

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

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**DEBTOR’S MOTION TO APPROVE CONSENT RESOLUTION
WITH UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (“**USAG**” or the “**Debtor**”), hereby moves (the “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to Sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 105-1532 (the “**Bankruptcy Code**”), Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9019-1(a) of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the “**Local Rules**”), approving a consent resolution between USAG and the United States Olympic and Paralympic Committee (the “**USOPC**”), a copy of which is attached hereto as Exhibit B (the “**USOPC Consent Resolution**”). In support of the Motion, USAG respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are

¹ The last four digits of the Debtor’s federal tax identification number are 7871. The location of the Debtor’s principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.

Sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rule 9019(a), and Local Rule 9019-1(a).

BACKGROUND

A. Chapter 11 Case History.

2. On December 5, 2018 (the “**Petition Date**”), USAG filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. USAG remains in possession of its property and continues to operate and maintain its organization as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

3. On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “**Survivors’ Committee**”), comprised of nine survivors asserting sexual abuse claims against USAG.

4. On December 13, 2021, USAG and the Survivors’ Committee filed the *Modified Third Amended Joint Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics And The Additional Tort Claimants Committee Of Sexual Abuse Survivors* [Dkt. 1764] (the “**Plan**”). The Plan implements a global settlement between USAG, the Survivors’ Committee, insurers for USAG and the USOPC, and other parties to fund a trust to make distributions to survivors asserting sexual abuse claims. (Plan §§ 3.2, 9.2.2.) The Plan also requires USAG to implement certain non-monetary commitments and reforms, including appointing at least one survivor as a director of USAG and creating a Restorative Justice Task Force. (*Id.* § 20.1.) On December 13, 2021, the Court rendered its bench ruling confirming the Plan. (*See* Dkt. 1767.)

B. The USOPC Consent Resolution.

5. Prior to the Petition Date, the USOPC issued a complaint (the “**Section 8 Complaint**”) against USAG that sought, pursuant to 36 U.S.C. § 220521(d) and Section 8.1 of the

USOPC's bylaws, to decertify USAG as the national governing body ("NGB") for gymnastics. The USOPC alleged that USAG no longer met the requirements for recognition as a NGB because USAG allegedly "failed to implement the recommendations" in Deborah Daniels' *Report to USA Gymnastics on Proposed Policy and Procedural Changes for the Protection of Young Athletes* (the "**Daniels Report**"), "suffered managerial deficiencies, experienced financial uncertainty, and lost athlete and public trust." (USOPC Consent Resolution, at 1.) USAG disputed the USOPC's allegations.

6. Before and following the filing of the Debtor's chapter 11 case, the Debtor has been working diligently to address the concerns raised in the Section 8 Complaint. USAG has implemented almost all of the recommendations that Ms. Daniels made and asked Ms. Daniels to audit USAG's compliance with her recommendations. On February 23, 2021, Ms. Daniels issued her *Findings of Compliance Audit of USA Gymnastics Regarding Report to USA Gymnastics on Proposed Policy and Procedural Changes for the Protection of Young Athletes (June, 2017)* (the "**Audit Report**"). In her Audit Report, Ms. Daniels stated:

Overall, it appears that USA Gymnastics, particularly in the time period since the current CEO was installed in the Spring of 2019, has made significant forward progress toward not only improving its written policies but also improving its performance in terms of athlete abuse reporting and response to reports of abuse; training of various constituencies to enhance their understanding of what constitutes abuse and what action is expected if misconduct is detected; outreach to, protection and support of athletes; and communication from the top down of a culture that values and protects its athletes first and foremost. USA Gymnastics has made myriad, highly visible and potentially highly impactful changes that appear to be making a real difference on behalf of the young athletes for whose safety it is responsible.

