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

IN RE: USA GYMNASTICS, Debtor.	CASE NO. 18-09108-RLM-11

UNITED STATES TRUSTEE'S 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 (Docket No. 1567)

Nancy J. Gargula, the United States Trustee for Region 10 (the "U.S. Trustee"), by and through her undersigned counsel, hereby objects to the approval of USA Gymnastics' ("Debtor") *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) ("Disclosure Statement") because the Disclosure Statement lacks adequate information, and the underlying plan is patently unconfirmable. The U.S. Trustee states as follows:

JURISDICTION AND STANDING

1. This Court has jurisdiction to hear this Objection under 28 U.S.C. §§ 157 and 1334.

2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written

by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys.* (*In re Columbia Gas Sys.*), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting the U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *In re Czykoski*, 320 B.R. 385 (Bankr. N.D. Ind. 2005).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on any issue in any case or proceeding, including with regard to this Objection.

BACKGROUND

4. On December 5, 2018, the Debtor filed its voluntary petition for relief under chapter 11 of Title 11 of the Bankruptcy Code.

5. Pursuant to 11 U.S.C. § 1102(a), on December 19, 2018, the U.S. Trustee appointed the Additional Tort Claimants Committee of Sexual Abuse Survivors. (Docket No. 97) (the "Committee").

6. The Debtor has continued in possession of its properties and has continued to operate and maintain its business as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

7. August 31, 2021, the Debtor and the Committee filed their *Joint Chapter 11 Plan of Reorganization Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* (Docket No. 1551).

8. On August 31, 2021, the Debtor filed its *Disclosure Statement for Joint Chapter 11 Plan of Reorganization* (Docket No. 1552).

9. On August 31, 2021, the Debtor filed *Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* (Docket No. 1553) ("Procedures Motion").

10. On August 31, 2021, notice was issued setting 11:59 p.m. EDT, September 29, 2021, as the deadline to file objections to the Procedures Motion and/or Disclosure Statement. (Docket No. 1554).

11. On September 22, 2021, the Debtor and the Committee filed their *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 "Joint Plan").

12. On September 22, 2021, the Debtor filed its Disclosure Statement (Docket No. 1567).

13. The Hearing on the Disclosure Statement has been scheduled for October 4, 2021, at 10:30 a.m.

14. This Objection is filed before the deadline to file objections and is therefore timely.

ARGUMENT

I. The Disclosure Statement Should Not Be Approved Because It Fails to Provide Adequate Information, as Required by Section 1125(b).

An acceptance or rejection of a plan may not be solicited unless, at the time of or before such solicitation, claimants are provided a copy of the plan or

a summary of the plan, and of a written disclosure statement approved by the court as containing "adequate information." 11 U.S.C. § 1125(b).

"Adequate information" is defined in the Bankruptcy Code as meaning

> … information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information; …

11 U.S.C. § 1125(a).

The standard for what constitutes "adequate information" is flexible in any particular situation and is determined on a case-by-case basis, *see Aspen Limousine Servs. v. Aspen Limousine Serv.*, 193 B.R. 325, 334 (D. Colo. 1996); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988), with the determination being largely within the discretion of the bankruptcy court. *See Menard-Sanford v. Mabey* (*In re A.H. Robins Co.*), 880 F.2d 694, 697 (4th Cir. 1989); *Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988).

The court in *In re Budd Co.* surveyed existing case law and found that other courts have created a non-exhaustive list of factors that should be

disclosed, with the qualification that "[d]isclosure of all factors is not necessary in every case." *Budd Co.*, 550 B.R. 407, 412-13 (Bankr. N.D. Ill. 2016) (citing *Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)). The factors enumerated by the *Budd Co.* court are:

> (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates. (citations omitted)

Budd Co., *Id.* at 412-13.

