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

In re:	Chapter 11
USA GYMNASTICS,[1]	Case No. 18-09108-RLM-11
Debtor.	

DEBTOR'S OBJECTION TO CLASS CLAIM NO. 531 AND NOTICE OF RESPONSE DEADLINE

NOTICE IS HEREBY PROVIDED TO THE CLAIMANT ASSERTING SEXUAL ABUSE CLAIM NO. 531 THAT THE DEBTOR OBJECTS TO YOUR CLAIM. YOUR CLAIM MAY BE DISALLOWED OR MODIFIED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE.

IF YOU DO NOT WANT THE COURT TO ENTER THE PROPOSED ORDER DISALLOWING YOUR CLAIM, THEN ON OR BEFORE MARCH 11, 2020 AT 4:00 P.M. (PREVAILING EASTERN TIME), YOU OR YOUR LAWYER MUST FILE A WRITTEN RESPONSE TO THE OBJECTION EXPLAINING YOUR POSITION.

THE OBJECTION AND ANY RESPONSE WILL BE HEARD AT A HEARING TO BE HELD ON MARCH 25, 2020 AT 1:30 P.M. (PREVAILING EASTERN TIME), IN ROOM 329 OF THE UNITED STATES BANKRUPTCY COURT, 46 EAST OHIO STREET, INDIANAPOLIS, INDIANA 46204.

IF YOU ARE NOT PERMITTED TO FILE ELECTRONICALLY, YOU MUST DELIVER ANY OBJECTION BY U.S. MAIL, COURIER, OVERNIGHT/EXPRESS MAIL, OR HAND-DELIVERY AT:

116 U.S. COURTHOUSE
ATTN: CHAMBERS OF THE HONORABLE JUDGE MOBERLY
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

IF YOU MAIL YOUR RESPONSE TO THE COURT, YOU MUST MAIL IT EARLY ENOUGH SO THE COURT WILL RECEIVE IT ON OR BEFORE THE DATE STATED ABOVE.

YOU MUST ALSO SEND A COPY OF YOUR OBJECTION TO:

JENNER & BLOCK LLP
ATTN: CATHERINE STEEGE AND MELISSA ROOT
353 NORTH CLARK STREET
CHICAGO, ILLINOIS 60654

IF YOU DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE YOU DO NOT OPPOSE AN ORDER DISALLOWING OR MODIFYING YOUR CLAIM.

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

USA Gymnastics, as debtor and debtor-in-possession in the above-captioned chapter 11 case (the "**Debtor**" or "**USAG**"), hereby submits this objection (the "**Objection**") to Sexual Abuse Claim No. 531 (the "**Class Claim**"), pursuant to section 502 of title 11 of the United States Code, 11 U.S.C. §§101–1532 (the "**Bankruptcy Code**"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 3007-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the "**Local Rules**"), requesting entry of an order, substantially in the form attached hereto as Exhibit A, disallowing Claim No. 531 in full. In support of this Objection, the Debtor states:

INTRODUCTION

1. Marcia Frederick filed Claim No. 531 on behalf of herself and "similarly situated class members" alleging that she and others in the purported class are entitled to damages under the Protecting Young Victims From Sexual Abuse And Safe Sport Act Of 2017, Pub. L. 115-126 (the "**Safe Sport Act**" or the "**Act**"). Ms. Frederick contends that the Court should apply the Safe Sport Act retroactively even though the Act does not state that it applies retroactively. *See generally id*. Ms. Frederick alleges that within 24 hours after the Safe Sport Act was enacted into law on February 14, 2018, USAG was required to report all claims of sexual abuse that the organization was ever aware of to the U.S. Center for Safe Sport (the "**Center**") without regard to when such claims were previously reported to USAG. (Claim No. 531, Class Action Complaint, attached hereto as Ex. B, at ¶39-40.)[2] In Ms. Frederick's case, her claims date back to the late 1970's and early 1980's. (Ex. B, at ¶¶76-94.) Ms. Frederick contends that she and any other person who was the subject of a pre-February 14, 2018 claim is entitled to actual damages, statutory

[2] The class complaint that Ms. Frederick attaches to her Class Claim was filed on the public docket in Case No. 1:18-cv-11299 (D. Mass.) and was not filed under seal or redacted in any way. Accordingly, because the class complaint is of public record, the Debtor attaches it as an exhibit to this Objection.

damages of $150,000 each, and the recovery of attorney's fees and costs. (Ex. B, at ¶43.) This Objection addresses only Ms. Frederick's Class Claim.

2. The Court should disallow Ms. Frederick's Class Claim. It is a well-settled rule that the efficiencies of bankruptcy administration typically make class claims unnecessary and unduly burdensome in a complex chapter 11 case. *See, e.g., In re American Reserve Corp.*, 840 F.2d 487, 493 (7th Cir. 1988) (describing how "class certification" may be "less desirable in bankruptcy than in ordinary civil litigation"); *In re Circuit City Stores, Inc.*, No. 08-35653, 2010 WL 2208014, at *7 (Bankr. E.D. Va. May 28, 2010) (refusing to allow class claim because "class litigation would be inferior to the bankruptcy claims resolution process and would unduly complicate the administration of these cases"). As the Seventh Circuit has explained, class actions involve "unique" and "complex problems" distinct from the merits of the claim, "consume judicial time, putting off adjudication for other deserving litigants," and "impose steep costs on defendants. . . ." *American Reserve*, 840 F.2d at 490. And because bankruptcy itself is a "mandatory collective proceeding," the principal benefit of a class action—that it "concentrates litigation in a single forum, where it may be resolved more readily than a series of suits could be"—is already achieved in a bankruptcy case without the class action "overlay." *Id.* at 489. As a result, bankruptcy courts in this Circuit are instructed that they should "consider the benefits and costs of class litigation" and refuse to allow class claims that "would greatly complicate a bankruptcy, without yielding significant compensation to injured parties." *Id.* at 492.

3. Ms. Frederick's proposed Class Claim does not even come close to satisfying the Seventh Circuit's exacting standards as to when Rule 23 should be applied in complex bankruptcy cases. Ms. Frederick filed a proof of claim in which she purports to represent all individuals abused as minors by *any* perpetrator, potentially decades ago, and which USAG allegedly failed to report

to the Center within 24 hours of the Act's enactment. Ms. Frederick fails to explain why members of her purported class, which was never certified pre-petition, were not able to individually comply with the Bar Date established in this chapter 11 case.

4. The practical effect of allowing Ms. Frederick's Class Claim to proceed is to vacate this Court's Bar Date Order. Granting this relief would be highly prejudicial to the claimants who timely filed their claims as it would make it virtually impossible to reach an agreement on an appropriate settlement of their sexual abuse claims. Without knowing how many claims must be resolved, it becomes very difficult, if not impossible, to determine what amount is necessary to settle those claims. And even if the Survivors Committee, the Debtor, and its insurance carriers could reach agreement on the amount necessary to fund a settlement trust for survivors, if there is no finality to the number of participating claimants, the trustee of such a trust would find it nearly impossible to make a complete distribution from the trust. These quite obvious problems are the reason why there is a bar date in every bankruptcy case and why the Court's Bar Date Order should not be vacated here under the guise of allowing the Class Claim to proceed.

5. Even more, the Class Claim fails on its merits as a matter of law. The Class Claim asserts that the Debtor violated the Safe Sport Act, but there is no private cause of action allowing Ms. Frederick to enforce the provisions of the Safe Sport Act that she alleges the Debtor violated. In addition, the Class Claim can only plausibly state a claim for relief if the Safe Sport Act applies retroactively, which it does not. There is no statutory text indicating that Congress intended to apply the Act retroactively, and doing so would expose the Debtor to enhanced criminal sanctions in violation of the *Ex Post Facto* Clause (assuming Ms. Frederick's factual allegations are true, which they are not). For all of these reasons, the Court should disallow the Class Claim in full.

JURISDICTION

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (B), 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 requested herein are section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

A. The Debtor's Bankruptcy Filing.

7. On December 5, 2018, USAG filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor 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.

8. On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee Of Sexual Abuse Survivors to represent the interests of all creditors making claims against the Debtor based on sexual abuse. (Dkt. 97.)

9. From the start, the Debtor's stated purpose in filing bankruptcy was to allow for a complete and equitable resolution of all of the sexual abuse claims. At the time it filed for bankruptcy, the Debtor faced hundreds of lawsuits and, while it has insurance applying to those claims, it feared that the insurance would not cover all of the claims. Thus, bankruptcy was the only option to ensure that all of the sexual abuse survivors would be treated equitably. The Debtor undertook a number of steps to achieve this objective.

B. USAG's Bar Date And Notice Procedures.

10. The first step in resolving the sexual abuse claims was to set a bar date for the filing of claims. On February 25, 2019, the Court issued an order fixing April 29, 2019 as the bar date for claims arising from sexual abuse (the "**Bar Date**"). (*See* Dkt. 301 (the "**Bar Date Order**").) No party appealed the Bar Date Order and the Bar Date Order is now a final order. The Bar Date Order provided that any individuals who did not comply with the Bar Date would be "forever barred, estopped, and enjoined from asserting" their claims, and USAG would be "forever discharged from any and all indebtedness or liability with respect to or arising from" their claims. (*Id.* ¶18.)

11. The Bar Date Order mandated extensive notice procedures that the Court found were "adequate and sufficient" notice of the Bar Date. (*Id.* ¶¶20-21.) The Bar Date Order directed USAG to serve the Sexual Abuse Bar Date Notice, "to the extent a mailing address was reasonably available," on known survivors who had filed or threatened to file lawsuits against the Debtor alleging sexual abuse, had reported abuse to the Debtor, had entered into a settlement agreement with the Debtor stemming from allegations of abuse, or had received payment from the Debtor as a result of an allegation of abuse. (*Id.* ¶20.)

12. The Debtor more than fulfilled its notice obligations under the Bar Date Order. After a meticulous and comprehensive search of its records to identify all potential sexual abuse claimants, even those who never formally or clearly notified USAG of their claims, the Debtor mailed the Sexual Abuse Bar Date Notice to more than 1,300 individuals. (*See, e.g.*, Dkt. 341, Ex. C; Dkt. 365, Ex. A-B.) The Debtor also sent this notice package to all known counsel for sexual abuse claimants, including Ms. Frederick's counsel, Kimberly Dougherty, Vance Andrus, and Aimee Wagstaff at Andrus Wagstaff, PC. (Dkt. 341, at pg. 55 of 357.) The Debtor e-mailed the

Bar Date Notice to its list of more than 360,000 e-mail addresses for current and former USAG members. (Dkt. 341, Ex. E.) The Debtor placed the Bar Date Notice on its website, Facebook, Twitter, and Instagram pages and published notification in USA Today, Inside Gymnastics, International Gymnast, the Gymcastic podcast, and the Meetscores website. (*See* Dkt. 366.) In addition, between February 26 (one day after the Bar Date Order was entered) and April 30 (one day after the Bar Date), the Sexual Abuse Bar Date Notice was prominently displayed at the top of USAG's Twitter feed as the "pinned" tweet. The Debtor also sent letters to each of its member gyms asking those facilities to post the sexual abuse notice package and the claim form for their members to see.

13. In addition to this notice, the Debtor's chapter 11 case also has received extensive media attention. A LexisNexis search shows that the chapter 11 filing has generated at least 520 articles about its bankruptcy including in national publications such as the New York Times, the Wall Street Journal, and USA Today, and in local papers such as the Indianapolis Star, and the Orange County Register.[3] Further, the bankruptcy has been the subject of stories on NPR and nightly news broadcasts and morning news shows on the major network broadcast stations.

14. The Debtor's broad notice plainly reached the universe of sexual abuse claimants. In total, 510 individuals were able to file their sexual abuse claims by the Bar Date. Of these claims, 60 were filed by individuals alleging abuse by someone other than Larry Nassar. Further, 72 of the 548 claimants were individuals who had not sued the Debtor before the bankruptcy filing. USAG had no notice of these 72 claimants and thus, these claimants would have learned of the Bar Date

[3] LexisNexis search of "'USA Gymnastics' and bankruptcy" narrowed to time period of December 5, 2018 through April 29, 2019, and performed on January 17, 2020.

Order as a result of the Debtor's extensive publication notice and/or the extensive media coverage surrounding this chapter 11 case.

C. The Futures Claims Representative.

15. Recognizing that some individuals might be legally disabled from filing a claim by the Bar Date, the Debtor also sought the appointment of a future claims representative. On May 17, 2019, this Court appointed Fred Caruso as the Future Claims Representative. (Dkt. 516.) As Future Claims Representative, Mr. Caruso represents the interests of any "Person who (a) held a Sexual Abuse Claim against the Debtor as of the Sexual Abuse Bar Date and (b) meets one of the following criteria:

(i) is under the age of majority under applicable state law as of March 1, 2019;

(ii) as of March 1, 2019, the statute of limitations for such Person was tolled under applicable state law or had not begun to run under applicable state law;

(iii) as of March 1, 2019, the Debtor was estopped under applicable state law from asserting the statute of limitations; or,

(iv) such Person's Sexual Abuse Claim was barred by the applicable statute of limitations as of March 1, 2019 but is no longer barred by the applicable statute of limitations for any reason, including the enactment of legislation that revives such claims."