(Audit Report, at 2 (found at Dkt. 1752-5).) Ms. Daniels further concluded that USAG "has made significant positive strides and has, in fact, fully satisfied the proposals for change made in the vast majority of the original 70 recommendations from the 2017 Report." (*Id.*)

7. USAG also has hired a new President and Chief Executive Officer, a Chief of Staff, a Chief of Athlete Wellness, a Director of Safe Sport Education and Policy, and a Safety and Compliance Counsel.

8. As a result of the Plan's confirmation, USAG also has resolved the lawsuits that were pending against it when it filed for bankruptcy through its global settlement with survivors and USAG's commitment to implement the non-monetary reforms set forth in the Plan. It also has stabilized its finances as a result of confirmation of the Plan.

9. Due to the substantial progress that USAG has made in addressing the USOPC's concerns, the USOPC has agreed to withdraw the Section 8 Complaint and to enter into the USOPC Consent Resolution with USAG. In the USOPC Consent Resolution, in exchange for withdrawal of the Section 8 Complaint, USAG has agreed to the following:

- a. **Auditing Implementation of the Daniels Report.** USAG will complete, by June 30, 2022, a follow-up audit of its implementation of the Daniels Report recommendations. Ms. Daniels, or another auditor agreed to by USAG and the USOPC in writing, will conduct the follow-up audit. If the follow-up audit reveals any deficiencies in USAG's implementation of the Daniels Report recommendations, then USAG will remedy such deficiencies to the auditor's reasonable satisfaction within 180 days after the date of the follow-up audit report. A remedy may include an action plan with a duration beyond 180 days if, in the auditor's judgment, circumstances require a longer remediation period. (USOPC Consent Resolution, at 3.)
- b. **Management.** In 2022, USAG will provide to the USOPC quarterly written updates describing USAG's efforts to retain members of its Executive Leadership Team. To the extent that any of those positions are vacant at the time of the update, USAG will include in the update a description of its efforts to fill those vacancies. USAG will also provide the USOPC with a copy of USAG's board-approved strategic plan for 2022. (*Id.*)
- c. **Financial Reporting.** In 2022, USAG will provide the USOPC with quarterly financial reports. (*Id.*)
- d. **Athlete and Public Trust.** In 2022, USAG and the USOPC will develop and implement a survey of USAG's members, and USAG will provide the results to the USOPC. In addition, in 2022 USAG will provide the USOPC with quarterly updates regarding anecdotal feedback from members. (*Id.*)

- e. **No Modification to Generally Applicable NGB Requirements.** USAG's obligations under the USOPC Consent Resolution are separate from, and in addition to, USAG's obligations to satisfy the USOPC's certification standards for NGBs, including USAG's obligation to satisfy the USOPC's audit process and remediate any audit findings within the period noted in USAG's final audit report. (*Id.* at 4.)

10. Approval of the USOPC Consent Resolution is in the best interests of the estate, its creditors, and the Debtor. The USOPC Consent Resolution allows USAG to emerge from its chapter 11 case on a more secure financial footing having removed any uncertainty about its NGB status. In addition, approval of the USOPC Consent Resolution is in the best interest of all creditors because, as to the survivors, it provides additional assurance that USAG will have the financial wherewithal to satisfy the non-monetary commitments in the Plan and, as to other creditors, that USAG will make the payments due to such creditors when they come due.

RELIEF REQUESTED

11. By this Motion, USAG seeks the entry of an order, pursuant to Sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rule 9019, and Local Rule 9019-1(a), approving the USOPC Consent Resolution attached hereto as Exhibit B, and authorizing USAG to take all steps necessary to comply with and otherwise effectuate the provisions of the USOPC Consent Resolution.

BASIS FOR RELIEF REQUESTED

12. Bankruptcy Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed R. Bankr. P. 9019(a). “Settlements are encouraged and favored by the courts,” especially in bankruptcy cases where estate assets are limited and disputes increase administrative expenses. *In re Goudy*, No. 87-11132, 1988 WL 236044, at *3 (Bankr. N.D. Ind. Dec. 22, 1988) (“[t]here is a strong policy in favor of encouraging parties to amicably resolve their differences, without resort to litigation”); *see also In*

re Oakfabco, Inc., 571 B.R. 771, 776 (Bankr. N.D. Ill. 2017) (“As a policy matter, settlements are generally favored due to their expediency, finality, and cost-effective results”) (citing *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000)).

