

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
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**U.S. TRUSTEE’S LIMITED OBJECTION TO THIRD AMENDED JOINT
CHAPTER 11 PLAN OF REORGANIZATION PROPOSED
BY USA GYMNASTICS AND THE ADDITIONAL TORT
CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS**

Nancy J. Gargula, the United States Trustee for Region 10 (the “U.S. Trustee”), respectfully submits this Limited Objection (the “Objection”) to the *Third Amended Joint Chapter 11 Plan Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* (the “Plan”) (Docket No. 1655) filed by USA Gymnastics (the “Debtor”) and the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors’ Committee” and, collectively, the “Plan Proponents”). In support of her Objection, the U.S. Trustee respectfully states as follows:

I. INTRODUCTION

1. The U.S. Trustee is acutely aware of the difficult and painful history behind this chapter 11 case and the great harm that many abuse survivors have suffered in the years leading up to this chapter 11 filing. Moreover, the U.S. Trustee appreciates the difficult and painstaking work by the parties in agreeing on a plan supported by both the Debtor and the Official

Survivors' Committee, a plan that includes many important institutional reforms to the governance of the Debtor and for the care and well-being of athletes going forward. The U.S. Trustee also has a statutory role as the watchdog of the bankruptcy system to ensure faithful and consistent application of the law and, therefore, files this limited objection to confirmation of the Plan for three reasons.

2. First, Article XII of the Plan provides for non-consensual third-party releases of claims between non-debtors that violate the Bankruptcy Code and Seventh Circuit law. Second, the Bankruptcy Court lacks constitutional authority to adjudicate, and thus release, the state law claims held by one non-debtor against another non-debtor. Third, although section 1123(b)(3)(A) authorizes a debtor to release the estate's own claims in a plan, the release must be a reasonable exercise of the debtor's business judgment supported by a substantial contribution to the reorganization from the released party. Here, the Debtor's release of many of its claims does not satisfy the business judgment test because many are supported by no contribution at all, much less a substantial contribution, from the released party. The Plan's failure to require all released parties to pay meaningful compensation as required by law is no theoretical concern; it ultimately diminishes recoveries for the Abuse Survivors and other creditors.

II. JURISDICTION

3. The Court has jurisdiction to hear and determine this Objection

under 28 U.S.C. §§ 157 and 1334.

4. 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).

5. 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.

III. FACTUAL BACKGROUND

The Bankruptcy Case

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

7. Pursuant to 11 U.S.C. § 1102(a), on December 19, 2018, the U.S. Trustee appointed the Survivors’ Committee. (Docket No. 97).

8. 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.

9. On August 31, 2021, the Debtor and the Survivors’ 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).

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

11. 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").

12. 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).

13. On September 22, 2021, the Debtor and the Survivors' 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).

14. On October 25, 2021, the Plan Proponents filed the Plan, captioned as the *Third Amended Joint Chapter 11 Plan Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors* (Docket No. 1655).

15. On October 25, 2021, the Debtor filed its Disclosure Statement for the Plan (Docket No. 1656).

16. On October 26, 2021, the Court approved the Disclosure Statement (Docket No. 1659).

17. This Objection is filed before the deadline to file objections to confirmation of the Plan and is therefore timely.

Classes of Claims and Their Treatment in the Plan

18. The Plan divides the claims against the Debtor’s estate into ten classes. Plan at Article V. Relevant to this Objection are Class 6 - Abuse Claims (“Abuse Claims”), Class 7 - USOPC Claim (“USOPC Claim”), Class 8 - Indemnification Claims (“Indemnification Claims”), and Class 9 - the Future Claimants’ Representative Claim (“FCR Claim”).

19. The U.S. Trustee does not object to the treatment of Classes 1 through 5, and 10.

20. As of the date of this Objection, it remains unclear how the Abuse Claims will be treated, as no election has been made.¹ However, there are two alternatives—the Litigation Only Option and the Settlement Option.² First, under the Litigation Only Alternative,³ the Abuse Claimants would be entitled to prosecute their individual claims against the reorganized Debtor in name only and any recovery would be limited by the insurance coverage available to a

¹ The Plan requires the Debtor and the Survivors’ Committee to elect the Plan’s Full Settlement Alternative, Partial Settlement Alternative, or Litigation Only Alternative on or before November 15, 2021. No election has been made and the deadline to make the election has been extended to December 6, 2021.

² The Plan provides for both a partial settlement option and a full settlement option, which are mutually exclusive. If all insurers agree to fund the Plan, the full settlement option is available. As of the date of this Objection, not all of the insurers have agreed to fund the Plan, and only the partial settlement option is available.