(Dkt. 516, at ¶2.) Mr. Caruso's job is to negotiate a carve-out for these "Future Claimants" from any settlement of the sexual abuse claims.

D. The Mediation.

16. On May 17, 2019, this Court appointed Judge Gregg Zive to mediate "the resolution of the sexual abuse claims; the resolution of any disputes relating to the applicability of the Debtor's insurance coverage to the sexual abuse claims and the Debtor's insurance carriers' obligations to fund distributions on the sexual abuse claims, and related defense costs; and the resolution of any other matters necessary to equitably determine the rights of, and allocate recoveries to, survivors holding allowed sexual abuse claims." (Dkt. 514, ¶2.)

17. In preparation for the mediation, the Debtor spent considerable time and resources analyzing what it believed to be the universe of claims, as well as the available insurance coverage for those claims, so that it could determine the extent of its liabilities and negotiate a consensual plan of reorganization. Judge Zive began the mediation process in late May, 2019 and has conducted a series of in-person and telephonic mediation sessions over the last many months. The mediation is ongoing.

E. Marcia Frederick's Alleged Class Claim.

18. On April 29, 2019, Marcia Frederick filed Sexual Abuse Claim No. 531. She attached and incorporated a class action complaint, which was filed on June 20, 2018 in the United States District Court for the District of Massachusetts. The complaint sought to certify a class defined as:

> All current or former USAG-affiliated and/or USOC affiliated amateur athletes for whom the USAG, the USOC, and/or their agents and/or employees received information that the amateur athlete may have suffered an incident of child abuse, including sexual, emotional and/or physical abuse, and either (a) failed to report incidents occurring after February 14, 2018 to law enforcement authorities within 24 hours of learning of the incident, and/or (b) failed to report incidents occurring before February 14, 2018 to law enforcement authorities, within 24 hours of the Congress enacting the Safe Sport Act.

(Ex. B, at ¶39.)

19. The Class Claim requests actual, liquidated, and punitive damages arising from USAG's alleged failure to comply with the Safe Sport Act, and to report allegations of sexual abuse of minor athletes to the U.S. Center for Safe Sport within 24 hours of that law's enactment on February 14, 2018. (*Id.* at ¶148.) The liquidated damages that are sought are $150,000 for each class member, and Frederick asserts that the class is numerous enough that the aggregate damages will exceed $5,000,000. In addition, the Class Claim requests undefined declaratory and injunctive relief, as well as reasonable attorney's fees and costs.

20. USAG moved to dismiss Ms. Frederick's complaint in the Massachusetts litigation in October, 2018. (*Frederick v. USAG, et al.*, No. 18-CV-11299, Dkt. 38, 39 (D. Mass.).) The district court never granted or denied class certification. It stayed the entire class action in light of this Court's order enjoining the continued prosecution of certain pre-petition lawsuits. (*See Frederick v. USAG, et al.*, No. 18-CV-11299, Dkt. 83 (D. Mass.); Adv. No. 19-50075, Dkt. 71.)

21. Ms. Frederick did not move the Bankruptcy Court for an order allowing the filing of a class claim before filing the Class Claim. She has not moved for such an order at any time after filing the Class Claim. No court has ever certified Ms. Frederick or her counsel as class representatives.

RELIEF REQUESTED

22. By this Objection, the Debtor objects, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1 to the Class Claim and requests entry of an order disallowing the Class Claim in its entirety. In the event that the Court does not grant this Objection and allows the Class Claim to proceed, the Debtor reserves its right to raise additional objections to the certification of a class and the merits of any class claim.

OBJECTION

23. There is no absolute right to file a class proof of claim in a bankruptcy case. Instead, bankruptcy judges, exercising their sound discretion, are tasked with deciding whether it is appropriate to apply class action procedures to the claims administration process. *American Reserve*, 840 F.2d at 493-94. Because allowing a class claim necessarily circumvents the bar date for filing claims and imposes other costs on a bankruptcy estate, bankruptcy courts allow such claims only "sparingly" and only in an appropriate case. *In re Musicland Holding Corp.*, 362 B.R.

644, 650 (Bankr. S.D.N.Y. 2007) (citing *In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995)).

24. This is not that case. The Class Claim should be disallowed because: (1) Ms. Frederick has not complied with the procedural requirements to prosecute a class action in bankruptcy; (2) class action practice would unduly burden the administration of this chapter 11 case with no benefit to creditors given the appointment of the Future Claims Representative; and (3) Ms. Frederick has not proven that certification is proper under Federal Rule of Civil Procedure 23. In addition, the Class Claim is without merit and only stands to dilute the recovery of the claims of the survivors who filed timely claims.

I. Ms. Frederick Has Not Complied With The Procedural Requirements For Class Action Practice In Bankruptcy Cases.

25. Federal Rule of Civil Procedure 23, the rule which allows for the prosecution of class actions, does not automatically apply to the claims allowance process. *See* FED. R. BANKR. P. 9014(c). That is because the claims allowance process is a contested matter governed by Bankruptcy Rule 9014. *American Reserve*, 840 F.2d at 488; *In re Ephedra Products Liability Lit.*, 329 B.R. 1, 5 (S.D.N.Y. 2005) (collecting cases). Bankruptcy Rule 9014(c) directs which of the Federal Rules of Civil Procedure (incorporated in the Part VII Rules) apply to contested matters. Bankruptcy Rule 7023, incorporating Rule 23, is not one of them. Instead, application of Rule 23 to the claims allowance process requires that the bankruptcy court issue an order directing its application. FED. R. BANKR. P. 9014(c); *see American Reserve*, 840 F.2d at 488.

26. A claimant's request to apply Rule 23 must be made "without undue delay." *In re Tarragon Corp.*, No. 09-10555-DHS, 2010 WL 3842409, at *5 (Bankr. D.N.J. Sept. 24, 2010). The reason for this requirement is that "class litigation is inherently more time-consuming than the expedited bankruptcy procedure for resolving contested matters," and so "class litigation would

have to be commenced at the earliest possible time to have a chance of being completed in the same time frame as the other matters that must be resolved before distributing the estate." *Ephedra Products Liability Lit.*, 329 B.R. at 5. Further, Rule 23 mandates that class certification be granted or denied "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A).

27. In *American Reserve,* the Seventh Circuit explained that filing a proof of claim constitutes a "stage," for purposes of Rule 9014(c). 840 F.2d at 488. Yet, Ms. Frederick did not file a motion to apply Rule 23 to her purported Class Claim or a motion to certify the putative class when she filed the Class Claim, *nor has she sought to do so in the more than eight months that the Class Claim has been pending.* This lethargic approach to class litigation cannot be excused in a chapter 11 case like this one, where each day spent administering this case delays and diminishes distributions to survivors asserting timely claims. It is well within the Court's discretion to refuse to apply Rule 23 due to Ms. Frederick's failure to prosecute the Class Claim, and in light of the delay that adjudicating certification issues now would impose on the parties' efforts to negotiate a consensual plan. *See, e.g., Tarragon*, 2010 WL 3842409, at *4 (refusing to apply Rule 23 where purported class claimant failed to "allege[] any facts adequate to provide justification for her delay in bringing a motion for class certification"); *Circuit City Stores, Inc.*, 2010 WL 2208014, at *5 (same); *In re Thomson McKinnon Securities, Inc.*, 150 B.R. 98, 101 (Bankr. S.D.N.Y. 1992) (same).

II. Rule 23 Should Not Be Applied In This Chapter 11 Case.

28. Even if the Court excuses Ms. Frederick's failure to timely invoke class action procedures (and it should not), the Court should refuse to apply Rule 23 to the Class Claim. When making the discretionary decision to direct (or forbid) the application of Rule 23 to a proof of claim, courts consider three factors: "(1) whether the class was certified pre-petition, (2) whether

the members of the putative class received notice of the bar date, and (3) whether class certification will adversely affect the administration of the case." *Musicland*, 362 B.R. at 654. None of these factors weigh in favor of applying Rule 23 here.

A. No Class Was Certified Pre-Petition.

29. *First*, no class was certified pre-petition, which strongly counsels against permitting class action litigation in this case. Simply put, there is no advantage to this Court deciding complex class action issues when the purported members of the class could each have filed an individual claim "for the price of a stamp" (or no cost at all, given electronic filing). *In re Bally Total Fitness of Greater N.Y., Inc.*, 411 B.R. 142, 145 (S.D.N.Y. 2009).

30. In fact, individuals have acted here to file their own claims, which negates the need for a class claim. There is no suggestion here that individuals were unable to file their claims by the Bar Date because they did not know about the Bar Date. In fact, 60 individuals have filed their own claims by the Bar Date alleging abuse by someone other than Nassar. Moreover, 72 individuals filed claims relying upon publication notice. The fact that these claims were filed strongly rebuts the need for a class claim for these individuals.

31. The existence of these claims also strongly supports the conclusion that potential claimants were not relying upon Ms. Frederick or her counsel to file a class claim on their behalf. Because Ms. Frederick did not initiate class litigation pre-bankruptcy, Ms. Frederick's counsel was obviously never "appointed by any court to serve as class counsel" and "therefore, was not authorized to file the Class Claim[] on behalf of the unnamed claimants as their authorized representative." *Circuit City Stores*, 2010 WL 2208014, at *4; *accord Musicland*, 362 B.R. at 652 (collecting cases finding that counsel purporting to represent uncertified class was not actually authorized to represent unnamed class members). Putative class members therefore had no "reasonable expectation that a class claim would be filed that would protect their rights." *Id.* at 656.

Denying Ms. Frederick the ability to file a class claim therefore will not interfere with any other creditor's reasonable expectation that a class claim would protect their interests.

32. Moreover, if this Court were to apply Rule 23 in the absence of a pre-petition order already certifying a class, it would be required to engage in a time-consuming Rule 23 analysis, delaying the resolution of this chapter 11 case. Specifically, the Court would have to adjudicate whether Ms. Frederick has "prove[n]," not merely pleaded, the elements required for class certification under Rule 23—namely: (i) that her putative class is sufficiently numerous for class-wide adjudication; (ii) common issues of fact and law not only exist but predominate over individual issues; (iii) Ms. Frederick's claims are typical of those of the unnamed class members; (iv) Ms. Frederick and her counsel will adequately represent the interests of the class; and (v) the class action is the superior method of adjudicating the controversy, notwithstanding the efficiencies of the bankruptcy forum. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

33. Because the resolution of these issues requires *proof* rather than *allegations*, the Court will have to "probe beyond the pleadings" to come to a reasoned decision. *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 677 (7th Cir. 2001); *accord Dukes*, 564 U.S. at 350; *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013). In order words, a "significant amount of discovery" will be required in order "to litigate [the] class certification motion." *In re Bally Total Fitness of Greater N.Y., Inc.*, 402 B.R. 616, 621 n.5 (Bankr. S.D.N.Y. 2009). This discovery and litigation will force the Debtor to incur substantial and unnecessary legal fees, "siphoning the Debtor's resources" and diminishing recoveries for individuals (including members of the putative class) who timely filed claims. *Id.* at 621.

34. In addition, class litigation will "interfer[e] with the orderly progression of the reorganization." *Id.* A "bankruptcy case can proceed no faster than its slowest matter." *In re*

Woodward & Lothrop Holdings, Inc., 205 B.R. 365, 376 (Bankr. S.D.N.Y. 1997); *see also American Reserve*, 840 F.2d at 491 ("Because bankruptcy is a collective proceeding, it is reduced to the slowest common denominator"). Here, parties in interest, most notably the Debtor's insurers, will likely refuse to bind themselves to a global settlement while the Class Claim remains pending. If it is possible (however remote) that the Class Claim will be allowed at a later date and valued at a substantial sum, diluting recoveries for non-class claimants and further eroding the Debtor's insurance coverage, parties will be unable to design and agree to a consensual plan of reorganization. The Debtor would then linger in chapter 11, delaying compensation that the Court has stated is already "past due" to holders of timely sexual abuse claims. (*See* February 21, 2019 Omnibus Hearing Transcript, attached hereto as Ex. C, at 67:8-11.)

35. In short, because no class was certified pre-petition, applying Rule 23 to the Class Claim will be no easy or quick task. It will instead require both the Court and the estate's professionals to make a substantial investment of resources and time to the detriment of every party in interest to this case. It is therefore well within the Court's discretion to refuse to apply Rule 23 to the Class Claim. *See, e.g.*, *Musicland*, 362 B.R. at 656 (refusing to apply Rule 23 because, *inter alia*, no class was certified pre-petition); *Circuit City Stores*, 2010 WL 2208014, at *2 (same); *Tarragon Corp.*, 2010 WL 3842409, at *2 n.3 (same); *Bally Total Fitness*, 411 B.R. at 145 (same); *In re FIRSTPLUS Financial, Inc.*, 248 B.R. 60, 66 (Bankr. N.D. Tex. 2000) (same); *Sacred Heart Hosp.*, 177 B.R. at 18 (same).