13. Under Bankruptcy Rule 9019, a settlement should be approved if it is “in the best interests of the estate.” *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); accord *In re Holly Marine Towing, Inc.*, 669 F.3d 796, 801-02 (7th Cir. 2012). The “linchpin” of this test “is a comparison of the value of the settlement with the probable costs and benefits of litigating.” *Doctors Hosp.*, 474 F.3d at 426. To conduct this cost-benefit analysis, courts consider a number of factors, including “the litigation’s probability of success, the litigation’s complexity, the litigation’s attendant expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.” *In re Davidson*, 402 B.R. 877, 880 (Bankr. S.D. Ind. 2009).

14. However, the Court need not conduct a full evidentiary hearing regarding the propriety of the settlement and it may give weight to the debtor’s and counsel’s informed judgment supporting the settlement. *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994) (“Rule 9019(a) itself does not expressly obligate the court to hold an evidentiary hearing prior to approving a compromise”); *Matter of Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997). Ultimately, so long as the Court determines that the settlement does not fall outside the “low end in the reasonable range of litigation possibilities,” the settlement is in the best interests of the estate and should be approved. *In re Witt*, 473 B.R. 284, 288 (Bankr. N.D. Ind. 2012); accord *Matter of Energy Co-Op.*, 886 F.2d 921, 927 (7th Cir. 1989).

15. In addition, to the extent a settlement implicates the use or sale of estate property, Section 363(b) authorizes the Court to approve the settlement if it is a sound exercise of the

debtor's business judgment. *In re UAL Corp.*, 443 F.3d. 565, 571-72 (7th Cir. 2006); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment standard, courts show "great judicial deference" to a debtor's business judgment. *In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012); *accord G & N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 238 (Ind. 2001) (describing Indiana's business judgment rule as "strongly pro-management").

16. Here, USAG has determined, in its sound business judgment and after arms' length and good faith negotiations, that the USOPC Consent Resolution is fair, equitable, in the best interests of USAG's estate, and well within the range of reasonableness. The benefits of the USOPC Consent Resolution are apparent. If the USOPC continued to prosecute the Section 8 Complaint after the Plan's effective date, reorganized USAG would continue to face the risk of decertification. If decertification occurred, USAG would no longer be the NGB for gymnastics and its financial status would be less secure. Decertification also would nullify the Plan's non-monetary commitments, as any NGB that may replace USAG would not be a party to the Plan's non-monetary commitments. Because all of USAG's creditors, including survivors, have agreed, through confirmation of the Plan, that USAG's continued existence is in their best interests, no party is served by risking USAG's decertification after confirmation. It is therefore reasonable for USAG to seek a consensual resolution of the Section 8 Complaint through the USOPC Consent Resolution.

17. For the foregoing reasons, the Court should approve the USOPC Consent Resolution as fair and equitable and as a reasonable exercise of USAG's business judgment.

NOTICE

18. USAG will provide notice of this Motion in accordance with the *Order Granting Debtor's Motion For Order Establishing Certain Notice, Case Management, And Administrative*

Procedures [Dkt. 213] and Local Rule 9019-1(a). In light of the nature of the relief requested herein, USAG submits that no other or further notice is necessary.

WHEREFORE, USAG respectfully requests that the Court enter an Order substantially in the form attached as Exhibit A, granting the relief requested herein and granting all other just and proper relief.