Further, to provide adequate information, a disclosure statement must include “all information that is reasonably necessary to permit creditors and parties-in-interest to fairly and effectively evaluate the plan.” *Robert's Plumbing & Heating, L.L.C., No.* 10-23221, 2011 WL 2972092, at *2 (Bankr. D. Md. July

20, 2011); *see also Nelson v. Dalkon Shield Claimants Trust (In re A.H. Robbins Co.)*, No. 98-1080, 1998 WL 637401, at *3 (4th Cir. Aug. 31, 1998) (defining adequate information as "sufficient information to permit a reasonable, typical creditor to make an informed judgment about the merits of the proposed plan"). The purpose of the disclosure statement is to give creditors sufficient information about the debtor, the plan, and the creditors' treatment thereunder to permit the creditors to make informed and reasoned votes. *See, e.g., Monnier Bros. v. Monnier Bros. (In re Monnier Bros.)*, 755 F.2d 1336, 1342 (8th Cir. 1985) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."). Knowledge of a debtor's financial condition is essential before any informed decision concerning the merits of a Chapter 11 plan can be made; therefore, a description of available assets and their value is a vital element of necessary disclosure under 11 U.S.C. § 1125. *In re Ligon*, 50 B.R. 127 (Bankr. M.D. Tenn. 1985).

The Disclosure Statement does not contain adequate information necessary for claimants to make an informed decision as to whether to accept or reject the Plan.

1. Insufficient Disclosure of Potential Assets and Claims Treatment

a. <u>The Survivor Claimants Need to Know the CGL Insurance Policies' Liability Limits to Fairly Evaluate the Joint Plan.</u>

The Debtor goes into significant detail regarding the Class 6 ("Survivor Claims") claimants' Full or Partial Settlement Alternatives[1] and the risks of the Litigation Only Alternative. (Disclosure Statement, pages 15-22 of 101).[2] The Debtor describes, in summary form, $425m in CGL Settlement Offers made to the CGL Insurers and describes insurance policies the Debtor, the Karolyis, and USOPC had in effect at various times. (Disclosure Statement, pages 16 and 20-21 of 101) (Joint Plan at pages 94-98 of 154). But the Debtor does not include any information, even disputed information, about the CGL Insurers' liability limits under the CGL Insurance Policies. As a result, Survivor Claimants cannot determine if the Full or Partial Settlement Alternatives represent a fair deal monetarily as they do not know how much money is potentially available for compensation if they were to choose to reject the Joint Plan. Without disclosure of the policies' liability limits, the Survivor Claimants cannot make a fully informed decision to evaluate whether to reject or accept the Joint Plan.

b. <u>The Survivors' Need to Know the Individual Amounts of the CGL Insurers' Settlement Offers to Fairly Evaluate the Joint Plan.</u>

The Disclosure Statement does not include the accepted CGL Insurer Settlement Offers. The Disclosure Statement includes the CGL Settlement

[1] Capitalized terms not defined in this Objection have the same meaning ascribed to them in the Joint Plan.
[2] For ease of the Court, all page number references to documents in the Court's docket are to the pagination assigned by the Court's ECF system as they appear at the top of each page.

Offers for those CGL Insurers who have yet to accept those offers; but fails to include that same information for those insurers who have accepted the offers. (Disclosure Statement, page 16 of 101)[3]. This issue is similar to the failure to disclose the policy liability limits as noted above. Survivor Claimants cannot determine if the Full or Partial Settlement Alternatives represent a fair deal monetarily because they do not know how much money is potentially available for compensation as compared to the amount being offered from each CGL Insurer. Without this information the Class 6 Survivor Claimants cannot make a fully informed decision to evaluate whether to reject or accept the Joint Plan.

c. No Detail is Provided About the Relationship Between the Debtor and Some of the Entities to be Protected by the Channeling Injunction

The Disclosure Statement supplies a short biography for the members of the Debtor's current board of directors. (Disclosure Statement, pages 41-44 of 101). It does not provide any information about some of the people and entities who would be covered by the Channeling Injunction and what their relationship is to the Debtor. (Disclosure Statement, pages 18-19 of 101). To determine if it is in their best interests to vote in favor of the plan, the Survivor Claimants should be given information as to who is on the list of Non-Debtor CGL Settling Insurer Covered Persons, Participating Parties, and Related

[3] Footnote 3 to the Disclosure Statement indicates that the accepted settlement amounts will be supplied if the Full or Partial Settlement Alternative is elected by the Debtor and the Committee. (Disclosure Statement page 16 of 101).