B. All Putative Class Members Received Constitutionally Adequate And Sufficient Notice Of The Bar Date.

36. *Second*, class action practice is also unnecessary because all of the putative class members received constitutionally sufficient notice of the Bar Date and could have easily filed claims on their own. Where notice of a bar date is sufficient, permitting a class claim in that

circumstance would "effectively extend the bar date for those [putative class members] who failed to file a timely claim, without a showing of excusable neglect." *Musicland*, 362 B.R. at 655-56; *see also In re W.R. Grace & Co.*, 389 B.R. 373, 380 (Bankr. D. Del. 2008) (refusing to permit class claim where putative class members received actual or constructive notice of bar date). Indeed, properly-noticed individuals are among the "least favored candidates for class action treatment" in bankruptcy. *Musicland*, 362 B.R. at 655.

37. Here, USAG provided constitutionally adequate and sufficient notice of the Bar Date to the putative class members. After a comprehensive review of its books and records, USAG mailed notice to every individual for whom anyone had provided USAG with any indication that they had been abused. USAG also sent e-mail notice to over 360,000 present and former members, requested that member gyms post the notice on their premises, and published the notice on numerous social media pages and websites and in gymnastics-focused and national publications. USAG's notice efforts were both tailored to the facts and circumstances of this case, as well as consistent with the form of notice "customarily provided in large chapter 11 cases, and in plenary litigation generally." *In re Motors Liquidation Co.*, 447 B.R. 150, 168 (Bankr. S.D.N.Y. 2011). USAG's notice procedures were therefore constitutionally adequate and sufficient to bind all of USAG's creditors to the Bar Date, including the putative class members. Indeed, this Court found that the extensive notice procedures in the Bar Date Order were "adequate and sufficient" notice of the Bar Date, and no party, including the purported class representative Ms. Frederick, has sought to vacate the Bar Date Order. (*See* Bar Date Order, at ¶¶20-21.)

38. The Court should refuse to apply Rule 23 and give "a second bite at the apple" to putative class members who failed to file timely claims, despite their notice of the deadline. *FIRSTPLUS Fin.*, 248 B.R. at 73 (refusing to permit class claim where putative class members

were on notice of bar date). Allowing such an "end run" around the Bar Date would be inequitable both to USAG and the hundreds of claimants who complied with the Bar Date. *W.R. Grace & Co.*, 389 B.R. at 380; *see also Musicland*, 362 B.R. at 656.

39. Providing that relief also would serve no legitimate purpose. The Future Claim Representative exists to protect the interest of those individuals who have a legally-valid reason for failing to file a claim by the Bar Date. A class representative with all of the attendant expense and delay is simply unnecessary here.

C. Applying Rule 23 Would Have An Adverse Impact On The Estate.

40. *Third*, courts refuse to apply Rule 23 when doing so would "gum up" the administration of the estate, delaying confirmation and distributions to non-class creditors. *American Reserve*, 840 F.2d at 491; *accord Musicland*, 362 B.R. at 656-57. The timing issues discussed above apply fully here. The Bar Date has come and gone and the mediation process has commenced. All of this has occurred in the shadow of the Class Claim, without any action by Ms. Frederick to invoke Rule 23 and seek certification of her putative class. To apply Rule 23 now would be to reward Ms. Frederick's "dilatory efforts" in prosecuting the Class Claim—or, rather, her "slumber" and "inattentiveness to [this] litigation"—at severe cost to every other party in interest in this case. *Matter of Chicago, Rock Island & Pacific R. Co.*, 788 F.2d 1280, 1284 (7th Cir. 1986); *Matter of Plunkett*, 82 F.3d 738, 742 (7th Cir. 1996).

41. *Sacred Heart Hospital* provides useful guidance. There, putative class counsel filed a motion for leave to file a class claim after the case had been pending for several months and while plan negotiations were underway. 177 B.R. at 19. The court denied the motion, finding that no factor supported the use of Rule 23 in the bankruptcy case. It noted that it is "clearly disruptive to the formulation of a plan to frustrate a debtor's [and other parties'] logical assumptions regarding the amounts of total claims" by permitting a class claim and litigating class action issues

after a bar date. *Id.* at 23. The court continued that "it would be unwarranted, unfair, and possibly violate the due process rights of other creditors of the debtor to effectively extend the bar date to benefit the members of the putative class who failed to exercise vigilance" and file their own claims. *Id.* at 24.

42. So too here. Ms. Frederick has done *nothing* to bring the class action issues to this Court's attention, while USAG has made every effort to expeditiously resolve this case. The Court should "decline to apply Rule 23 at this late date because of the huge problems it would create for the prompt and orderly distribution of the estate." *Ephedra Products Liability Lit.*, 329 B.R. at 8 (refusing to apply Rule 23 because of untimely efforts to litigate class claim); *see also Musicland*, 362 B.R. at 656-57; *Circuit City Stores*, 2010 WL 2208014, at *5-6 (same); *Tarragon Corp.*, 2010 WL 3842409, at *4-5 (same); *In re Northwest Airlines Corp.*, No. 05-17930-ALG, 2007 WL 2815917, at *3 (Bankr. S.D.N.Y. Sept. 26, 2007) (same); *Woodward & Lothrop Holdings*, 205 B.R. at 371 (same); *Sacred Heart*, 177 B.R. at 22-23 (same).

III. The Class Claim Should Not Be Certified Under Rule 23.

43. The Class Claim also does not meet the requirements for certification under Rule 23. In order for a damages class to be certified, Rule 23(b)(3) requires that the class claimant "prove," not merely plead, that common questions of law or fact "predominate" over individual questions and that the class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." *Dukes*, 564 U.S. at 350, 362; *see also Behrend*, 569 U.S. at 33-34. Here, Ms. Frederick has not "affirmatively demonstrate[d]" that either Rule 23(b)(3) element is satisfied "*in fact*." *Id.* at 33 (emphasis in original).

A. Common Issues Do Not Predominate.

44. The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997)

(vacating class certification in mass tort case). Predominance is not met where liability determinations are "individualized" and fact-intensive, or "where affirmative defenses will require a person-by-person evaluation of conduct to determine whether an individual potential class member's action precludes individual recovery." *Clark v. Experian Information, Inc.*, 233 F.R.D. 508, 512 (N.D. Ill. 2005); *accord Jones et al. v. BRG Sports, Inc.*, No. 18-CV-7250, 2019 WL 3554374 (N.D. Ill. Aug. 1, 2019). For these reasons, "[c]ivil actions involving mass torts are often not certified for class action treatment, even in non-bankruptcy plenary litigation, because so many individualized legal and individualized damages inquiries are ultimately required." *Motors Liquidation*, 447 B.R. at 159-60 (collecting cases).

45. The District Court for the Southern District of Indiana has applied these principles and denied class certification under circumstances similar to those here. In *Hurd v. Monsanto Co.*, plaintiffs sued Monsanto on behalf of a class of over 3,500 employees, asserting that Monsanto wrongfully exposed them to toxic chemicals during their employment in the 1950s through 1970s. 164 F.R.D. 234, 237 (S.D. Ind. 1995). The district court determined that class certification was inappropriate because common issues did not predominate.

46. Specifically, the court reasoned that "[u]nlike airplane crash or hotel disaster cases, which usually involve *a single set of operative facts used to establish liability*, this case involves continuing exposure over as many as twenty years." *Id.* at 240 (emphasis added). The question for the court was not whether the allegedly toxic chemical *could* cause harm, but "whether it *did* cause harm and to whom." *Id.* (emphasis in original). This "determination is highly individualistic, and depends upon the characteristics of individual plaintiffs (*e.g.*, state of health, lifestyle) and the nature of their exposure." *Id.* In addition, Monsanto's right to assert certain defenses, including that "the claims of some putative class members may be barred by the statute of limitations," would

"further infuse the proceedings with individual issues." *Id.* In light of the individualized liability and defense issues applicable to each class member, the court determined that common questions did not predominate and that class certification was improper.

47. The same reasoning applies to the Class Claim. The Class Claim demands damages for USAG's failure to report any incident of child abuse, suffered by any minor and committed by any perpetrator at any time. (Ex. B, at ¶¶39-40.) But, like in *Hurd*, the question is not whether USAG allegedly and generally exposed putative class members to a risk of injury, but instead whether USAG "*did* cause harm and to whom." 164 F.R.D. at 240. On this question, there will not be "a single set of operative facts used to establish liability" because the Class Claim arises from the acts of all potential abusers and over an unbounded period of time. *Id*. Individual issues will therefore "quickly dominate the proof" on the Class Claim, making class certification inappropriate. *Motors Liquidation*, 447 B.R. at 160 (quoting *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 226 F.R.D. 456, 482-83 (S.D.N.Y. 2005)).

48. In short, to adjudicate the Class Claim, "the Court would have to engage in a series of highly disputed mini-trials for each class member to resolve" highly contested issues of causation and injury, "making class treatment untenable and implausible." *Bally Total Fitness of Greater N.Y.*, 402 B.R. at 622.

B. A Class Action Is Not Superior To The Normal Claims Administration Process In Bankruptcy.

49. The class action is not a superior method of adjudicating the Class Claim. The benefits of class action practice "vanish[]" when the other available method for fairly and efficiently adjudicating the controversy "is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost." *Ephedra Products Liability Lit.*, 329 B.R. at 9; *accord American Reserve*, 840 F.2d at 489; *Motors*

Liquidation, 447 B.R. at 163; *Circuit City Stores*, 2010 WL 2208014, at *6. The determination whether to allow or disallow a proof of claim is typically done without "discovery and fact-finding altogether," whereas the costs that a debtor's estate incurs to litigate class action issues are inevitably substantial. *Bally Total Fitness*, 411 B.R. at 145-46; *see also American Reserve*, 840 F.2d at 490 ("the systemic costs of class litigation should not be borne lightly").

50. These considerations apply fully to this case. Here, the Court approved a 10-page sexual abuse proof of claim form designed to uncover the information that was "legally important" to a sexual abuse claim, avoid "unpleasant" discovery, and quickly and efficiently resolve the case and compensate survivors. (Ex. C, at 67:2-11.) If the mediation is successful, the plan will provide a trust for claimants and a stream-lined process for satisfaction of claims. A class action and its attendant cost and complexity is far from superior to the normal process of claims administration in this case, especially in light of the fact that sexual abuse claimants received proper notice that their claims would be channeled into the chapter 11 forum.

51. Class action practice is also not superior because of the specific notice requirements for class actions certified under Rule 23(b)(3). For those class actions, the court must direct notice to each individual class member "who can be identified through reasonable effort," usually by direct mail or "electronic means." Fed. R. Civ. P. 23(c)(2)(B). The notice must provide the class member the opportunity to opt out of the class action. But undergoing this notice protocol here would simply duplicate the efforts USAG undertook and the costs it incurred providing notice of the Bar Date. The Rule 23 notice would be sent to the same individuals USAG previously mailed or e-mailed notice of the Bar Date, inviting them to take advantage of class action procedures to assert a claim that they failed to file on time. Under these circumstances, the class action is not superior but instead would harm the estate by increasing USAG's noticing costs and the entire

creditor body by diluting recoveries for claimants who timely filed individual claims. *See, e.g.*, *Bally Total Fitness*, 411 B.R. at 146 (denying class certification because the debtor already provided "legally adequate" notice of the bar date to the putative class members who would receive the opt-out notice); *W.R. Grace*, 389 B.R. at 380 (denying class certification because of prejudice that opt-out notice procedures would cause to debtor's estate).

52. Further, if the Class Claim is allowed to proceed, once a resolution of the Class Claim is reached, further burdensome notice would be required under the Class Action Fairness Act, 28 U.S.C. §§1711-1715, which would further delay this case and impose additional expense.

53. Finally, though class actions may be superior methods of adjudicating a controversy when they deter future misconduct, the Class Claim will have no deterrent effect here. *See American Reserve*, 840 F.2d at 490-91. USAG filed for chapter 11 *because* of the numerous sexual abuse claims and thus, it has already experienced the deterrent effect that any class claim might impose. Instead, the delay and cost of the class action would only serve to harm other creditors.

54. Class action practice therefore is not the superior method of trying the Class Claim. The benefits of class litigation have "disappear[ed]" now that USAG is in chapter 11, and certifying the putative class "would severely undercut the efficiency of [USAG's] reorganization by adding the layers of procedural and factual complexity" attendant to class action practice. *In re Blockbuster Inc.*, 441 B.R. 239, 242 (Bankr. S.D.N.Y. 2011).