³ Capitalized terms not defined in this Objection have the same meaning ascribed to them in the Plan.

particular claimant. Alternatively, under the Full or Partial Settlement Alternative, Abuse Claims would receive a payout from the Trust, pursuant to the Allocation Protocol whereby a claims administrator would review and award points to each claimant and then payment would be made to each claimant pursuant to the value of each point (*See Exhibit H attached to the Plan*).

21. Similarly, payment of the USOPC Claim is unclear as no election has been made. Under the Full Settlement Alternative, the USOPC will not receive a distribution under the Plan; however, it will contribute money from its insurance policies only for the benefit of Abuse Claims and receive the benefit of a Channeling Injunction which prohibits Abuse Claimants from seeking further remedies against the USOPC. Under the Partial Settlement Alternative, the USOPC Claim would receive the benefit of the Channeling Injunction for the Settling Insurer indemnification claims; however, it would maintain its indemnification claims against the Non-Settling Insurer and could continue to recover against those claims without further liability of the Debtor. If the Litigation Only Alternative is selected, the USOPC Claim will be treated as a Class 5 General Unsecured Claim and paid pro rata with other unsecured creditors. Further, USOPC would retain its Indemnification Claim against the Debtor but could only recover from the Debtor's insurance policies.

22. The treatment of the Indemnification Claims also depends on the election that has not yet been made. If the Full or Partial Settlement Election is made, Indemnification Claims will not receive a distribution under the Plan and will either benefit from the Channeling Injunction under the Full Settlement

Alternative or benefit from the Channeling Injunction and will retain the claimants' indemnification rights only to the extent there is coverage under a non-settling insurance policy under the Partial Settlement Alternative. The Debtor has no personal liability under the Partial Settlement Alternative. Under the Litigation Only Alternative, all rights are reserved but recovery is limited to recovery from the Debtor's CGL Insurance Policies.

23. The treatment of the FCR Claim again depends on the, yet to be made, election. If the Full or Partial Settlement Alternative is selected, future claimants would be entitled to receive funds under the Future Allocation Protocol, attached to the Plan as Exhibit I. Under the Litigation Only Alternative, the future claimants will receive nothing under the Plan.

24. Each of Classes 6, 7, 8, and 9 are impaired and are entitled to vote to accept or reject the Plan. *See* Plan at Article 8.1.

The Channeling Injunction and Releases

25. Ultimately, if either the Full or Partial Settlement Alternative is elected by the Debtor and the Survivors' Committee, as provided for in the Plan, the Plan contains a Channeling Injunction provision (the "Channeling Injunction and Releases"), which prevents further prosecution of Abuse Claims against the Debtor, the Participating Parties, and the Settling Insurers being released under the Plan. *See* Plan at Article XII. Without any mechanism to express their consent or lack thereof, the Abuse Claimants will be enjoined from pursuing, and thus will be releasing claims against, the following non-debtors who are defined in the Plan as the "Released Parties":

- “Participating Parties” defined in the Plan as:
 - USOPC;
 - The Karolyis, defined in the Plan at 1.1.78 to include:
 - Marta Karolyi (aka Martha Karolyi);
 - Bela Karolyi;
 - Karolyi Training Camps, LLC;
 - Karolyi’s Elite;
 - Karolyi World Gymnastics;
 - BMK Partners, Ltd.; and,
 - BMK Training Facilities, Ltd.
 - Twistars, defined in the Plan at 1.1.142 to include:
 - Twistars USA, Inc. d/b/a Geddert’s Twistars Gymnastics Club USA;
 - Geddert’s Twistars USA Gymnastics Club, Inc.;
 - Twistars USA, Inc.;
 - John Geddert; and,
 - Kathryn Geddert; and,
 - for each includes their respective employees, officers, agents, attorneys, and directors, but only to the extent acting in their capacities as such (Plan at 1.1.99 and 1.1.119(a)).
- Each Participating Parties’ predecessors, successors, assigns, and present and former shareholders, affiliates, parents, 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 (Plan at 1.1.118 and 1.1.119(b));
- the 12 Settling Insurers for the Debtor, USOPC, and the Karolyis (Plan at 1.1.119(c));
- Each Settling Insurer’s predecessors, successors, assigns, and present and former shareholders, affiliates, parents, 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 (Plan at 1.1.118 and 1.1.119(d));
- Non-Debtor CGL Settling Insurer Covered Persons, including:
 - any Person that has or may have a Claim to Insurance Coverage under a Debtor CGL Settling Insurer Policy
 - the USOPC;

- National Gymnastics Foundation;
 - Twistars;
 - the Karolyis;
 - Rhonda Fahan;
 - Stephen Penny;
 - Paul Parilla;
 - Amy White;
 - Debra Van Horn;
 - Kathy Scanlan;
 - Kathy Scanlan LLC;
 - Bob Colarossi;
 - All Olympia Gymnastics Center;
 - AOGC All Olympia Gymnastics Center;
 - Artur Akopyan; and
 - Galina Marinova. (Plan at 1.1.90 and 1.1.119(e))
- all known or unknown parties who may claim coverage under any insurance policy issued to the Debtor (Plan at 12.5)

Plan at 12.3 through 12.12

26. Similarly, upon confirmation of the Plan, the Channeling Injunction and Releases also prevent further prosecution of claims against the Debtor by the non-debtor Released Parties listed above without any mechanism to express their consent or lack thereof.