Persons, so the Survivor Claimants can determine if releasing each person or entity is appropriate. That information, at a minimum, should include the identities of the Released Parties, their relationship to the Debtor, what they are and are not contributing to the Trust, and the rationale for including them in the Channeling Injunction. The names of many of the Released Parties are included in the Disclosure Statement, but not the balance of the information noted above. (Disclosure Statement, pages 18-19 of 101).

In addition, the Releases the Survivor Claimants will be required to sign to obtain funds from the Trust, add two categories of persons released from liability. First, "All other known or unknown parties who may claim coverage under any Insurance Policy issued to USA Gymnastics" (emphasis added) are included in the Release. (Joint Plan, page 154 of 154). If a person is known who may claim coverage under any Insurance Policy, that person should be identified like all other Released Parties in the Disclosure Statement, including the additional information about their assets and contributions, as noted above. Second, "All Related Persons of the foregoing but solely in such Person's capacity as a Related Person" are included in the Release. Related Person is defined in the Joint Plan as "with respect to any Person, such Person's predecessors, successors, assigns, and present and former shareholders, affiliates, subsidiaries, employees, agents, brokers, adjusters, managing agents, claims agents, underwriting agents, administrators, officers, directors, trustees, partners, attorneys, financial advisors, accountants, and consultants,

each in their capacities solely as such; provided, however, that no Person shall be a Related Person if such Person is an Excluded Party." Again, if the identities of the Related Persons are known, they should be specifically identified, and the information noted above supplied for each.

Further, because the Survivor Claimants will be required to release the persons and entities covered by the Channeling Injunction, the Survivor Claimants should be supplied with information about them to determine the potential liability of each. If Participating Parties, like the USOPC and Karolyi Training Camps, LLC, Twistars, *et al.* and individuals like the Karolyis and other Non-Debtor CGL Settling Insurer Covered Persons, as listed in the Disclosure Statement, are to receive broad releases as a result of the channeling injunction, the disclosure statement must provide information not only about what, if anything, they are contributing toward the plan, but also about what they *are not* contributing toward the plan. (Disclosure Statement, pages 18-19 of 101). The disclosure statement 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. These non-debtor parties are receiving many of the benefits of bankruptcy relief without undergoing the scrutiny required of bankruptcy debtors. Most importantly here, Debtors provide no evidence regarding what claimants would receive if the released non-debtors' assets were liquidated and distributed in a chapter 7 case. Although 11 U.S.C.

§ 1129(a)(7) (the "best interest of creditors test") does not technically apply to these non-debtors, at a minimum the claimants should be afforded the opportunity to evaluate what they are losing because of the generous releases being afforded these non-debtor parties. The use of non-consensual non-debtor releases should not enable these favored parties to affect an expedient end-run around fundamental bankruptcy and disclosure principles.

A disclosure statement must contain adequate information, including information reasonably necessary to allow creditors and other parties-in-interest sufficient information to evaluate the plan to determine if it is in their best interests. Because of the lack of information regarding the insurance policy limits, and the rationale for including in the Channeling Injunction the Non-Debtor CGL Settling Insurer Covered Persons, the Related Persons, and Participating Parties, the Survivor Claimants do not have sufficient information to independently evaluate if voting in favor of the Joint Plan is in their best interests.[4]

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[4]Although the U.S. Trustee contends that non-consensual releases of claims held by one non-debtor against another non-debtor are unlawful, the Seventh Circuit has ruled that they are permissible in "appropriate" circumstances. *In re Airadigm Commcn's, Inc.*, 519 F.3d 640, 657 (2008). But in so ruling, the Seventh Circuit relied heavily on the bankruptcy court's allegedly "broad equitable powers" under section 105, a result seemingly at odds with the Supreme Court's decision six years later in *Law v. Siegel,* 571 U.S. 415, 421 (2014) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.").