Dated: December 15, 2021

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Catherine Steege

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Counsel for the Debtor

EXHIBIT A

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

In re:

USA GYMNASTICS,¹
Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**ORDER APPROVING CONSENT RESOLUTION BETWEEN
DEBTOR AND UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE**

This matter came before the Court on the Debtor's *Motion To Approve Consent Resolution With United States Olympic And Paralympic Committee* (the "**Motion**") filed by USA Gymnastics (the "**Debtor**"), for an order pursuant to Sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 105-1532, Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, and Rule 9019-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of

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Indiana, requesting the approval of a consent resolution between the Debtor and the United States Olympic and Paralympic Committee (the “USOPC” and the “USOPC Consent Resolution”); and the Court finds that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (M); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all parties in interest; and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Motion should be GRANTED:

1. The Motion is granted as set forth herein.
2. The USOPC Consent Resolution attached to the Motion as Exhibit B, and the settlement described therein, is approved. The Debtor is authorized to execute the USOPC Consent Resolution and take all actions necessary to implement and effectuate the USOPC Consent Resolution.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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EXHIBIT B

CONSENT RESOLUTION

This Consent Resolution (the “Agreement” or “Resolution”) is entered into this 11th day of December 2021 (the “Effective Date”), by USA Gymnastics, Inc. (“USAG”), and the United States Olympic & Paralympic Committee (“USOPC”). USAG and USOPC are the “Parties,” and each is a “Party.”

RECITALS

USAG is a Texas non-profit corporation with its principal office in Indianapolis, Indiana. USAG is the National Governing Body (“NGB”) for gymnastics in the United States.

The USOPC is a federally chartered corporation authorized by the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501, et seq. (the “Act”) and recognized by the International Olympic Committee under the *Olympic Charter* as the National Olympic Committee for the United States. The USOPC has its principal office in Colorado Springs, Colorado.

On November 5, 2018, the USOPC issued a complaint (the “Complaint”) against USAG under 36 U.S.C. § 220521(d) and Section 8.1 of the USOPC Bylaws, effective September 21, 2018, which authorizes the USOPC to terminate membership in the USOPC and to revoke the recognition of an NGB.

The Complaint alleges that USAG failed to meet the requirements for membership in the USOPC. Specifically, the USOPC alleged that USAG had failed to implement the recommendations in the Deborah Daniels Report, suffered managerial deficiencies, experienced financial uncertainty, and lost athlete and public trust.

On December 5, 2018, USAG commenced a voluntary Chapter 11 bankruptcy proceeding styled *In re: USA Gymnastics*, Case No. 18-09108-RLM-11, in the U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (“Bankruptcy Case”).

Since USAG filed the Bankruptcy Case, the organization has undertaken substantial efforts to address the issues alleged in the Complaint. USAG has provided the USOPC with periodic updates and information regarding these efforts.

On October 25, 2021, the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors Committee”) and USAG jointly filed in the Bankruptcy Case a Third Amended Joint Chapter 11 Plan of Reorganization (doc # 1655) (the “Plan”), which provides for one of three options: a Full Settlement Alternative, a Partial Settlement Alternative, or the Litigation Alternative (each as defined in the Plan).

Given the significant progress that USAG has made to remedy the issues alleged in the Complaint and the likelihood that the Plan will be confirmed, the Parties believe that resolving the Complaint through this Agreement is in the best interest of USAG’s athletes and other members, as well as the broader Olympic community. Accordingly, the Parties enter into this Agreement.

AGREEMENT

The Parties agree as follows:

Condition Precedent. This Agreement is effective only upon confirmation of the Full Settlement Alternative or the Partial Settlement Alternative in the Plan or a functionally alternative in any amendment to the Plan or any newly-filed Plan.

Resolution Framework. USA Gymnastics will abide by the terms of this Agreement, including the compliance obligations set forth in section 2. In exchange, the USOPC will withdraw its Complaint upon confirmation of the Plan. The USOPC reserves the right to bring an action under 36 U.S.C. § 220521(d) and Section 8 of the USOPC Bylaws if USAG fails to abide by the terms set forth in this Agreement or based on issues not covered by the Complaint.

Compliance Obligations.