27. The Channeling Injunction and Releases are reprinted for convenience in the attached Exhibit A. In summary, the Channeling Injunction and Releases generally provide that:

(a) All Channeled Claims will be channeled into the Trust and resolved under the procedures and protocols and in the amounts as established under the Plan and Trust agreement as the sole and exclusive remedy for all holders of Channeled Claims;

(b) all persons with any Channeled Claim are permanently stayed, from taking any action, to enforce any Channeled Claim against a Protected Party;

(c) All persons are permanently enjoined and barred from asserting against a Settling Insurer, or any of its Related Persons, or any Non-

Debtor CGL Settling Insurer Covered Person any claim arising from or relating in any way to any Abuse Claim or future claim or any of the Settling Insurer policies or any claim against any Settling Insurer, or any of its Related Persons, or any non-Debtor CGL Settling Insurer Covered Person for contribution, indemnity, defense, subrogation, or similar relief;

(d) Any Non-Settling Insurer and any other insurer is permanently stayed, from taking any action, against any Settling Insurer, or any of its Related Persons, or any Non-Debtor CGL Settling Insurer Covered Person, for the purposes of asserting, enforcing, or attempting to assert or enforce any claim against any Settling Insurer and any Non-Debtor CGL Settling Insurer Covered Person;

(e) All avoidance rights of the Debtor, the estate, and the reorganized Debtor, including those arising under sections 544, 547, 548, 549, 550, and 553 of the Bankruptcy Code, against each of the Participating Parties, Non-Debtor CGL Settling Insurer Covered Persons, and Settling Insurers shall be deemed settled;

(f) The Debtor and the Participating Parties, the non-Debtor CGL Settling Insurer Covered Persons, and Settling Insurers, that each may have against the other or their respective Related Parties;

(g) Each and every Protected Party releases of all claims related in any way to the Debtor CGL insurance policies they have against each Debtor CGL Settling Insurer and its Related Persons ;

(h) The USOPC releases each USOPC Settling Insurer and its Related Persons from any indemnity claims it may have;

(g) The Karolyis release the Karolyi Settling Insurer and its Related Persons from indemnity claims they may have;

See Plan at Article XII.

28. A comprehensive list of Released Parties is attached as Schedule 1 to Exhibit J, Form of General Release to the Plan.

IV. ARGUMENT

The Channeling Injunction and Releases must be analyzed from two

perspectives—first, as a non-consensual third-party release between non-debtors and, second, as a release of estate claims by the Debtor. *In re Midway Gold US, Inc.*, 575 B.R. 475, 506 (Bankr. D. Colo. 2017) (third-party release and debtor release must be analyzed separately). The Plan should not be confirmed because the non-consensual Channeling Injunction and Releases between non-debtors violate applicable law, and the Bankruptcy Court lacks constitutional authority to adjudicate, and thus order the “release” of, the state law claims between non-debtors. And the Debtor’s release of some of its claims without any consideration from those being released is impermissible and not a valid exercise of the Debtor’s business judgment.

A. The Non-Consensual Channeling Injunction and Releases Between Non-Debtors Violate Applicable Law

The non-consensual Channeling Injunction and Releases between non-debtors violate applicable law and should not be approved.⁴ The Bankruptcy Code authorizes releases between non-debtors in only one provision, section 524(g) governing asbestos cases, and section 524(e) is clear that discharges are for debtors only. Consistent with this view, three courts of appeals have expressly rejected the idea that bankruptcy courts have statutory authority to enter non-consensual third-party releases, a view that the U.S. Trustee shares.

⁴ The releases are non-consensual because creditors must vote on a plan as a whole, and none had the opportunity here to reject the non-debtor releases. A vote in favor of—and the absence of an objection to—a plan are not necessarily consent to non-debtor releases. Some (or even all) may consent and some may not, but there is no way to determine that here.