C. The Class Claim Also Cannot Be Certified Under Rule 23(b)(2).

55. Another problem with the Class Claim is its ill-defined requests for injunctive relief pursuant to Rule 23(b)(2). (*See* Ex. B, at ¶¶49-52.) Rule 23(b)(2) does not "authorize class certification" for injunctive relief "when each class member would be entitled to an individualized award of monetary damages." *Dukes*, 564 U.S. at 360-61. Here, the predominant relief Ms. Frederick seeks is money damages for each class member, which independently precludes

certification under Rule 23(b)(2). *Lemon v. Int'l Union of Operating Engineers, Local No. 139, AFL-CIO*, 216 F.3d 577, 581 (7th Cir. 2000) (vacating 23(b)(2) class certification where "the requested monetary damages for the plaintiffs' [] claims were not incidental to the requested injunctive and declaratory relief").[4]

IV. The Class Claim Lacks Legal Merit.

56. Finally, the purported Class Claim fails as a matter of law. The Class Claim argues that the Safe Sport Act required USAG to report, within 24 hours of the law's enactment on February 14, 2018, every incident of alleged sexual abuse that USAG had ever learned of at any time prior to February 14, 2018. This argument fails for two reasons. First, the Safe Sport Act does not provide a private right of action, and second, its reporting obligation does not apply retroactively.

A. The Safe Sport Act Does Not Provide A Private Cause Of Action.

57. The Class Claim fails because the Safe Sport Act does not provide a private cause of action. The Supreme Court has repeated, time and time again, that any "private right[] of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001); *accord Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015) (refusing to imply private cause of action under Medicaid Act); *Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979) (refusing to imply private cause of action under section 17(a) of the Securities Exchange Act of 1934). Absent an expression of congressional intent, "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Sandoval*, 532 U.S. at 286-87. In addition, "when a federal statute

[4] USAG also disputes that Ms. Frederick could prove the Rule 23(a) elements of numerosity, commonality, typicality, and adequacy of representation and reserves its right to advance those objections should the Court allow the Class Claim to proceed.

creates specific private rights of action, the judiciary cannot add others." *Stockbridge-Munsee Community v. Wisconsin*, 922 F.3d 818, 824 (7th Cir. 2019) (refusing to imply private right of action under the Indian Gaming Regulatory Act).

58. Ms. Frederick invokes 18 U.S.C. §2255 as the basis for the Class Claim. That section provides a civil cause of action for "[a]ny person who, while a minor, was a victim of a violation" of specific criminal provisions of the U.S. Code: namely, the crimes of Forced Labor (18 U.S.C. §1589); Trafficking With Respect To Peonage, Slavery, Involuntary Servitude, Or Forced Labor (18 U.S.C. §1590); Child Sex Trafficking (18 U.S.C. §1591); Aggravated Sexual Abuse With Children (18 U.S.C. §2241(c)); Sexual Abuse (18 U.S.C. §2242); Sexual Abuse Of A Minor Or Ward (18 U.S.C. §2243); Sexual Exploitation Of Children (18 U.S.C. §2251); Selling Or Buying Of Children (18 U.S.C. §2251A); Certain Activities Relating To Material Involving The Sexual Exploitation Of Minors (18 U.S.C. §2252); Child Pornography (18 U.S.C. §2252A); Production Of Child Pornography (18 U.S.C. §2260); Transportation For Prostitution Or Criminal Sexual Activity (18 U.S.C. §2421); Coercion And Enticement For Transportation (18 U.S.C. §2422); and, Transportation Of Minors (18 U.S.C. §2423).

59. Notably absent from this lengthy list is the provision imposing the reporting obligation under the Safe Sport Act (34 U.S.C. §20341). That Safe Sport Act provision also is not found within title 18, unlike every other provision referenced in §2255. The absence of any reference to the reporting obligations in §2255 means that Congress determined that non-compliance with the Safe Sport Act's reporting obligation should not give rise to the private civil remedy under §2255. As the Seventh Circuit has explained, "the existence of an explicit cause of action in [two sections] makes it highly unlikely that Congress absentmindedly forgot to provide

a cause of action for [a third section]" that is not mentioned. *Dersch Energies, Inc. v. Shell Oil Co.*, 314 F.3d 846, 857 (7th Cir. 2002) (refusing to imply private cause of action).

60. Moreover, Congress created an alternative remedial scheme for the enforcement of the Safe Sport Act's reporting requirement, which suggests that any violations of that requirement cannot be enforced by a private cause of action. The Safe Sport Act amended 18 U.S.C. §2258 to impose criminal sanctions for non-compliance with the reporting requirement. Under that section, any "covered individual" (including a national governing body) that "fails to make a timely report as required by [the Safe Sport Act] shall be fined under this title or imprisoned not more than 1 year or both." Pub. L. 115-126 §101(b) (amending 18 U.S.C. §2258). The Seventh Circuit has made clear that "[e]xpress provisions for criminal prosecution and administrative enforcement, without a corresponding provision for private enforcement, generally establish that private enforcement is inappropriate." *Israel Aircraft Indus. Ltd. v. Sanwa Business Credit Corp.*, 16 F.3d 198, 200 (7th Cir. 1994) (internal citation omitted).

61. Because the Safe Sport Act does not authorize a private cause of action to enforce its reporting requirement, and because the federal government may criminally punish covered individuals who do not comply with their reporting obligations, Ms. Frederick has no basis to pursue her civil class action against USAG. The Class Claim should be disallowed in full on this basis alone.

B. The Safe Sport Act's Reporting Obligation Is Not Retroactive.

62. Even if a private cause of action existed under the Safe Sport Act for reporting violations (and it does not), the Class Claim fails because Congress did not impose the reporting obligation retroactively. There is no textual support for the premise that the Safe Sport Act required national governing bodies to report allegations of sexual abuse that they learned of before the Act was enacted on February 14, 2018, within 24 hours after the Act was enacted.

63. Statutes are presumed to apply only prospectively "unless Congress has *unambiguously*" made them retroactive. *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (emphasis added) (refusing to apply statute retroactively). The Supreme Court has recognized the "unfairness of imposing new burdens on persons after the fact." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 270 (1994) (refusing to apply Civil Rights Act of 1991 retroactively). As a result, when a statute lacks an "express command" as to whether it applies retroactively, it should not be applied to "increase a party's liability for past conduct" or "impose new duties with respect to transactions already completed." *Id.* at 280.

64. Nothing in the Safe Sport Act's text suggests that its reporting obligation applies retroactively. Instead, the reporting obligation is triggered when a covered individual "*learns* of facts that give reason to suspect that a child has suffered an incident of child abuse." 34 U.S.C. §20341 (emphasis added). In that provision, Congress spoke in the present tense. "[W]ords used in the present tense include the future as well as the present," but they do not include the past. 1 U.S.C. §1. For example, in *Carr v. United States*, the Supreme Court explained that "a statute that regulates a person who 'travels' is not readily understood to encompass a person whose only travel occurred before the statute took effect." 560 U.S. 438, 448 (2010). Applying the reasoning of *Carr* here leads to the conclusion that Congress determined that the Safe Sport Act's reporting obligation may only be enforced with respect to present and future misconduct, and not with respect to past misconduct. It does not apply retroactively.

65. Apart from the fact that the statute uses the present tense, it also does not contain the phrasing the Supreme Court has held indicates an express Congressional intent of retroactivity: that the statute applies to conditions or events that have occurred "*before, on, or after*" the effective date of the statute. *See, e.g., INS v. St. Cyr*, 533 U.S. 289, 318-19 (2001) (holding that phrase

indicates an express intent to apply the statute retroactively); *Vartelas*, 566 U.S. at 267 (such language "expressly direct[s] retroactive application"); *Martin v. Hadix*, 527 U.S. 343, 355-56 (1999) (same language is "explicitly retroactive").

66. Ms. Frederick does not cite any text in the Safe Sport Act to contradict this reading. Instead, anticipating this problem with her Claim, she posits in her complaint that the reporting obligation should be enforced retroactively because of the policy of the Safe Sport Act to protect amateur athletes from sexual abuse. (Ex. B, at ¶146.) This allegation ignores *Landgraf*'s command that courts must not apply statutes retroactively unless Congress gives a "clear indication," in a statute's text, that retroactivity is required. *Siddiqui v. Holder*, 670 F.3d 736, 749 (7th Cir. 2012) (refusing to apply statute retroactively).

67. In addition, the anti-retroactivity presumption applies here with special force because of the Safe Sport Act's criminal sanction for violations of the reporting requirement. *See* 18 U.S.C. §2258. The *Ex Post Facto* Clause prohibits the enactment of legislation that "imposes a punishment for an act which was not punishable at the time it was committed." *Weaver v. Graham*, 450 U.S. 24, 28 (1981). The Supreme Court has relied upon the *Ex Post Facto* Clause to refuse to give "penal legislation" retroactive effect. *Landgraf*, 511 U.S. at 266. If the Court applied the Safe Sport Act retroactively and accepted Ms. Fredericks' allegations as true, USAG could be exposed to substantial fines for acts or omissions that were "not punishable" at the time they occurred. *Weaver*, 450 U.S. at 28. That result is barred under *Landgraf*'s reading of the *Ex Post Facto* Clause, and it provides another basis to reject retroactive application of the Safe Sport Act.

68. Without retroactive application of the Safe Sport Act, the Class Claim cannot state a claim for relief. Importantly, Ms. Frederick assumes, as a necessary condition to her Class Claim, that the Safe Sport Act has retroactive effect. For instance, she argues: USAG "failed to follow the

mandate of timely reporting all of the claims to law enforcement within 24 hours of learning facts that gave rise to the suspicion of abuse *prior to the enactment of the Safe Sport Act on February 14, 2018*." (Ex. B, at ¶ 148 (emphasis added).) Because the Safe Sport Act does not punish acts that occurred prior to its enactment, the Class Claim fails on its merits as a matter of law.

***

69. Accordingly, the Debtor requests that the Court disallow the Class Claim in its entirety. As noted above, (1) Ms. Frederick has not complied with the procedural requirements to prosecute class actions in bankruptcy; (2) class action practice would unduly burden the administration of this chapter 11 case; (3) Ms. Frederick has not proven that certification is proper under Federal Rule of Civil Procedure 23; and (4) the Class Claim fails, on its merits, to state a claim upon which relief can be granted.

70. In the event that the Court does not grant this Objection and allows the Class Claim to proceed, the Debtor reserves its right to raise additional objections to the certification of a class and to the merits of any class claim.

DEADLINE TO RESPOND

71. If Ms. Frederick wishes to contest this Objection, she must file and serve a written response by March 11, 2020 at 4:00 p.m. (prevailing Eastern time).

72. Now that the Debtor has objected to the Class Claim, the burden rests upon Ms. Frederick to "meet the objection and establish the claim." *In re Pierport Dev. & Realty Inc.*, 491 B.R. 544, 547 (Bankr. N.D. Ill. 2013). If no response is filed in support of the Class Claim, the Court may sustain this Objection and disallow the Class Claim as requested herein.

NOTICE

73. The Debtor will provide notice of this Objection by overnight mail to Ms. Frederick and by e-mail to Ms. Frederick's counsel. Pursuant to Local Rule 3007-1, Ms. Frederick will be given 30 days from the date of service of this Objection to respond. The Debtor will also provide notice of this Objection in accordance with Bankruptcy Rule 3007, Local Rule 3007-1, and the *Order Granting Debtor's Motion For Order Establishing Certain Notice, Case Management, And Administrative Procedures* [Dkt. 213]. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter the order substantially in the form annexed hereto as Exhibit A, disallowing the Class Claim in its entirety and granting such further relief as is just and proper.

Dated: January 17, 2020

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ *Catherine Steege*

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EXHIBIT A

Proposed Order

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

In re:	Chapter 11
USA GYMNASTICS,[1]	Case No. 18-09108-RLM-11
Debtor.	

ORDER SUSTAINING DEBTOR'S OBJECTION TO CLASS CLAIM

This matter came before the Court on the *Debtor's Objection To Class Claim No. 531 And Notice Of Response Deadline* (the "**Objection**"), filed by USA Gymnastics as debtor and debtor in possession (the "**Debtor**"), for the entry of an order pursuant to section 502 of title 11 of the

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

United States Code, 11 U.S.C. §§101–1532, Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 3007-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the "**Local Rules**"); 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 pursuant to 28 U.S.C. §§157(b)(2)(A) and (B); (iii) sufficient notice was given under the Bankruptcy Rules and Local Rules; and (iv) and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Objection should be SUSTAINED.

IT IS HEREBY ORDERED:

1. The Objection is sustained.

2. Sexual Abuse Claim No. 531 is hereby disallowed in its entirety.

3. The Debtor's Claims and Noticing Agent (Omni Agent Solutions) is authorized to take all actions necessary or appropriate to effectuate this Order.

4. The Debtor retains the right to further object to any or all of the claims filed against the Debtor's estate on any basis whatsoever.