Implementation of the Daniels Report. USAG agrees to complete, by June 30, 2022, a follow-up audit of its implementation of the Daniel's Report recommendations. Ms. Daniels, or another auditor agreed to by the Parties in writing, will conduct the audit. If the audit reveals any deficiencies in USAG's implementation of those recommendations, then USAG will remedy such deficiencies to the auditor's reasonable satisfaction within 180 days after the date of the audit report. A remedy may include an action plan with a duration beyond 180 days if in the auditor's judgment circumstances require a longer remediation period.

Managerial Deficiencies. In 2022, USAG agrees to provide to the USOPC quarterly written updates describing USAG's efforts to retain members of its Executive Leadership Team. To the extent that any of those positions are vacant at the time of the update, USAG will include in the update a description of its efforts to fill those vacancies. These reports will be in a form mutually agreed to by the Parties. USAG will also provide the USOPC with a copy of USAG's board-approved strategic plan for 2022.

Financial Deficiencies. USAG agrees to provide the USOPC with quarterly financial reports in 2022. These reports will be in a form mutually agreed to by the Parties.

Lawsuits/Claims & Bankruptcy. USAG will use its best efforts to confirm a plan of reorganization promptly that addresses its liability for the claims and lawsuits brought by survivors. The Parties agree that confirmation of the Full or Partial Settlement Alternatives under the Plan satisfies this requirement.

Athlete and Public Trust. The Parties will develop and implement a survey of USAG's members and provide the results to the USOPC in 2022. In addition, USAG agrees to provide the USOPC with quarterly updates in 2022 regarding anecdotal feedback from members regarding USAG.

Relationship to Certification Standards and Audit. This Agreement is separate from, and in addition to, USAG's obligations to satisfy the USOPC's Certification Standards for NGBs, including USAG's obligation to satisfy the USOPC's audit process and remediate any audit findings within the period noted in USAG's final audit report.

Entire Agreement. This Agreement contains the complete agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings between the Parties with respect to that subject matter. Section and other headings are for reference only and will not affect the interpretation or construction of this Agreement. The Parties have not made any representations or warranties except as expressly stated in this Agreement.

Amendment. This Agreement may be amended, modified or supplemented only by a written instrument executed by all parties.

Notice. Any notice in connection with this Agreement shall be considered received five working days after its deposit into the U.S. Mail in Certified form addressed to the address listed below for each respective party:

NOTICE TO USAG:

C.J. Schneider
Miller Johnson
45 Ottawa Avenue, SW, Suite 1100
P. O. Box 306
Grand Rapids, MI 49501-0306
schneiderc@millerjohnson.com

NOTICE TO USOPC:

Chris McCleary
General Counsel
United States Olympic Committee
1 Olympic Plaza
Colorado Springs, CO 80909
Chris.McCleary@usoc.org

Transparency. Recognizing the importance of transparency to USAG's athletes and members, and to the Olympic movement as a whole, the Parties agree that this Agreement is not confidential and may be shared with third parties. However, the parties will keep confidential any information that USAG provides to the USOPC in compliance with section 2 that is of a confidential nature (e.g., employment and financial information or personal contact information.)

Governing Law. This agreement shall be governed and construed pursuant to the internal laws of the State of Indiana without regard to its principles on conflicts of laws. Any dispute arising out of this Agreement must be brought exclusively in a state or federal court of competent subject matter jurisdiction in Marion County, Indiana.

Voluntary and Informed Execution of Agreement. The parties are freely and voluntarily entering into this Agreement after full consultation with legal, financial and other counsel of their choosing. Each of the parties has read this Agreement and discussed it with such legal, financial and other counsel. Each of the parties understands this Agreement. This Agreement was jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any provision of this Agreement.

[Signature Page Follows]

The parties have executed this Agreement as of the 11th day of December 2021.

USA GYMNASTICS



By: Li Li Leung
Its: President and CEO

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE



By: Sarah Hirshland
Its: Chief Executive Officer