See *In re Zale Corp.*, 62 F.3d 746, 760 (5th Cir. 1995); *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995);⁵ *In re Western Real Estate Fund Inc.*, 922 F.2d 592, 600-02 (10th Cir. 1990), *modified sub nom. Abel v. West*, 932 F.2d 898 (10th Cir. 1991). The U.S. Trustee nevertheless recognizes that the Seventh Circuit allows third-party releases in “‘appropriate’ [cases] and not inconsistent with any provision of the bankruptcy code.” See *Airadigm Commc’ns, Inc. v. FCC (In re Airadigm Commc’ns, Inc.)*, 519 F.3d 640, 657 (7th Cir. 2008).⁶ The determination is case specific, but the release must be “narrow and essential to the reorganization plan as a whole.” *In re Ingersoll, Inc.*, 562 F.3d 856, 864 (7th Cir. 2009) (citing *Airadigm*, 519 F.3d at 657). The release must not grant “‘blanket immunity’ for all times, all transgressions, and all omissions.” *Id.* at 864.

The Channeling Injunction and Releases here are not narrowly tailored

⁵ *But see Blixseth v. Credit Suisse*, 961 F.3d 1074, 1084-85 (9th Cir. 2020) (holding 11 U.S.C. § 524(e) did not preclude approval of “exculpation clause” extending to non-debtor third parties).

⁶ Imposing releases of claims between non-debtors absent consent can also implicate constitutional due process rights guaranteed by the Fifth Amendment. See U.S. Const., Amdt. 5. “Due process requirements apply in bankruptcy cases,” *In re Johns-Manville Corp.*, 551 B.R. 104, 113 (S.D.N.Y. 2016) (citations omitted), and a cause of action for damages is a species of property interest. See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). A fundamental right guaranteed by the Due Process Clause is the “deep-rooted historical tradition that everyone should have his own day in court.” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)). For these reasons, and subject only to very limited exceptions not relevant here, the Due Process Clause protects litigants from being forced into settlements to which they have not consented. See *id.*, 527 U.S. at 847 (mandatory class action settlement of asbestos litigation violated due-process rights of non-consenting plaintiffs).

with respect to the scope of releasing and released parties and resemble the “blanket immunity” that the Seventh Circuit has cautioned against. To determine who is released, one must parse through the definitions of who are Released Parties, Participating Parties, Related Persons, and Non-Debtor CGL Settling Insurer Covered Persons. Not only is a litany of individuals and entities being released, but the Channeling Injunction and Releases also include predecessors, successors, assigns, and present and former shareholders, affiliates, parents, 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. Plan at 1.1.118. Virtually none of those individuals have been identified by name by the Debtor. Moreover, the Debtor has neither proven why the release of each of these parties is essential to the case nor identified what contribution each party on the laundry list of those benefitting from the Channeling Injunction and Releases has made. Because the Debtor has not satisfied its burden on this point, the Plan should not be confirmed.

B. Bankruptcy Courts Lack Constitutional Authority to Adjudicate, and Thus Impose a Release of, the State Law Claims Between Non-debtors

Claims between non-debtors that arise under non-bankruptcy substantive law are at most “related to” the bankruptcy, 28 U.S.C. § 157(c)(1), and would not “necessarily be resolved in the claims allowance process.” *Stern v. Marshall*, 564 U.S. 462, 499 (2011) (holding authority to adjudicate private

state-law disputes must generally be vested in Article III judges). *See also Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (although recognizing bankruptcy court’s jurisdiction over proceedings “related to” bankruptcy case under 28 U.S.C. §§ 157(a) & 1334(b), such jurisdiction “cannot be limitless”); *id.* at 323 (questioning authority of bankruptcy court to “grant injunctions over cases that [it] may not decide” as “inconsistent” with limited jurisdiction over related proceedings under 28 U.S.C. § 157(c)(1)) (Stevens, J.) (dissenting). Thus, absent all parties’ knowing and voluntary consent, bankruptcy courts would not have the statutory or constitutional authority to enter final judgment to impose third-party releases against non-debtor claimants that extinguish their state law claims against other non-debtors. *See Wellness Int’l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015) (“Article III is not violated when the parties knowingly and voluntarily consent to adjudication [of a Stern claim] by a bankruptcy judge.”). Yet, regardless of the Court’s constitutional authority as a non-Article III court, once final and unappealable, its confirmation order would have *res judicata* affect. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009).

C. The Debtor’s Release of Many Parties Who Are Contributing Nothing to the Reorganization Does Not Satisfy the Business Judgment Standard That Applies Under Section 1123(b)(3)(A)

The Debtor and its estate are releasing, among others, various entities and individuals that are only contributing their insurance coverages to the plan, specifically USOPC, the Karolyi Entities, and Twistars, without contributing anything from their own pockets. *See* Plan at Article III. The

Debtor and its estate are also releasing, among others, the following entities and individuals that are not contributing anything directly to the Plan:

- All Olympia Gymnastics Center;
- AOGC All Olympia Gymnastics Center;
- Amy White;
- Artur Akopyan;
- Bob Colarossi;
- Debra Van Horn;
- Galina Marinova;
- John Geddert;
- Kathryn Geddert;
- Kathy Scanlan;
- Kathy Scanlan, LLC;
- National Gymnastics Foundation;
- Paul Parilla;
- Rhonda Faehn; and
- Stephen Penny.