The United States Trustee reserves her rights to object to the third-party releases at plan confirmation for any reason, including that *Airadigm* is arguably no longer viable precedent after *Law v. Siegel*. But even if it were still viable, the deficient disclosures—including the absence of disclosures about the assets, liabilities, and contributions of the third parties (e.g.,

d. The Litigation Only Alternative Continues to Shelter Debtor's Assets from Liability

The Debtor provides limited detail regarding the Litigation Only Alternative (Disclosure Statement, pages 19, 28, 29, 31, 33, and 35 of 101). The Litigation Only Alternative still provides a discharge to the Debtor and limits recovery for the Survivor Claimants to any funds they can recover from the CGL Insurance Policies. The Debtor is not contributing any of its current assets or future income to fund recoveries, if any, by Survivors. Further, the Litigation Only Alternative requires Holders of Abuse Claims to either recommence their prepetition lawsuits or to initiate new lawsuits within 30 days following the Effective Date of the Joint Plan. (Disclosure Statement, page 31 of 101). The acceptance of the Litigation Only Alternative appears to provide no benefit to the Survivor Claimants and is tantamount to rejection of the Joint Plan but with more limitations on those claimants' rights to recovery than if the Joint Plan were not approved. The Debtor should be required to provide additional detail in the Disclosure Statement to explain what benefit, if any, the Survivor Claimants will receive if they vote in favor of the Joint Plan if the Litigation Alternative is selected. That information should be conspicuously placed in the Disclosure Statement for ease of the Survivor Claimants' review

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the Karolyis and Karolyi entities, Twistars, and the USOPC) proposed to be released—render it impossible to determine if the proposed releases and injunction would satisfy *Airadigm*'s standard.

and so that the Survivor Claimants have sufficient information to make an informed decision.

2. Insufficient Information Regarding the Survivors' Claims' Treatment

The Class 6 Survivors' Claimants are to be paid pursuant to the Allocation Protocol and the Class 10 Future Claimants are to be paid pursuant to the Future Claimant Allocation Protocol via the FCR. (Disclosure Statement, page 17 of 101). The Allocation Protocol and Future Claimant Allocation Protocol should be attached to the Joint Plan as Exhibits H and I, but they have not yet been supplied by the Debtor or filed with the Court[5]. The inability of parties to review the protocols before the deadline for the filing of this Objection made it impossible for them to know if the protocols are objectionable. It is impossible to know if the explanations of the Allocation Protocol and Future Claimant Allocation provide sufficient information for Survivor Claimants to know the value of their claim[6].

Furthermore, Survivor Claimants cannot currently discern with certainty how their claims will be valued and therefore what gross amount they would receive under the terms of the Full or Partial Settlement Alternative. The U.S. Trustee is not suggesting that such sensitive information be made publicly

[5] The First Amended Joint Plan indicates Exhibits H and I are "To Be Supplemented Prior To The Disclosure Hearing."

[6] As a result of Debtor's failure to file Exhibits H and I prior to the objection deadline, the U.S. Trustee reserves her right to object to the Allocation Protocol and Future Claimants Allocation Protocol.

available in the Disclosure Statement, but the Disclosure Statement should direct the Survivor Claimants to review their ballot, which should be customized to advise each individual Survivor Claimant what the result of the application of the Allocation Protocol is to their claim and estimated gross settlement payment (whether in terms of actual dollars or in terms as a percentage of the Net Settlement Payment plus the Twistars Payment.)

II. THE DISCLOSURE STATEMENT SHOULD NOT BE APPROVED BECAUSE THE TREATMENT OF CLASS 6 CLAIMS UNDER THE FULL OR PARTIAL SETTLEMENT ALTERNATIVE RENDERS THE PLAN PATENTLY UNCONFIRMABLE.