5. 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

Class Action Complaint

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARCIA FREDERICK, individually, and on behalf of all others similarly situated, *Plaintiffs*, v. UNITED STATES OLYMPIC COMMITTEE, USA GYMNASTICS (formerly known as the United States Gymnastics Federation), RICHARD CARLSON, MURIEL GROSSFELD, GEORGE WARD, *Defendants*.	)	PLAINTIFF DEMANDS TRIAL BY JURY CLASS ACTION COMPLAINT BROUGHT UNDER THE PROTECTING YOUNG VICTIMS FROM SEXUAL ABUSE AND SAFE SPORT AUTHORIZATION ACT

CLASS ACTION COMPLAINT AND JURY DEMAND

Comes now, Plaintiff MARCIA FREDERICK, on behalf of herself and all others similarly situated, by and through her attorneys, Andrus Wagstaff, PC and Andrus Anderson LLP, and for her causes of action against Defendants, alleges as follows:

INTRODUCTION

This is an action in which Plaintiff, Marcia Frederick, a former Olympic gymnast, on behalf of herself and all others similarly situated, seeks relief and damages, statutory and otherwise, against Defendant United States of America Gymnastics (formerly known as United States Gymnastics Federation, hereinafter referred to as "USAG" or "USA Gymnastics") and Defendant United States Olympic Committee, ("USOC") (collectively referred to as "Class Defendants") for violations of the Protecting Young Victims from Sexual Abuse and Safe Sport

Authorization Act of 2017, (the "Safe Sport Act") by systemically failing to respond to and report suspected child abuse of amateur athletes to law enforcement.

Plaintiff Frederick also brings this claim individually, seeking injunctive relief and compensation for personal injuries and damages suffered when she was repeatedly molested, sexually abused and assaulted while training and competing as a minor elite gymnast for the United States across the nation by Defendant Richard Carlson, ("Perpetrator Carlson"), an agent or employee of Defendant USAG, Defendant USOC, Defendant Muriel Grossfeld, ("Defendant Grossfeld"), and Defendant George Ward, ("Defendant Ward").

The abuse and assault occurred as a result of the negligence and failures of all Defendants and each and every Defendant is jointly liable. Despite having the power, authority and responsibility to act, Defendants failed Plaintiff Frederick and numerous others by showing deliberate indifference to assault and abuse of minors, fostering an environment of abusive activity towards gymnasts, failing to institute corrective measures to protect gymnasts from assault and abuse, failing to investigate, train, oversee, monitor and supervise employees and agents, including but not limited to Perpetrator Carlson, failing to respond to the complaints of sexual abuse, and/or actively defending and covering up abuse, all at the expense of Plaintiff Frederick and other class members.

JURISDICTION AND VENUE

1. This Court has jurisdiction over Defendants based on diversity of citizenship and pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

2. This Court also has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, 34 U.S.C. § 20341, *et seq* and (c)(9), and 18 U.S.C. § 2255, *et seq*.

3. The amount in controversy exceeds $75,000, exclusive of costs and interest and the Class claims exceed $5 million.

4. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367 because the state law claims arise out of the same common nucleus of facts and are so closely related to the federal law claims as to form the same case or controversy under Article III of the U.S. Constitution.

5. This Court has personal jurisdiction over Defendants as Defendants conducted substantial, continuous, and systematic business activities within this Commonwealth.

6. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391 because Plaintiff is a resident of the Commonwealth of Massachusetts and a substantial part of the events or omissions giving rise to claim occurred in the Commonwealth of Massachusetts.

7. Further, the Defendants have purposefully availed themselves of the benefits and the protections of the laws within the Commonwealth of Massachusetts. Defendants have had sufficient contact such that the exercise of jurisdiction would be consistent with the traditional notions of fair play and substantial justice.

8. Plaintiff seeks relief that is within the jurisdictional limits of the Court.

PARTIES

9. Plaintiff Ms. Frederick is a former elite gymnast who is a resident and citizen of the Commonwealth of Massachusetts.

10. Perpetrator Richard Carlson is a former elite level gymnastics coach, who upon information and belief, resides and is a citizen of New York.

11. Upon information and belief, Defendant Muriel Grossfeld, at all times mentioned herein, was and is a resident and citizen of Connecticut

12. Upon information and belief, Defendant George Ward, at all times mentioned herein, was and is a resident and citizen of Connecticut.

13. Defendant USOC, at all times mentioned herein, was and is a federally-chartered nonprofit corporation, having its principal place of business in the State of Colorado and is headquartered in Colorado Springs, Colorado.

14. Defendant USAG, at all times mentioned herein, was and is a business entity of form unknown, having its principal place of business in the State of Indiana.

SUBSTANTIVE ALLEGATIONS

USOC AND USAG'S OBLIGATION TO PROTECT YOUNG ATHLETES

15. The USOC is a federally-chartered nonprofit corporation, which was reorganized by the Ted Stevens Amateur Sports Act, 36 U.S.C. §§220501, *et seq*. ("Ted Stevens Act"), originally enacted in 1978. As described on its website, "[t]he USOC has two primary responsibilities in its oversight of Olympic and Paralympic sport in the United States. The first is to generate resources in support of its mission, which is to help American athletes achieve sustained competitive excellence. The second is to ensure organizational resources are wisely and effectively used to that end." Furthermore, Defendant USOC claims that "USOC is committed to creating a safe and positive environment for athletes' physical, emotional and social development and to ensuring that it promotes an environment free of misconduct."

16. The USOC is the governing body for all American Olympic teams. Under the Ted Stevens Act, Defendant USOC has a mandatory obligation to ensure that before granting National Governing Bodies ("NGB"), including USAG, a sanction to host national or international events, "proper safety precautions have been taken to protect the personal welfare of the athletes." 36 U.S.C. §§220525(b)(4)(F). The USOC has the power to decertify USAG and all associated clubs,

gyms, and teams. Among other things, decertification would strip USAG of its ability to crown national champions and select Olympic teams.

17. USAG is the National Governing Body for gymnastics in the United States, as designated and permitted by Defendant USOC under the Ted Stevens Act, and selects and trains the United States gymnastics teams for the Olympics and World Championships, promotes and develops gymnastics locally and nationally, and serves as a resource center for members, clubs, fans and gymnasts throughout the United States. USAG has more than 174,000 athletes and professional members, more than 148,000 athletes registered in competitive programs, as well as more than 25,000 professional, instructor and club members. Approximately 4,000 competitions and events throughout the United States are sanctioned annually by USAG.

18. The USAG directly certifies and trains coaches for a fee, in part through USA Gymnastics University, an online training platform through which USAG provides courses, course material, and video training.

19. The USAG collects a fee from gymnasts to be a USAG member and to compete in USAG-sanctioned competitions.

20. The USAG sanctions gyms where gymnasts practice and compete. For a fee and proposed compliance with just five USAG policies, a gym can become certified to train under the USAG banner.

21. The USAG sponsors competitions in which members and gyms pay a fee to compete. These competitions take place throughout the country, and gymnasts of a variety of ages and skill levels compete. USAG was the primary entity owning, operating and controlling the activities and behavior of its certified, trained, and sanctioned professionals, members, and agents, including, but not limited to Defendant Grossfeld, Defendant Ward, and the Grossfeld's American

Gold Gym ("GAG" or "GAG Gym") owned and operated by Defendants Grossfeld and Ward and the certified head coach who committed the abuse described herein, Perpetrator Carlson.

USOC AND USAG'S FAILURE TO PROTECT YOUNG ATHLETES AND THE PASSAGE OF THE SAFE SPORT ACT

22. For decades, the USAG and the USOC have touted themselves as creating a positive and safe environment, including during the time Ms. Frederick was a gymnast. In fact, USAG touts that "prior to almost all other National Governing Bodies, USA gymnastics has provided awareness, prevention and reporting information regarding sexual misconduct to professional members, member clubs, athlete members and their families."

23. Moreover, the bylaws of USAG, or similar bylaws previously enacted, were made in conformance with, and under the mandate of, Defendant USOC, and were intended to protect minor gymnasts, including Ms. Frederick, from sexual abuse, a known and foreseeable risk posed to minor athletes in amateur sports.

24. The USOC similarly touts that it's policies prevent "…USOC employees, coaches, contracted staff, volunteers, board members, committee and task force members, and other individuals working with athletes or other sport participants while at an OTC, whether or not they are employees of the USOC" and "…[a]thletes training and/or residing at a USOC Olympic Training Center" from engaging in sexually-abusive misconduct, including "child sexual abuse" and "sexual misconduct." USOC Safe Sport Policies, Section II(c). USOC also has policies identify "grooming" behaviors, which it defines as, "…the most common strategy used by offenders to seduce their victims."

25. Despite their obligations under the Ted Stevens Act and their bylaws, rules, policies and procedures purporting to protect young athletes, Defendants USOC and USAG never ensured,

audited, or checked to confirm that these policies were properly implemented, enforced, or effective at detecting, preventing, and remedying abuse perpetrated by certified coaches and at sanctioned facilities. Had Defendant USOC and USAG upheld their duties under federal law, the repeated sexual abuse suffered by Ms. Frederick and so many others could have been avoided.

26. Indeed, the USAG and the USOC affirmatively allowed a culture of gymnast assault and abuse by its certified coaches to persist by taking overt acts to conceal the abuse and assault in the interest of protecting themselves and their criminal coaches, while simultaneously inflicting emotional and physical harm on countless young athletes who trusted that USOC and USAG would ensure their safety.

27. The USAG and the USOC failed to protect their gymnasts, including Ms. Frederick, from perpetrators of abuse and assault.

28. Defendant USOC expressly admitted its wrongdoing. In January 2018, former USOC Chief Executive Officer Scott Blackmun issued an apology to victims, stating that USOC is "sorry you weren't afforded a safe opportunity to pursue your sport dreams. The Olympic family is among those that have failed you."

29. On January 31, 2018, amid public outcry and a threat by USOC to wholly decertify the organization, all 21 members of the board of directors for USAG resigned.

30. The USAG and the USOC's conduct has been so egregious and with utter disregard for young gymnasts, including Ms. Frederick, that Congress responded by enacting the Safe Sport Act in February 14, 2018, which was promulgated "to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of any amateur athlete."

31. As of February 14, 2018, the Safe Sport Act mandates that USAG and the USOC, along with their agent coaches and members, report any assault or abuse to authorities within 24

hours. The Safe Sport Act makes non-reporting assault or abuse a federal crime and imposes a significant fine, as well as other damages. Additionally, under the Safe Sport Act, an independent body, the U.S. Center for Safe Sport ("Center for Safe Sport"), was created to adjudicate the sexual abuse cases in the Olympic Movement and other amateur athlete settings.

32. There are 47 National Governing Bodies ("NGB") of various amateur sports. Of those NGB, eight (8) turned over a total of approximately twenty-five (25) cases to the Center for Safe Sport after its opening in March, 2017. Only four (4) of the NGBs that had pending investigations declined to transfer them to the Center for Safe Sport, including USAG and Ms. Frederick's case.

33. The Center for Safe Sport has already received approximately 540 total reports across 38 different sports. Thus far, those cases have led to 73 lifetime bans and continued investigations. Unfortunately, Defendants USAG and USOC have failed and continue to fail to report countless other reports of assault and abuse to law enforcement as required, including Ms. Frederick's case.

34. The Safe Sport Act was enacted in direct response to the widespread reports of sexual abuse and assault at USAG and USOC sanctioned gyms, clubs and events, at the hands of USAG trained and certified coaches. For decades, USAG and USOC have failed to protect young member athletes, including Ms. Frederick, from perpetrators of abuse and assault. And generations of young men and women have been forced to bury their abuse and leave the sport.

35. In June 2018, the USAG was required to testify at Congressional hearings. During those hearings, Steve Penny, Past President of USAG, pled the Fifth Amendment, refusing to answer any questions. During that same hearing, Rhonda Faehn, former Director of the Women's

program for USAG, testified that Penny told her not tell anyone about accusations of sexual assault and molestation of gymnasts.

36. Although USOC has acknowledged its responsibility for allowing years of abuse, upon information and belief, to date, the USOC has not decertified the USAG. The USAG still retains the power to appoint and control coaches, clubs, and athletes, despite USAG's negligent conduct and ongoing violations of the Safe Sport Act.

37. At all times relevant to Ms. Frederick's repeated sexual abuse at the hands of Perpetrator Carlson, Defendants USOC and USAG, and others, were responsible for Ms. Frederick's safety, supervision and well-being.

CLASS ACTION ALLEGATIONS

38. Plaintiff incorporates by reference the allegations contained in the previous paragraphs.

39. Plaintiff alleges violations of the Safe Sport Act on behalf of herself individually, and on behalf of the following class of other athletes similarly situated (herein after the "Class"):

> All current or former USAG-affiliated and/or USOC affiliated amateur athletes for whom the USAG, the USOC, and/or their agents and/or employees ("Class Defendants") received information that the amateur athlete may have suffered an incident of child abuse, including sexual, emotional and/or physical abuse, and either (a) failed to report incidents occurring after February 14, 2018 to law enforcement authorities within 24 hours of learning of the incident, and/or (b) failed to report incidents occurring before February 14, 2018 to law enforcement authorities, within 24 hours of the Congress enacting the Safe Sport Act.