Although section 1123(b)(3)(A) authorizes a debtor to settle or adjust “any claim or interest belonging to the debtor or to the estate” as part of the plan, the authority to do so is not limitless. “The Plan Supporters bear the burden of persuading the Court that the Global Settlement [embodied in the plan] falls within the range of reasonableness.” *In re Washington Mut., Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011). Bankruptcy courts look to the following five factors when reviewing releases given by debtors:

- (1) an identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate's resources;
- (2) a substantial contribution to the plan by the non-debtor;
- (3) the necessity of the release to the reorganization;
- (4) the overwhelming acceptance of the plan and release by creditors and interest holders; and
- (5) the payment of all or substantially all of the claims of the creditors and interest holders under the plan.

Id. at 346 (quoting *In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del.

1999)). But the five factors are “neither exclusive nor conjunctive requirements;” they simply provide guidance in the Court's determination of fairness. *Master Mortgage Inv. Fund*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994) (finding that there is no ‘rigid test’ to be applied in every circumstance and that the five factors are neither exclusive, nor conjunctive).”

A review of these factors and the other circumstances of the Channeling Injunction and Releases show that the Debtor’s releases do not satisfy the standard for approval.

First, the Debtor has not proven there is an identity of interest between the Debtor and each Released Party such that a suit against the non-debtor will deplete the estate's resources. The Debtor has not identified by name each of the Released Parties, and therefore it cannot be known if a suit brought against each such person will deplete the estate’s resources. Many of these parties may have a right to be indemnified by the Debtor or its insurers, such that the Debtor can ultimately satisfy its burden on this point. But without knowing their identities, it is not possible to know for certain.

Second, few of the Released Parties have made any contribution to the Plan, much less a substantial contribution. While Twistars, the Karolyi Entities, and USOPC have all contributed insurance rights and settlements from their insurance policies to the Plan, none of them have made actual contributions of their own assets. The remaining Non-Debtor CGL Settling Insurer Covered Persons and Debtor’s Related Persons have not made any contribution to the Plan yet are obtaining the benefit of the Channeling

Injunction and Releases.

Third, the Channeling Injunction and Releases are not necessary to the reorganization of the Debtor. Although the case is not liquidating, the broad Channeling Injunction and Releases proposed by the Debtor are not necessary as to all Participating Parties.

Fourth, one *Washington Mutual* factor does favor confirmation of the Plan. Based upon the voting, it appears that the creditors will overwhelmingly accept the Plan, including each of the 476 of the 512 Abuse Survivors who voted in favor of the Plan (only 36 did not vote).

Finally, the Plan does not provide for payment of all or substantially all of the claims of Abuse Claimants. If, as it appears, the Debtor has “left money off the table” by not insisting on financial contributions from all those being released, as the law requires, this works to the detriment of the Abuse Survivors who deserve better and deserve more. At present, it is also entirely unclear what Abuse Claimants will receive under the proposed Allocation Protocol if the Full or Partial Settlement Alternative is elected in this case. Further, as the Plan is currently structured, the Abuse Claimants cannot know the value of their abuse claims until after the Plan is confirmed, the claims administrator allocates points, and a per point value is determined. It should be noted that the point system created in the Allocation Protocol merely creates a system to divide the Trust Assets among the Abuse Claimants; the total liquidated value of the Abuse Claims has not been, and will not be, determined. Accordingly, it cannot be known if the payment of all or substantially all of the

Abuse Claims will be made under the Plan. Additionally, if the Litigation Only Alternative is selected there is no guarantee that any Abuse Claimant will receive any payment on account of their Abuse Claim because their recovery, if any, will be limited to insurance proceeds, while the Debtor will still be granted a broad release from liability.

The Channeling Injunction and Releases granted by the Debtor and its estate are improper, and either they should be stricken from the Plan or the Plan should not be confirmed.

CONCLUSION

The Plan should not be confirmed as the non-consensual third-party releases violate the Bankruptcy Code and Seventh Circuit law, and the Bankruptcy Court lacks constitutional authority to adjudicate, and thus impose releases of, the state law Abuse Claims at issue. Moreover, the Debtor's release of many of the estate's claims for little to no financial contribution does not satisfy the applicable standards under section 1123(b)(3)(A) and directly harms the Abuse Claimants and other creditors. The U.S. Trustee requests that this Court deny confirmation of the Plan.

