11. In fact, however, certain of those Abuse Claims – including those filed by Non-Committee Claimants John J. Ferreira and Jacqueline Combs – qualify as Future Claims under the Plan.

20. A “Future Claim” is defined as a “Claim” made by a “Future Claimant,” *id.* § 1.1.62, which is in turn defined to include someone who “held a Sexual Abuse Claim as of the Bar Date” but whose claim was barred under the applicable statute of limitations as of March 1, 2019 yet was thereafter revived as a result of legislation. *See id.* § 1.1.63. Ferreira and Combs fall within this definition, as both were abused in the State of New York and hold claims that were time-barred as of March 1, 2019 but were thereafter revived by New York’s revival legislation. At least one other creditor (Terin Humphrey) alleges that she, too, is listed as a late-filed Abuse Claim but in fact is a Future Claimant. *See* Humphrey Obj. at 1–4. It is possible that other Abuse Claimants who are currently counted among the fifteen late-filed Abuse Claims also qualify as Future Claimants.

21. In addition to incorrectly asserting that all 15 Abuse Claims filed after the Bar Date are not entitled to compensation (when in fact at least three, and possibly many more, are Future Claims), the Disclosure Statement is also deficient in that it provides virtually no information regarding how Future Claims will be treated. The Disclosure Statement fails to quantify or estimate the number and amount of such claims, and it provides no explanation or justification for reserving just 1% of available funds for Future Claimants. There is certainly no

showing that a reserve of that size will in fact suffice to provide Future Claimants with the same compensation as other Abuse Claimants, which is the very purpose of having a Future Claims Representative. *See, e.g., Debtor's Motion for Order Authorizing the Appointment of a Future Claimants' Representative* [Docket No. 363] ¶¶ 10–11 (quoting case law to the effect that the purpose of a future claimants representative is to “assure equitable treatment of future as well as present claimants,” and successfully asking this Court to appoint such a representative).

22. The Disclosure Statement as drafted raises other troubling issues of unequal treatment as between current and future claimants. Future Claimants appear to be excluded from the important (and potentially highly valuable) right to participate in litigation against Non-Settling Insurers, without any explanation or justification for such exclusion. *See* Disclosure Statement § VI.B.6 (“A Future Claimant may not elect to become a Litigation Claimant.”). In addition, the Plan appears to contemplate two separate Allocation Protocols – one for present claimants, another for Future Claimants. *Compare* Plan Ex. H *with* Plan Ex. I. As both exhibits are currently blank, it is impossible to tell what differences the Debtor envisions between the two Allocation Protocols. But the existence of separate Allocation Protocols certainly implies that there will not be identical Allocation Protocols.

**C. The Debtor's Liquidation Analysis Is Misleading**

23. The liquidation analysis appended as Exhibit 3 to the Disclosure Statement asserts that in a hypothetical chapter 7 liquidation there would be no net assets available to make distributions to holders of Abuse Claims or Future Claims. There is, however, ample insurance coverage available, and it is not sufficient to just state in a Note to the analysis that “[i]n the event of a chapter 7 liquidation, the Abuse Claims ... would be allowed to proceed against certain USAG insurance policies,” Disclosure Statement Ex. 3 at Note 10, without more.



24. Nor does the liquidation analysis account for the fact that in a hypothetical chapter 7 case, there would be no channeling injunction barring pursuit of culpable third parties, such as the USOPC. Accordingly, as the United States Trustee aptly argues, the Debtor “should disclose the total assets of non-debtors who are to be released that would be available for distribution to claimants who successfully established that they were liable for claims being extinguished under the proposed plan.” UST Obj. at 10.<sup>3</sup> *See also id.* at 8–9 (making the related point that the Disclosure Statement should delineate the exact “people and entities who would be covered by the Channeling Injunction and what their relationship is to the Debtor,” as well as “what they are and are not contributing to the Trust, and the rationale for including them in the Channeling Injunction”).

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<sup>3</sup> Although the United States Trustee states in passing that the best interests of creditors test “does not technically apply to [claims against] non-debtors,” UST Obj. at 10, the Non-Committee Claimants respectfully disagree. Most courts that have addressed the issue have held that in conducting the best interests inquiry – *i.e.*, comparing what creditors “will receive or retain under the plan” with what creditors would “receive or retain if the debtor were liquidated under chapter 7” – a court must consider the rights of creditors to bring claims against non-debtor third parties that are proposed to be released under the plan given that those rights would be retained in a chapter 7. *See, e.g., In re Quigley Co.*, 437 B.R. 102, 144-45 (Bankr. S.D.N.Y. 2010); *In re Ditech Holding Corp.*, 606 B.R. 544, 607 (Bankr. S.D.N.Y. 2019); *In re Hercules Offshore, Inc.*, 565 B.R. 732, 765 (Bankr. D. Del. 2016); *In re Wash. Mut., Inc.*, 442 B.R. 314, 359-60 (Bankr. D. Del. 2011); *see also, e.g., In re SunEdison, Inc.*, 576 B.R. 453, 457 n.4 (Bankr. S.D.N.Y. 2017); *Mercury Capital Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006).

#### IV. CONCLUSION

25. In the absence of additional disclosures, the Motion should be denied because the Disclosure Statement fails to provide adequate information to permit Abuse Claimants and Future Claimants to make an informed decision with respect to voting on the Plan.

DATED: September 29, 2021

By: /s/ Robert J. Pfister

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## CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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*/s/ Robert J. Pfister*

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