40. Plaintiff and the members of the Class: (a) were amateur athletes as defined under the Safe Sport Act[1] at the time of the suspected abuse; (b) were amateur athletes for which Class

[1] "'Amateur Athlete' means an athlete who meets the eligibility standards established by the national governing body or paraolympic sports organization for the sport in which the athlete competes." 18 U.S.C. § 220501.

Defendants, as a covered individual[2], learned facts that gave reason to suspect he/she suffered an incident of child abuse when the Class member was a minor and (c) were amateur athletes for which Class Defendants failed to make a report of the suspected abuse to a law enforcement agency within 24 hours, and/or by February 15, 2018 for incidents reported prior to enactment of the Safe Sport Act. Plaintiff and Class members suffered a personal injury as a result of the failure to report the suspected abuse to a law enforcement agency.[3] Plaintiff and Class members can be readily ascertained from Class Defendants' own records.

41. The proposed Class meets the requirements for certification pursuant to Federal Rule of Civil Procedure 23(a), as well as subsections (b)(3) and (c)(4), as described below.

Numerosity

42. On information and belief, the Class consists of hundreds of amateur athletes, too numerous to make joinder practicable.

Common Questions of Law and Fact

43. Numerous questions of law and fact common to the Plaintiff and the Class exist, including, without limitation: (a) whether Class Defendants unlawfully failed to report suspected abuse of Class Plaintiffs to law enforcement agencies; (b) whether Class Defendants failure to report violated the Safe Sport Act; (c) whether, in addition to actual damages, Class members are entitled to liquidated damages in the amount of $150,000 each, as well as the cost of the action, including reasonable attorney's fees and other litigation costs, and (d) whether the Class members are entitled to punitive damages and other preliminary and equitable relief.

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[2] "[T]he term 'covered individual' means an adult who is authorized, by a national governing body, a member of a national governing body, or an amateur sports organization that participates in the interstate or international amateur athletic competition, to interact with a minor or amateur athlete at an amateur sports organization facility or at any event sanctioned by a national governing body, a member of a national governing body, or such an amateur sports organization." 34 U.S.C. § 20341(c)(9).

[3] *See* 18 U.S.C. § 2255.

44. The answers to these common questions will be the same for Plaintiff Frederick and all Class members and will establish liability under the Safe Sport Act.

Typicality

45. Plaintiff Frederick's Safe Sport Act claims are typical of the claims of the Class. The relief sought by the Plaintiff Frederick for violation of the Safe Sport Act complained of herein is also typical of the relief sought on behalf of the Class.

46. Like all members of the Class, Plaintiff Frederick was an amateur athlete for which Class Defendants learned of facts that gave rise to suspect that she had suffered an incident of child abuse during the liability period but failed to report those abuses to law enforcement within 24 hours after the passage of the Safe Sport Act.

Adequacy of Representation

47. Plaintiff Frederick's interests are co-extensive with those of the Class. Plaintiff Frederick seeks remedies as provided for under the Safe Sport Act. Plaintiff is willing and able to represent the Class fairly and vigorously.

48. Plaintiff Frederick has retained counsel who are qualified, experienced, and able to conduct this litigation and to meet the time and fiscal demands required to litigate a class action of this size and complexity. The combined interests, experience, and resources of Plaintiff's counsel to litigate competently the individual and class claims at issue in this case satisfy the adequacy of representation requirement.

Requirements of Rule 23(b)(2)

49. Class Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

50. Class Defendants have failed to report suspected child abuse to law enforcement agencies described herein.

51. Class Defendants have acted, or failed to act, on grounds generally applicable to the Plaintiff Frederick and the Class by adopting and implementing systemic policies, practices, and procedures resulting in a failure to report suspected child abuse. Failing to respond to and report suspected child abuse of amateur athletes to law enforcement are Class Defendants' standard operating procedures rather than sporadic occurrences.

52. Class Defendants' systemic refusal to act on and report facts they learn that give reason to suspect of incidents of child abuse, have made appropriate the requested final injunctive and declaratory relief with respect to the Class as a whole.

Requirements of Rule 23(b)(3)

53. The common issues of fact and law affecting the claims of Plaintiff Frederick and the Class members predominate over any issues affecting only individual claims. Core issues in the case that are amenable to classwide treatment include whether Class Defendants violated the Safe Sport Act by: (a) learning facts that give reason to suspect Plaintiff and other similarly situated Class members suffered an incident of abuse as a minor; and (b) unlawfully failing to report suspected abuse to law enforcement agencies when required to do so under the Safe Sport Act.

54. Prosecution of these claims on a class-wide basis is the most efficient and economical means of resolving the questions of law and fact common to the claims of Plaintiff Frederick and the Class.

55. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications

and conflicting obligations. Additionally, pursuing individual litigation would be prohibitively expensive.

56. Certification of the Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for and the Class, as well as for the Defendants.

Requirements of Rule 23(c)(4)

57. Plaintiff also meets the requirements of Rule 23(c)(4), because particular issues that are core to every Class members' claim present common issues capable of class-wide resolution, which would advance the interests of the parties in an efficient manner. These issues include, inter alia, whether Class Defendants were required to report Class member incidents upon passage of the Safe Sport Act and whether it failed to do so.

PLAINTIFF FREDERICK'S ALLEGATIONS IN SUPPORT OF HER INDIVIDUAL SAFE SPORT VIOLATION

58. Plaintiff incorporates by reference the allegations contained in the previous paragraphs.

59. Plaintiff Frederick filed a claim with the USAG related to the sexual abuse she suffered as an amateur athlete at the hands of her USAG certified Coach, Richard Carlson, while a minor, in or around 2015.

60. After Ms. Frederick made her complaint to the USAG, the USAG and USOC learned facts that gave reason to suspect that she had suffered an incident of child abuse.

61. As of the passing of the Safe Sport Act on February 14, 2018, the USAG and USOC were obligated to report the suspected child abuse that Ms. Frederick suffered to law enforcement within 24 hours, specifically by February 15, 2018.

62. The USAG and USOC failed to report the suspected child abuse of Ms. Frederick to law enforcement on February 15, 2018 and even as of the date of this filing, in direct violation of the Safe Sport Act.

63. Ms. Frederick suffered personal injury as a result of the failure to report the suspected abuse to a law enforcement agency.

64. The USAG and USOC are liable to Ms. Frederick for actual damages, liquidated damages in the amount of $150,000, the cost of the action, including reasonable attorney's fees and other litigation costs, punitive damages and other preliminary and equitable relief.

FAILURES OF DEFENDANTS RESULTING IN INJURY AND DAMAGES TO PLAINTIFF MARCIA FREDERICK

65. Plaintiff incorporates by reference the allegations contained in the previous paragraphs.

66. In addition to her Safe Sports Act claims, Ms. Frederick has common law claims for injuries occurring before the Act was passed that are timely pursuant to MGL c. 206, s. 4C1/2.

67. Ms. Frederick was an elite level gymnast and was the first American female gymnast to win a Gold medal at the World Gymnastics Championships. She qualified for the 1980 U.S. Women's Olympic Gymnastics Team.

68. Prior to qualifying for the 1980 Olympic Gymnastics Team, Ms. Frederick, at the age of thirteen (13) joined GAG, a USAG and USOC sanctioned facility, on or around 1975 to further her training in Gymnastics.

69. GAG was formed by Defendants Grossfeld and Ward in 1968.

70. Defendant Grossfeld is a retired United States gymnast and member of the U.S. Gymnastics Olympic team.

71. Defendant Ward was the common-law husband of Defendant Grossman. Upon information and belief, he handled the finances for GAG, and had significant investments in the gym.

72. GAG's purpose was to train elite level gymnasts in order to prepare them for World Gymnastic Competitions such as the World Championships and the Olympics.

73. GAG paid fees to and was sanctioned by the USAG and USOC.

74. In order to accomplish their lofty goals of making the Olympic gymnastics team, GAG and its employees, particularly its coaches, were given complete control of the young gymnasts' lives, including, but not limited to, training schedules, education, daily meals and even sleep schedules.

75. Because of the rigorous training schedules required to become an elite gymnast, many gyms including both training and a dormitory that housed the young athletes. The GAG facility was one such gym that provided housing, schooling and training for the minor athletes. During the pertinent years of this complaint, the GAG facility housed approximately 11 girls aged 12-16 at a cost of several thousands of dollars per year.

76. From 1975 to 1978, Ms. Frederick trained with GAG Coach, Don Peters, infamous former gymnastics coach later banned by USAG for allegations of sexual misconduct with minor gymnasts.

77. In 1978, Don Peters' employment was terminated by Defendant Grossfeld after an incident at the 1978 World Championship in Strasbourg, France.

78. In or around late 1978, Defendant Grossfeld assigned Perpetrator Carlson, another USAG certified and trained coach, to be the new head coach of the GAG Gym and Ms. Frederick.

79. Defendants Grossfeld, Ward, and Perpetrator Carlson had direct and complete custody and control of the Ms. Frederick and were members and participants sanctioned and trained by Defendants USAG and USOC.

80. Ms. Frederick was a participant and dues paying member of USAG and USOC.

81. As a member and participant of USAG while Perpetrator Carlson was a USAG certified head coach, Ms. Frederick was under Perpetrator Carlson and Defendant Grossfeld's direct supervision, control and care, which created a special, confidential, and fiduciary relationship between Ms. Frederick, her parents, and them. Because of such relationship, Perpetrator Carlson and Defendant Grossfeld owed Plaintiff a special duty of care. Additionally, as the employers and supervisors of Perpetrator Carlson, with knowledge that he was in contact with and providing care to children, Defendants USAG and USOC were also in a special, confidential, and fiduciary relationship with Ms. Frederick, owing her a duty of care.

82. Perpetrator Carlson was hired by Defendant Grossfeld to coach at the GAG Gym and was Ms. Frederick's head coach and during much of the time she lived in the GAG dorms. Perpetrator Carlson was a "dorm parent" who lived on the first floor of the housing facility.

83. Throughout her time at the GAG Gym, Ms. Frederick lived in a single-occupancy dorm room on the second floor, while many other gymnasts lived with roommates.

84. Perpetrator Carlson was charged with overseeing the minor gymnasts including Ms. Frederick within the housing facility, while at the gym and while on excursions and USAG and USOC competitions outside of the gym.

85. Perpetrator Carlson was the team head coach of the GAG Gym, and a certified coach of USAG. While a head coach and dorm parent at the GAG Gym, Perpetrator Carlson's employment duties included coordinating the training and providing individual care and providing

for the physical needs and well-being of participants and members of USAG (and in accord with Defendants' USAG and USOC policies, procedures, and mandates), and care including but not limited to treatment to participants and members of USAG, which included Ms. Frederick.

86. Perpetrator Carlson commenced the process of grooming Ms. Frederick in late 1978, when she was 15 years old.

87. Plaintiff is informed and believes the Perpetrator Carlson's physical and sexual abuse of Plaintiff commenced after the grooming of Ms. Frederick began, and occurred numerous times while Ms. Frederick was on the GAG Gym properties, while traveling for competitions and before and after competitive gymnastics meets from in or around 1978 through 1980. Specifically, the Plaintiff was sexually abused by Perpetrator Carlson in Connecticut at the GAG Dormitories, located in Millford, Connecticut and at numerous locations around the country. During this period, Ms. Frederick was a participant, member, and ward under the Perpetrator's Carlson and Defendants' direct supervision and control.

88. Perpetrator Carlson used his position of authority, trust and confidence in an abusive manner to sexually assault, batter, molest, and harass Ms. Frederick over the course of his tenure as her coach.

89. Based upon what was told to Ms. Frederick by the adults tasked to supervise her and the culture that USAG and USOC cultivated, and allowed to be cultivated, both in and out of the gym, Ms. Frederick believed she had to submit to Perpetrator Carlson's sexual demands in order to continue training for the 1980 Olympics.

90. In 1980, Ms. Frederick qualified for the U.S. Olympic team and attended the U.S. Gymnastics Olympic Training Camp in Colorado.

91. On or about March 21, 1980, after hearing of the U.S. boycott of the 1980 Olympics, Ms. Frederick traveled directly to GAG and told Defendant Grossfeld about the abuse and molestation she was suffering at the hands of Perpetrator Carlson. Ms. Frederick told Defendant Grossfeld where the abuse had occurred, describing with specificity what Defendant Carlson had forced her to do. Defendant Grossfeld appeared visibly angry, but did not say anything on the subject.

92. In approximately 1980, Ms. Frederick also disclosed the abuse to Defendant Ward who, like Defendant Grossfeld, took no actions to remedy the situation.