The Plan, as currently proposed, cannot be confirmed because it provides for treatment of the Survivor Claims in Class 6 in a manner prohibited by 11 U.S.C. § 1123(a)(4). It is well-settled that bankruptcy courts have the authority to deny approval of disclosure statements when the chapter 11 plans underlying them are unconfirmable. *See, e.g.,* I*n re Am. Capital Equip., L.L.C.,* 688 F.3d 145, 154 (3d Cir. 2012) ("a bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable"); *In re K Lunde, LLC*, 513 B.R. 587, 598 (Bankr. D. Colo. 2014) (denying approval of a disclosure statement when the "Debtor's plan is facially unconfirmable"); *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) ("There are numerous

decisions which hold that where a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan"); *In re Century Inv. Fund VIII Ltd. P'ship,* 114 B.R. 1003, 1005 (Bankr. E.D. Wis. 1990) ("If a plan is on its face nonconfirmable as a matter of law, then it is appropriate for the court not to approve the disclosure statement.").

Courts deny approval of disclosure statements "to avoid engaging in a wasteful and fruitless exercise of sending the disclosure statements to creditors and soliciting votes on the proposed plan when the plan is unconfirmable on its face." *In re Atlanta W. VI*, 91 B.R. 620, 622 (Bankr. N.D. Ga. 1988). Thus, while "[c]onsideration of whether a debtor's plan satisfies the requirements of 11 U.S.C. Section 1129 is generally addressed at confirmation[,]" courts will consider whether a plan is confirmable in ruling on a disclosure statement's adequacy when doing so will "conserve judicial resources and debtor's estate . . . ." *Id.* Accordingly, in ruling on the adequacy of the Disclosure Statement, the Court should consider issues that make the Plan unconfirmable on its face.

Fundamentally, the Plan cannot be confirmed because its treatment of Survivor Claims in Class 6 does not comply with § 1123(a)(4), as applied through § 1129(a)(1). The bankruptcy court may confirm a plan only if it complies with all applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1). Section 1123(a)(4) provides that that:

> A plan shall—

> Provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.

11 U.S.C. § 1123(a)(4). As a result, § 1123(a)(4) "implements the fundamental bankruptcy policy of equality of distribution to similarly situated creditors" by providing the same treatment for claimants in the same class unless that claimant consents to less favorable treatment. *In re The Vaughan Co., Realtors*, 543 B.R. 325, 338 (Bankr. D.N.M. 2015); *see also In re Dow Corning Corp.*, 244 B.R. 634, 649 (Bankr. E.D. Mich. 1999) ("The chapter 11 reorganization process serves a number of important policy objectives including . . . equality among similarly situated creditors."), *aff'd*, 255 B.R. 445 (E.D. Mich. 2000), *aff'd and remanded*, 280 F.3d 648 (6th Cir. 2002).

"Even though neither the Code nor the legislative history precisely defines the standards of equal treatment, the most conspicuous inequality that § 1123(a)(4) prohibits is payment of different percentage settlements to co-class members." *See In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986). For instance, other circuits recognize that "[i]t is disparate treatment when members of a common class are required to tender more valuable consideration—be it their claim against specific property of the debtor or some other cognizable chose in action-in exchange for the same percentage of recovery." *In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986); *see also In re WR Grace & Co.*, 729 F.3d 332, 344 (3d Cir. 2013) (adopting the same

reasoning). Additionally, other circuits recognize that § 1123(a)(4) is violated when one claimant is "accorded far more effective recovery rights" than another claimant. *See Class Five Nev. Claimants v. Dow Corning Corp.* (*In re Dow Corning Corp.*), 280 F.3d 648, 659–60 (6th Cir. 2002).