Respectfully Submitted,

Nancy J. Gargula
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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021, a copy of the U.S. TRUSTEE'S LIMITED OBJECTION TO THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY USA GYMNASTICS AND THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS 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 December 3, 2021, a copy of the U.S. TRUSTEE'S LIMITED OBJECTION TO THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY USA GYMNASTICS AND THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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EXHIBIT A – CHANNELING INJUNCTION AND RELEASES

For ease of reference, the paragraph designations below correspond to the Plan:

12.3. CHANNELING INJUNCTION PREVENTING PROSECUTION OF ABUSE CLAIMS. In consideration of the critical undertakings and substantial contributions of the debtor, the Participating Parties, and Settling Insurers pursuant to the terms of this Plan, including the funding of the Trust, and to further preserve and promote the settlements embedded in this Plan between and among the Participating Parties, the Settling Insurers, holders of Sexual Abuse Claims, the Survivors' Committee, the FCR, and the Debtor, and pursuant to sections 105, 363, and 1129 of the Bankruptcy Code:

(a) any and all Channeled Claims are channeled into the Trust and shall be treated, administered, determined, and resolved under the procedures and protocols and in the amounts as established under the Plan and Trust agreement as the sole and exclusive remedy for all holders of Channeled Claims; and

(b) all persons that have held or asserted, hold or assert, or may in the future hold or assert, any Channeled Claim (including all debt holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, Abuse Claimants, Future Claimants, other insurers, and all others holding claims or interests of any kind or nature whatsoever against or related to the Protected Parties) are hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, for the purposes of asserting, enforcing, or attempting to assert or enforce any Channeled Claim against a Protected Party, including:

- i. Commencing or continuing in any manner any action or other proceeding of any kind with respect to any Channeled Claim against the Protected Parties or against the property of the Protected Parties;
- ii. Enforcing, attaching, collecting or recovering, by any manner or means, from the Protected Parties, or from

the property of the Protected Parties, with respect to any such Channeled Claim, any judgment, award, decree, or order against the Protected Parties;

iii. Creating, perfecting or enforcing any lien of any kind against the Protected Parties, or the property of the Protected Parties, with respect to any such Channeled Claim;

iv. Asserting, implementing, or effectuating any Channeled Claim of any kind against: (1) the Protected Parties; (2) any direct or indirect obligation due to the Protected Parties; or (3) the property of the Protected Parties, with respect to any such Channeled Claim; and

v. Taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan.

All claims described in this section 12.3 shall be channeled to the Trust. This injunction shall not apply to any reinsurance claim. For the avoidance of doubt, claims by or against any non-Settling Insurer shall not be Channeled Claims but claims by any non-Settling Insurer shall be subject to the injunctions and releases set forth in this Plan.

12.3.1. LIMITATIONS ON THE SCOPE OF CHANNELING INJUNCTION. Notwithstanding any provision of this Plan, the foregoing “Channeling Injunction preventing prosecution of Abuse Claims” provides absolutely no protection to: (a) an Excluded Party; (b) any claims excepted from exculpation under section 18.4 of the Plan; (c) to the extent the Settling Insurers are also insurers to the Debtor or to any Participating Party under policies not specifically identified in Exhibit A, the Channeling Injunction shall not apply to claims by the Debtor or any Participating Party against any Settling Insurers in their capacity as an insurer to such parties under policies not specifically identified in Exhibit A; and (d) any Non-Settling Insurer.

12.4 ENFORCEMENT TO THE MAXIMUM EXTENT. To the extent not otherwise enjoined in section 12.3, the

assertion or enforcement of Channeled Claims, and any attempt to assert or enforce a Channeled Claim, directly or indirectly, by any person, against a Protected Party is hereby permanently stayed, enjoined, barred, and restrained.

12.5. SETTling INSURER INJUNCTION. In consideration of the critical undertakings and substantial contributions of the Settling Insurers pursuant to the terms of this Plan, including the funding of the Trust, and to further preserve and promote the settlements embedded in this Plan between and among the Participating Parties, the Settling Insurers, holders of Sexual Abuse Claims, the Survivors' Committee, the FCR, and the Debtor, and pursuant to sections 105, 363, and 1129 of the Bankruptcy Code, and except as otherwise provided in the Plan, any and all persons (including, without limitation, all debt holders, all equity holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, Abuse Claimants, Future Claimants, Settling Insurers, Non-Settling Insurers, other insurers, and all others holding claims or interests of any kind or nature whatsoever against or related to the Protected Parties) are permanently enjoined and barred from asserting against a Settling Insurer, or any of its Related Persons, or any Non-Debtor CGL Settling Insurer Covered Person any claim (including any insurance coverage claim, extra-contractual claim, contribution claim, or subrogation claim) or interest of any kind or nature whatsoever arising from or relating in any way to (a) any Abuse Claim or future claim or (b) any of the Settling insurer policies or (c) any claim against any Settling Insurer, or any of its Related Persons, or any non-Debtor CGL Settling Insurer Covered Person for contribution, indemnity, defense, subrogation, or similar relief that arises directly or indirectly from any claim against the Debtor or any Non-Debtor CGL Settling Insurer Covered Person, or any Settling Insurer policy. Notwithstanding the foregoing, to the extent the Settling Insurers are also insurers to the Debtor or to any participating party under policies not specifically identified in Exhibit A, the Channeling Injunction shall