93. Defendants Grossfeld and Ward resumed normal activities as if the report had not been made. This inaction, coupled with Perpetrator Carlson's continual remarks that the sexual acts were part of her training and were necessary to her gymnastics career and reaching her goals, caused Ms. Frederick to believe that the abuse was "normal." As a young gymnast, Ms. Frederick was lead to believe that enduring this pain was required because she had "to be close with her coach" in order to be the best gymnast and become an Olympian.

94. In 1982, Ms. Frederick participated in the American Classic gymnastics competition, winning first place. This was her last competition with Defendant Carlson. She chose to forego the following 1984 Olympics because she was afraid to and physically could not continue training with Perpetrator Carlson and at the GAG Gym.

95. At all times that Ms. Frederick was training and competing nationwide all Defendants, took care, custody and control of her and stood in loco parentis and had a duty to protect Ms. Frederick from danger, such as the abuse and molestation by Carlson, and to properly train, hire, monitor, oversee, investigate, remove and report Carlson; remedial action which they never took to protect Ms. Frederick.

96. At all times relevant to Ms. Frederick's repeated sexual abuse at the hands of Perpetrator Carlson, Defendants were responsible for Ms. Frederick's supervision. Despite being the body responsible for Ms. Frederick's safety and well-being, Defendants provided no adequate or effective measures to ensure her protection from the risk of sexual abuse. At all times relevant to Ms. Frederick's sexual abuse at the hands of Perpetrator Carlson, Defendants were responsible for Ms. Frederick's supervision. Despite their responsibility for Ms. Frederick's safety and well-being, Defendants provided no adequate or effective measures to ensure her protection from the risk of sexual abuse and now, they have compounded their misconduct by denying Ms. Frederick access to the forum that can fully and finally adjudicate the harm she endured for years.

97. At all times pertinent hereto, including the years 1978 to 1981, Perpetrator Carlson was an employee, representative, and/or agent of Defendants acting under their control and supervision.

98. At all times pertinent hereto, Perpetrator Carlson was employed by and/or an agent of Defendants serving in various positions, including but not limited to coach, head coach, traveling coach and dorm parent.

99. While employed by Defendants, Perpetrator Carlson sexually assaulted, abused and molested Ms. Frederick by engaging in nonconsensual sexual assault, battery, molestation, and harassment, including but not limited to groping and forced sexual contact.

100. Despite Ms. Frederick’s complaints to Defendant Grossfeld and Defendant Ward, her concerns and reports of abuse went unaddressed.

101. Defendants had a duty to report allegations of Perpetrator Carlson’s inappropriate sexual conduct directed at Ms. Frederick to law enforcement. All Defendants knew, or should

have known, of the abuse alleged herein, and did not report or sanction the abuser, their employee or agent.

102. Defendants, and their employees, agents, and/or representatives, through planned artifice, attempted to prevent inquiry or escape investigation regarding the tortious acts of Perpetrator Carlson by hindering the acquirement of information and expressly misleading Ms. Frederick as described more fully in this Complaint.

103. At all times material hereto, Perpetrator Carlson was under the direct supervision, management, agency and control of Defendants.

104. By designating Perpetrator Carlson as a certified head coach team of GAG under the mandated and control of Defendants, all Defendants represented to the community and participants and members of USAG that Perpetrator Carlson was safe, trustworthy, and of high moral and ethical repute, such that parents of participants and members need not worry about having Perpetrator Carlson interact with, and provide care to their minor children. Defendants did so in order to preserve their own public image and reputation, so they could retain past participants and members and recruit new participants and members, thus allowing donations and other financial support to continue flowing into their coffers for financial gain.

105. Plaintiff is informed and believes, and on that basis, alleges that Defendants knew or should have known that sexually abusive staff, such as Perpetrator Carlson, were violating USOC and USAG policies, without enforcement or abatement, and were continually allowed to be in contact with minor children, such as Ms. Frederick.

106. It was not until in or around 2000, that Defendant USOC created the Safe Sport program and issued a handbook detailing specific procedures for preventing sexual abuse of minors, and access to minors by sexual abusers. Despite instituting this handbook and program,

Defendant USOC maintained its course and culture of ignoring abuse, ignoring its internal policies and procedures, and placing minors in the way of danger.

107. Plaintiff is informed and believes and on that basis, alleges Defendants knew of, or should have known of, Perpetrator Carlson's propensity and disposition to engage in sexual misconduct with minors.

108. Defendant failed to implement reasonable safeguards to avoid acts of unlawful sexual conduct by Perpetrator Carlson. Defendants ignored the sexual misconduct Perpetrator Carlson had engaged in, and concealed that information from Ms. Frederick's family and law enforcement.

109. Because of the relationship between Plaintiff and Defendants, Defendants had an obligation and duty under the law not to hide material facts and information about Perpetrator Carlson's deviant sexual behavior and propensities. Additionally, Defendants had an affirmative duty to inform, warn, monitor, oversee and institute appropriate protective measures to safeguard minors who were reasonably likely to come in contact with Perpetrator Carlson, including Ms. Frederick at the time. Defendants refused to notify, give adequate warning, monitor, oversee and implement appropriate safeguards, thereby creating the peril that ultimately damaged Ms. Frederick.

110. Plaintiff is informed and believes, and on that basis alleges, that prior to Ms. Frederick's sexual abuse by Perpetrator Carlson, Defendants engaged in a pattern and practice of employing sexual abusers and molesters. Defendants concealed these facts from participants and members, their parents, the gymnastics community, the public at large, other National Governing Bodies, the United States government, various local governments, and law enforcement agencies.

111. As is set forth herein, Defendants and each of them have failed to uphold numerous mandatory duties required of them by state and federal law, as well as their own internal written policies and procedures, including:

a. Duty to use reasonable care to protect participants and members from known or foreseeable dangers;
b. Duty to inform Ms. Frederick and her parents of the known risks to the health and well-being of their daughter while in USAG and/or USOC sponsored, authorized, and supervised programs, events and trainings;
c. Duty to enact policies and procedures that are not in contravention of the Federal Civil Rights Act, section 1983 and the 14th amendment of the United States Constitution;
d. Duty to protect participants and members and staff, and provide adequate supervision;
e. Duty to ensure that any direction given to participants and members is lawful, and that adults act fairly, responsible and respectfully towards participants and members;
f. Duty to properly train staff so that they are aware of their individual responsibility for creating and maintaining a safe environment;
g. Duty to review the criminal history of applicants and current employees;
h. Duty to monitor and oversee their staff, employees and agents, including Carlson;
i. Duty to provide diligent supervision to minors;
j. Duty to act promptly and diligently and not ignore or minimize problems; and
g. Duty to report suspected incidents of child abuse and more specifically childhood sexual abuse;

112. Defendants and each of them had and have a duty to protect participants and members, including Ms. Frederick. Defendants were required to, and failed, to provide adequate training, supervision, monitoring and failed to be properly vigilant in seeing that training, supervision and monitoring was sufficient at USAG and USOC to ensure the safety of Ms. Frederick and others.

113. Despite having a duty to do so, Defendants failed to adequately train and supervise all staff to create a positive and safe environment, specifically including training to perceive, report and stop inappropriate sexual conduct by other members of the staff, specifically including Perpetrator Carlson.

114. Defendants failed to enforce their own rules and regulations designed to protect the health and safety of the participants and members. Further, they failed to adopt and implement safety measures, policies and procedures designed to protect minor children such as Ms. Frederick from the sexually exploitive and abusive acts of their agents and employees such as Perpetrator Carlson.

115. Plaintiff is informed and believes and on that basis alleges that as part of Defendants' conspiratorial and fraudulent attempt to hide Perpetrator Carlson's propensity to molest from public scrutiny and criminal investigation, Defendants implemented various measures designed to make molestation conduct harder to detect and ensure minors came into contact with molesters, such as Ms. Frederick, would be subject to abuse, including:

a. Permitting Perpetrator Carlson to remain in a position of authority and trust after Defendants knew or should have known that he was a molester.
b. Allowing Perpetrator Carlson to be in an environment, at USAG and USOC authorized camps and events, including assigning him unfettered access and control over minor participants and members that included individual and private coaching sessions, access to minor's private sleeping quarters without a chaperone, and allowing Perpetrator Carlson to physically and sexually interact with Ms. Frederick;
c. Failing for decades to disclose Perpetrator Carlson's sexual abuse, harassment and molestation and his propensity to commit such acts towards participants and members in USAG's and USOC's program, the public at large and law enforcement;
d. Allowing Perpetrator Carlson's unsupervised and un-controlled access to minors, including Ms. Frederick;
e. Holding out Perpetrator Carlson to Ms. Frederick, other participants and members of USAG and USOC, and the public at large as a trustworthy and honest person of high ethical and moral repute who was capable and worthy of being granted unsupervised access to the children of USAG;
f. Failing to investigate or otherwise confirm or deny such facts about Perpetrator Carlson;
g. Failing for decades to inform, or concealing from Plaintiff and law enforcement officials the fact that Ms. Frederick has been abused, harassed and molested, after Defendants knew or should have known that Perpetrator Carlson may have sexually abused Ms. Frederick, thereby enabling Ms. Frederick to continue to be endangered and sexually abused, harassed, molested, and/or creating the circumstance where Ms. Frederick and others were subject to harm;

h. Holding out Perpetrator Carlson to Ms. Frederick and to the community as being in good standing and trustworthy;
i. Cloaking Perpetrator Carlson's sexual misconduct with the facade of normalcy, thereby disguising the nature of his sexual abuse and contact with Ms. Frederick;
j. Failing to take reasonable steps and to implement reasonable safeguards to avoid acts of unlawful sexual conduct by Perpetrator Carlson such as avoiding placement of Perpetrator Carlson in functions or environments in which his solitary contact Ms. Frederick was inherent;
k. Failing to put in place a system or procedure to supervise or monitor coaches, athletic trainers, and agents to insure they do not molest or abuse minors in Defendants' care; and
m. Failing to implement any reasonable, meaningful, or adequate supervision policies, practices or procedures at the GAG, which would have prevented Perpetrator Carlson solitary access to minors, including the Plaintiff.

116. By his position within the Defendants' institutions, Perpetrator Carlson attained a position of influence over Ms. Frederick, her parents, and others. Defendants' conduct created a situation of peril that was not, and could not be appreciated by Ms. Frederick. By virtue of Defendants' conspiratorial and fraudulent conduct, and in keeping with their intent to fail to disclose Perpetrator Carlson's conduct from the community, the public at large and law enforcement, Defendants allowed Perpetrator Carlson to remain in a position of influence where his unsupervised or negligently supervised conduct with Ms. Frederick and minor participants and members made molestation and abuse possible.

117. During the period Ms. Frederick was being sexually abused and harassed by Perpetrator Carlson, Defendants had the authority and ability to prevent such abuse by removing Perpetrator Carlson from his position as head coach at GAG, USAG and in his status with the USOC. They failed to do so, allowing the abuse to occur and to continue unabated.

118. Plaintiff is informed and believes and on that basis, alleges that this failure was a part of Defendants' conspiratorial plan and arrangement to conceal Perpetrator Carlson's wrongful acts, to avoid and inhibit detection, to block public disclosure, to avoid scandal, to avoid the disclosure of their tolerance of child sexual molestation and abuse, to preserve a false appearance

of propriety, and to avoid investigation and action by public authority including law enforcement. Such actions were motivated by a desire to protect the reputation of Defendants and protect the monetary support of Defendants, while fostering an environment where such abuse could continue to occur.

119. As a direct result of the sexual harassment and abuse that Ms. Frederick suffered by Perpetrator Carlson and Defendants' failures, Ms. Frederick lost her chance to succeed as Olympic gymnast. She has been traumatized by the sexual abuse, and upset of knowing that Defendants could have prevented or stopped such abuse had Defendants conveyed the appropriate information. This inability to interact creates conflict with Ms. Frederick's values of trust and confidence in others, and has caused Ms. Frederick substantial emotional distress, anxiety, nervousness and fear. Ms. Frederick gets physically ill when reminded of the molestation and has difficulty with men in vulnerable situations and trusting men generally.

120. As a direct result of this conduct, Ms. Frederick suffered immensely, including, but not limited to, encountering issues with a lack of trust, various negative psychological and emotional sequelae, depressive symptoms, anxiety, and nervousness. This psychological trauma and association of her abuse with gymnastics cut Ms. Frederick's gymnastics career short, as participating in gymnastics reminded her of the repeated sexual abuse that she suffered at the hands of Perpetrator Carlson, which she eventually suppressed as a survival mechanism. Having been one of the most famous gymnasts in U.S. (and World) history, Ms. Frederick lost millions of dollars in economic damages, as a result of her sexual abuse at the hands of Perpetrator Carlson, and continues to suffer from such loss.

121. Moreover, Ms. Frederick continues to worry, distress, and experience concern, anxiety, and depression, over whether Perpetrator Carlson still has access to minors and could continue to sexually abuse and harass them, as no criminal action has taken place.