Because the Allocation Protocol has not yet been filed, how the Trust would distribute funds among Survivor Claimants is unknown. However, the need to have an Allocation Protocol implies that the Debtor and the Committee intend to implement some distribution methodology other than pro rata. In the absence of the Allocation Protocol the U.S. Trustee will utilize the terms of a prior version of the Trust Agreement filed on February 21, 2020, (Docket No. 928 Exhibit D) ("Prior Trust Agreement"), to explain her argument against a distribution scheme that is not pro rata. Under the Prior Trust Agreement holders of Survivor Claims were provided one of four different treatments if the class elected to settle their claims, rather than to litigate. *See* Prior Trust Agreement §§ 4.2, 4.3. The claimants were divided into subclasses, identified as (i) 6A-Elite Gymnasts, (ii) 6B-Non-Elite Gymnasts, (iii) Other Claimants, and (iv) Derivative Claimants. *Id.* Those claims would have received varying gross distributions ranging from $82,550.00 to $1,250,757.58, depending on how the Debtor classified the claim. The pay-out in each category was to be mandatory notwithstanding the validity of the claims filed or the damages asserted. *See* Prior Trust Agreement § 4.3. Although the Debtor claimed that this was a pro rata allocation, it demonstrably was not. This treatment provided equal shares

of four different trust subclasses notwithstanding actual amount of a claim. The Debtor and Committee have unilaterally decided how much each claim in each subclass will receive, even if a claimant does not consent to such treatment. There was no option to litigate the value of each claimant's claim to receive a pro rata portion of the trust res. This starkly contrasts with plans where each creditor determines whether to accept a settlement amount (which could be potentially result in less favorable treatment), rather than to maintain their litigation claim. *See, e.g.*, *In re Dow Corning Corp.*, 244 B.R. 634, 649 (plan was consistent with section 1123(a)(4) where mass tort victims could individually choose settlement amount or retain right to litigate).

Moreover, as previously proposed, the allocation of Trust funds to Class 6 Claimants was inconsistent with 11 U.S.C. § 502. Under § 502(a), "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. 502(a). By mandating that claimants in each subclass accept a certain amount in full satisfaction of their claims, the Debtor seeks to unilaterally compel "settlements" of claims and to disallow portions of a settling creditor's claim that exceed the amount set for distribution. There is no basis in the Bankruptcy Code for the Debtor to unilaterally "settle" or disallow all or any part of a claim without providing the holder of the claim with an opportunity to respond, and there is no basis to force a settlement of a filed claim to confirm a plan of reorganization.

The disparate treatment of the different claims in the subclasses of Class 6 could have led to additional anomalies under the Bankruptcy Code. Section 1126(c) prescribes the requirements for a class of claims to accept a plan. The plan must be accepted by holders of allowed claims in the class with more than one-half of the claims constituting not less than two-thirds of the amount of such claims. 11 U.S.C. § 1126(c). The Joint Plan provides for no allowance of individual claims, instead assigning apparently arbitrary recovery amounts to members of the different subclasses. It would be patently contrary to the Bankruptcy Code to approve a procedure by which claims being treated differently are assigned to the same class for class acceptance purposes.

Again, the terms of the Allocation Protocol are unknown but if the Debtor wants to treat the Survivor Claims differently, then they ought to be classified separately to the extent that such classification would be consistent with § 1122. One or more of the less-advantaged subclasses might vote to reject the plan. Under those circumstances the Debtor could certainly seek confirmation under § 1129(b), but it would have to show that the plan did not discriminate unfairly with respect to the dissenting class. 11 U.S.C. § 1129(a)(1).

Because of the foregoing, until the terms of the Allocation Protocol and Future Claimants Allocation Protocol are known and it can be determined if the proposed terms are compliant with the Bankruptcy Code, the Court

should not permit solicitation of the Plan, which will result in the unnecessary waste of judicial and estate resources.

CONCLUSION

Wherefore, for the above stated reasons, the U. S. Trustee requests that the Court sustain this Objection and deny approval of the Disclosure Statement.

Date: September 29, 2021

Respectfully submitted,

NANCY J. GARGULA
United States Trustee

By: /s/ Laura A. DuVall

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2021, a copy of the UNITED STATES TRUSTEE'S OBJECTION TO DISCLOSURE STATEMENT FOR FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY USA GYMNASTICS AND THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS (Docket No. 1567) 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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I further certify that on September 29, 2021, a copy of the UNITED STATES TRUSTEE'S OBJECTION TO DISCLOSURE STATEMENT FOR FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY USA GYMNASTICS AND THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS (Docket No. 1567) was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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