not apply to claims by the Debtor or any Participating Party against any Settling Insurers in their capacity as an insurer to such parties under policies not specifically identified in Exhibit A; and (d) any Non-Settling Insurer.

12.6 CONTRIBUTION BAR AGAINST NON-SETTLING INSURERS AND OTHER INSURERS. In consideration of the critical undertakings and substantial contributions of the Settling Insurers pursuant to the terms of this Plan, including the funding of the Trust, and to further preserve and promote the settlements embedded in this Plan between and among the Participating Parties, the Settling Insurers, holders of Sexual Abuse Claims, the Survivors' Committee, the FCR, and the Debtor, and pursuant to sections 105(a), 363, and 1129 of the Bankruptcy Code, any Non-Settling Insurer and any other insurer is hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, including filing any suit or cause of action against any Settling Insurer, or any of its Related Persons, or any Non-Debtor CGL Settling Insurer Covered Person, for the purposes of asserting, enforcing, or attempting to assert or enforce any claim, including any contribution claim, subrogation claim, claim for recovery of defense costs or indemnity payments, or any similar claim, cause of action, or remedy, against any Settling Insurer and any Non-Debtor CGL Settling Insurer Covered Person.

12.7. PERMANENT TERM OF INJUNCTIONS OR STAYS AND CONFIRMATION OF SETTLEMENTS WITH PARTICIPATING PARTIES AND SETTLING INSURERS. All injunctions and stays provided for in this Plan and under and pursuant to the injunctive provisions of sections 524 and 1141 of the Bankruptcy Code are permanent and will remain in full force and effect following the Effective Date and are not subject to being vacated or modified. For the avoidance of doubt, absence of objection to the settlements, releases and sales provided in the Plan constitutes consent to such releases and sales.

12.8 RELEASE OF AVOIDANCE CLAIMS AND OTHER CLAIMS AGAINST PARTICIPATING PARTIES, NON-

DEBTOR CGL SETTLING INSURER COVERED PERSONS, AND SETTLING INSURERS. On the Effective Date, all avoidance rights of the Debtor, the estate, and the reorganized Debtor, including those arising under sections 544, 547, 548, 549, 550, and 553 of the Bankruptcy Code, against each of the Participating Parties, Non-Debtor CGL Settling Insurer Covered Persons, and Settling Insurers shall be deemed settled, compromised, and released by this Plan. As to each Settling Insurer, on the Effective Date, the insurance coverage adversary proceeding and all related proceedings in any court shall immediately cease, and the insurance coverage adversary proceeding and any related proceedings shall be dismissed, with prejudice, against each Settling Insurer.

12.9. MUTUAL RELEASE. Except for (i) obligations arising under any executory contract assumed by the reorganized Debtor pursuant to article xix of this Plan, (ii) obligations under the Plan of Settling Insurers to pay defense costs (excluding all defense costs of the type sought in the costs motion) through the Effective Date of the Plan, and (iii) claims excepted from exculpation under section 18.4, on the Effective Date, the Debtor, the estate, and the reorganized Debtor, on the one hand, and the Participating Parties, the non-Debtor CGL Settling Insurer Covered Persons, and Settling Insurers, on the other hand, shall be deemed to have waived, released, and discharged any and all claims or causes of action of every kind and nature, known or unknown, that they may have against each other, and their respective Related Persons, including claims arising under or against their respective insurance policies. No such claim will survive the Effective Date. No such claim will be deemed to be assigned to the Trust.

Notwithstanding the foregoing, to the extent the Settling Insurers are also insurers to the Debtor or to any participating party under policies issued to the Debtor or any Participating Party not specifically identified in Exhibit A, this mutual release shall not apply to claims by the Debtor or any Participating Party against any Settling Insurers in their capacity as an insurer to such

parties under policies not specifically identified in Exhibit A.

12.10. PROTECTED PARTY RELEASE. Except for (i) obligations under the Plan of Settling Insurers to pay defense costs (excluding all defense costs of the type sought in the costs motion) through the Effective Date of the Plan, and (ii) claims excepted from exculpation under section 18.4, on the Effective Date of the Plan, each and every Protected Party shall grant, and shall be deemed to have granted, to each Debtor CGL Settling Insurer and its Related Persons a full and complete general release of all claims or causes of action of every kind and nature, known or unknown, that they may have against each Debtor CGL Settling Insurer and its Related Persons related in any way to the Debtor CGL insurance policies issued by such Debtor CGL Settling Insurers. No such claim will survive the Effective Date and such releases will be deemed granted regardless of whether the Protected Party executes and delivers a separate release to a Debtor CGL Settling Insurer. In addition, each Protected Party will be deemed to have consented to the sale by the Debtor of each Debtor CGL insurance policies issued by a Debtor CGL Settling Insurer back to the Debtor CGL Settling Insurer. Notwithstanding the foregoing, to the extent the Debtor CGL Settling Insurers are also insurers to the USOPC under policies issued to the USOPC or to the Karolyis under insurance policies issued to the Karolyis, this release shall be limited by the USOPC Release and the Karolyi Release.

12.11 USOPC RELEASE. On the Effective Date of the Plan, and subject to any separate agreement between the USOPC and a USOPC Settling Insurer, which shall control in the event of any conflict with this section 12.11, the USOPC shall grant, and shall be deemed to have granted, to each USOPC Settling Insurer and its Related Persons a full and complete general release of any rights and interests in indemnity coverage for Abuse Claims under any insurance policy issued by a USOPC Settling Insurer for which the Abuse Claimant has provided a full and complete general release to the

USOPC pursuant to section 11.2.1 of the Plan. The USOPC shall also grant, and shall be deemed to have granted, only to National Casualty Company and Virginia Surety Company (f/k/a as Combined Specialty Insurance Company) and their Related Persons, and only if National Casualty Company and Virginia Surety Company are each a Settling Insurer, and then only upon the Effective Date, a full and complete release of any and all rights and interests to defense costs incurred after the Effective Date of the Plan for Abuse Claims under any insurance policy issued by National Casualty Company or Virginia Surety Company that is specifically identified on Exhibit A, whether or not such Abuse Claims are those for which an Abuse Claimant has provided a release to the USOPC pursuant to section 11.2.1 of the Plan. Notwithstanding the foregoing, the USOPC retains the right to reimbursement of, and to pursue collection of, any defense costs incurred before the Effective Date of the Plan under any insurance policy issued by National Casualty Company or Virginia Surety Company. The USOPC also retains the right to reimbursement of, and to pursue collection of, any defense costs incurred before or after the Effective Date of the Plan under any insurance policy issued by a USOPC insurer other than National Casualty Company or Virginia Surety Company. Nothing in this provision shall be deemed to limit the Protected Party Release (described above) granted by the USOPC to any Debtor CGL Settling Insurer of claims against a Debtor CGL insurance policy. Provided, however, nothing in this provision shall be construed to effectuate a release of any claim by the USOPC against any Debtor CGL Settling Insurer or USOPC Settling Insurer under or in connection with any insurance policy that is not subject to a CGL settlement offer that is accepted by a Settling Insurer and that is not listed on Exhibit A.

12.12. KAROLYI RELEASE. On the Effective Date of the Plan, the Karolyis shall grant, and shall be deemed to have granted, to the Karolyi Settling Insurer and its Related Persons a release of any rights and interests in indemnity coverage for Abuse Claims under any

insurance policy issued by the Karolyi insurer (sic) for which the Abuse Claimant has provided a release to the Karolyis pursuant to section 11.2.1 of the Plan. Notwithstanding the foregoing, nothing shall be construed to effect a release of any claims by the Karolyis for reimbursement of defense costs under any insurance policy issued by the Karolyis Settling Insurer. The Karolyis retain the right to reimbursement of, and to pursue collection of, any defense costs incurred to date or which may be incurred after the Effective Date of the Plan. Nothing in this provision shall be deemed to limit the Protected Party release (described above) granted by the Karolyis to any Debtor CGL Settling Insurer of claims against a Debtor CGL insurance policy.

12.13. EXCLUDED PARTIES LIMITATION OF RELEASES AND CHANNELING INJUNCTION.

Notwithstanding anything to the contrary herein, nothing herein shall be deemed to release or affect any claims by any person (including Abuse Claimants, future claimants, and any other person) against any excluded parties. The excluded parties shall not be released parties or receive the benefits or protections of the Channeling Injunction. The fact that an excluded party shall not be a released party or receive the benefits or protections of the Channeling Injunction shall not prevent a release of insurance coverage under the Debtor CGL Insurance Policies issued by Debtor CGL Settling Insurers.

Plan at Article XII.