122. As a direct and proximate result of Defendants' tortious acts, omissions, wrongful conduct and breaches of their duties, Ms. Frederick's employment and professional development has been adversely affected. She has lost wages, endorsements, and many financial opportunities in an amount to be determined at trial. Ms. Frederick has suffered substantial economic injury, all to Ms. Frederick's general, special and consequential damage in an amount to be proven at trial, but in no event less than the minimum jurisdictional amount of this Court.

123. As a further direct and proximate result of Defendants' wrongful actions, as herein alleged, Ms. Frederick has been hurt in her health, strength and activity. Ms. Frederick has sustained permanent and continuing injury to her nervous system and person, which has caused and continues to cause great mental, physical and nervous pain, suffering, fright, upset, grief, worry and shock in an amount according to proof at trial but in no event less than the jurisdictional minimum requirements of this Court.

124. In subjecting Ms. Frederick to the wrongful conduct herein described, Defendants acted in gross negligence and disregard of Ms. Frederick's rights, so as to constitute wrongful conduct and/or oppression.

125. Ms. Frederick is informed and believes, and on that basis alleges, that specifically, the Defendants acted in concert, and under their authority as child care providers, with reckless disregard for the concern of the minor participants in its charge, including Ms. Frederick, in order to further financially benefit their respective business' growth. Defendants created an environment that harbored molesters, put the vulnerable minor participants, including Ms. Frederick, at-risk of

harm, ignored clear warning signs and their duties to report sexual abusers and molesters in their ranks, to maintain a façade of normalcy, in order to maintain its funding and provide further financial growth of USAG and USOC, on the international level. The safety of the minor participants who were entrusted to USAG and represented as being protected through USOC procedures, was compromised due to Defendants' desire to maintain the status quo of the USAG and USOC organizations, and avoid any public scrutiny for their misconduct.

126. Ms. Frederick is informed, and on that basis alleges, that these acts, as alleged herein above, were ratified by the officers, directors, and/or managing agents of the Defendants. Ms. Frederick is therefore entitled to recover punitive damages, in an amount to be determined by the court, against Defendants.

EQUITABLE TOLLING OF STATUTE OF LIMITATIONS

127. Plaintiff incorporates by reference the allegations contained in the previous paragraphs.

128. Class members' claims and Plaintiff Frederick's individual claims for violations of the Safe Sport Act are timely under 18 U.S.C. § 2255(b).

129. Plaintiff Frederick's common law claims are timely under MGL c. 260, s. 4C1/2, as Ms. Frederick discovered that an emotional or psychological injury or condition was caused by the sexual assault she suffered as a result of the Defendants wrongful conduct in 2015 when she saw an online photograph of Perpetrator Carlson at a gymnastic competition involving young girls. At that time, the memories that she suppressed for many years came flooding back and Plaintiff Frederick finally realized over the next months that she was injured by her molestation.

130. In addition, Defendants' failure to report, document, or investigate the complaints against Perpetrator Carlson, and concealment of the sexually illicit conduct of Perpetrator Carlson,

constitute fraudulent concealment that equitably tolls any proffered statute of limitation that may otherwise bar the recovery sought by Ms. Frederick herein.

131. Defendants are estopped from relying on any statute of limitations defense because they continued to refute and deny reports and allegations of sexual harassment and assault perpetrated by Perpetrator Carlson and intentionally concealed sexually illicit conduct, suppressed the complaints of Ms. Frederick, and failed to disclose known dangerous behaviors and serious increased risks to the Ms. Frederick.

132. Defendants represented that Perpetrator Carlson was a competent coach and entrusted him with overseeing the safety and wellbeing of minor athletes, including Ms. Frederick, instead of upholding their duty to Ms. Frederick to protect her from harassment and abuse.

133. At all relevant times, Defendants were under a continuing duty under federal law and parallel state laws to protect members and participants, including Ms. Frederick from harassment and abuse while under their care, and to disclose the true character, quality, and nature of their employees and/or agents.

134. As a result of Defendants' concealment of the true character, quality and nature of Perpetrator Carlson and his conduct, they are estopped from relying on any statute of limitations defense.

135. Defendants furthered their fraudulent concealment through acts and omissions, including misrepresenting known dangers of sexual harassment and abuse and a continued and systematic failure to disclose and/or cover up such information from/to the members and participants, their parents, and the public.

136. Defendants' acts and omissions, before, during, and/or after the act causing Ms. Frederick' injury prevented her from discovering the injury or cause thereof until recently when suppressed memories were unrevealed.

137. Defendants' conduct, because it was purposely committed, was known or should have been known by them to be dangerous, heedless, reckless, and without regard to the consequences or the rights and safety of Ms. Frederick.

138. The failure of USOC and USAG to take any meaningful action against Perpetrator Carlson and report his actions to law enforcement mirrors a larger pattern of willful ignorance and inaction by USOC and USAG.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATION OF THE SAFE SPORT ACT, 18 U.S.C. § 2255, *et. seq.*
(By Plaintiff on Behalf of Herself and the Class Against the Class Defendants)

139. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

140. The Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 (herein known as the "Safe Sport Act") was written into law on or about February 14, 2018.

141. The Safe Sport Act amended the Ted Stevens Olympic and Amateur Sports Act to include among the purposes of the U.S. Olympic Committee to promote a safe environment in sports that is free from abuse, including emotional, physical and sexual abuse of any amateur athlete.

142. The Safe Sport Act expands those who must do mandatory reporting of child abuse to include "an adult who is authorized, by a national governing body, a member of a national

governing body, or an amateur sports organization that participates in interstate or international amateur athletic competition, interact with a minor or amateur athlete at an amateur sports organization facility or at any event sanctioned by a NGB, a member of a NGB, or such amateur sports organization."

143. The report of child abuse must be done "as soon as possible" which within the statute means within a twenty-four (24) hour period.

144. Defendants USAG and USOC became aware of reports that Plaintiff and Class members had been the victims of sexual abuse prior to or since the Safe Sport Act came into effect. For example, Defendants USAG and USOC learned facts that gave rise to a suspicion of Perpetrator Carlson's sexual abuse of Ms. Frederick on September 12, 2015, when she filed her formal complaint with USAG.

145. Neither USAG nor USOC complied with the mandatory reporting required by the Safe Sport Act and did not report the abuse to local law authorities.

146. The Safe Sport Act was enacted to protect amateur athletes from serial predatory abusers who prey upon young and naïve athletes. As the legislative intent is protect those athletes in the future who may become victims to the serially abuser, it is apparent the Safe Sport Act retroactively applies to all previously reported abuses and not simply those that occur after February 14, 2018.

147. USAG and USOC have not reported Ms. Frederick's abuse to authorities.

148. Ms. Frederick is informed and believes, and on that basis alleges, that Defendants have failed to follow the mandate of timely reporting all of the claims to law enforcement within 24 hours of learning facts that gave rise to the suspicion of abuse prior to the enactment of the Safe Sport Act on February 14, 2018.

149. As a result of the above-described conduct, Ms. Frederick and those similarly situated have suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION
NEGLIGENCE
(By Plaintiff Frederick, Individually, Against All Defendants)

150. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

151. Defendants owed a duty of care to hire, train, monitor, investigate and oversee its USAG/USOC certified and sanctioned coaches, including Perpetrator Carlson. Defendants' duties were increased because Perpetrator Carlson served as the "dorm parent" on behalf of the Defendants and was in a position of authority and power over Ms. Frederick.

152. Ms. Frederick's care, welfare and physical custody was entrusted to Defendants. Defendants voluntarily accepted the entrusted care of Ms. Frederick. As such, Defendants owed Ms. Frederick, a minor child, a special duty of care that adults dealing with children owe to protect them from harm.

153. Defendants had a duty to protect and warn arising from the special, trusting, confidential, and fiduciary relationship between Defendants and Ms. Frederick.

154. Prior to during the "grooming period" and after the first incident of the Perpetrator Carlson's sexual harassment, molestation and abuse of Ms. Frederick, through the present, Defendants Grossfeld, Ward, USOC and USAG, knew and/or should have known that the Perpetrator Carlson was capable of sexually abusing and harassing Ms. Frederick or other victims.

155. Defendants Grossfeld, Ward, USOC and USAG breached their duty to take reasonable protective measures to protect Plaintiff from the risk of childhood sexual harassment, molestation and abuse by the Perpetrator Carlson, by failing to supervise and stop employees and agents, including the Perpetrator Carlson, from committing wrongful sexual acts with minors, including Ms. Frederick.

156. Defendants Grossfeld, Ward, USOC and USAG breached their duties of care to the minor Plaintiff by allowing the Perpetrator Carlson to come into contact with Ms. Frederick and other participants and dues-paying members, without supervision; by failing to adequately hire, train, supervise and retain the Perpetrator Carlson whom they permitted and enabled to have access to Plaintiff; by concealing from Plaintiff, her family, and law enforcement that the Perpetrator Carlson was sexually harassing, molesting and abusing her; and by holding the Perpetrator Carlson out to Plaintiff and her family as being of high moral and ethical repute, in good standing and trustworthy.

157. Defendants Grossfeld, Ward, USOC and USAG breached their duties to Plaintiff by failing to investigate facts of sexual abuse by the Perpetrator Carlson, which they knew or should have known about. Defendants failed to reveal such facts of abuse to Plaintiff, her parents, the community and law enforcement agencies, and failed to reveal that they do not investigate and monitor their USAG/USOC certified coaches and dorm parents. Defendants also failed by placing

the Perpetrator Carlson into a position of trust and authority, holding him out to Plaintiff, her parents, and the public as being in good standing and trustworthy.

158. Defendants Grossfeld, Ward, USOC and USAG breached their duty to Plaintiff by failing to adequately train, monitor and supervise the Perpetrator Carlson and failing to prevent the Perpetrator Carlson from committing wrongful sexual acts with minors including Ms. Frederick. Defendants Grossfeld, Ward, USOC and USAG knew or should have known of the Perpetrator's Carlson grooming process and incapacity to serve as a USAG/USOC certified head coach, providing for the physical care and coaching of minor females, including Ms. Frederick.

159. As a result of the above-described conduct, Ms. Frederick has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and has incurred and will continue to incur expenses for therapy and counseling.

THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION/RETENTION
(By Plaintiff Frederick Individually, Against Defendants Grossfeld, Ward, USOC, and USAG)

160. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

161. By virtue of Ms. Frederick's special relationship with Defendant Grossfeld, Ward, USOC and USAG, and Defendants Grossfeld, Ward, USOC and USAG's relation to the Perpetrator Carlson, they owed Plaintiff a duty to provide reasonable supervision and oversight of USAG/USOC certified and sanctioned coach CARLSON, to use reasonable care in investigating

the Perpetrator Carlson's background, and to provide adequate oversight of Perpetrator Carlson's dangerous propensities and unfitness. As organizations and individuals responsible for, and as representatives of Defendants Grossfeld, Ward, USOC and USAG, where many of the participants and dues-paying members thereof are vulnerable minors, like Plaintiff Frederick, entrusted to these Defendants Grossfeld, Ward, USOC and USAG, these Defendants Grossfeld, Ward, USOC and USAG's agents expressly and implicitly represented that certified coaches and staff, including the Perpetrator Carlson, were not a sexual threat to children and others who would fall under Perpetrator Carlson's influence, control, direction, and care.

162. Defendants Grossfeld, Ward, USOC and USAG, by and through their respective agents, servants and employees, knew or should have known if they properly investigated, supervised and monitored Carlson, of the Perpetrator Carlson's exploitive and inappropriate propensities and that Perpetrator Carlson was an unfit agent.

163. Despite such knowledge, Defendants Grossfeld, Ward, USOC and USAG negligently failed to supervise and monitor Perpetrator Carlson in his position of trust and authority as a USAG/USOC certified head coach, authority figure over children, and dorm parent, where he was able to commit wrongful acts of sexual misconduct against Ms. Frederick.

164. Defendants Grossfeld, Ward, USOC and USAG failed to provide reasonable supervision and monitoring of the Perpetrator Carlson, failed to use reasonable care in investigating Perpetrator Carlson, and failed to ascertain his dangerous propensities and unfitness.

165. Defendants Grossfeld, Ward, USOC and USAG further failed to take reasonable steps to ensure the safety of minors, including Ms. Frederick from sexual harassment, molestation, and abuse.

166. At no time during the periods of time alleged did Defendants Grossfeld, Ward, USOC and USAG have in place a reasonable system or procedure to train, investigate, supervise and monitor the certified head coach or staff, including the Perpetrator Carlson, to prevent pre-sexual grooming and sexual harassment, molestation and abuse of children, nor did they implement a system or procedure to oversee or monitor conduct toward minors and others in Defendants Grossfeld, Ward, USOC and USAG's care.

167. Defendants Grossfeld, Ward, USOC and USAG were aware or should have been aware of how vulnerable children were to sexual harassment, molestation and abuse by teachers, coaches and other persons of authority within Defendants Grossfeld, Ward, USOC and USAG's entities.

168. Defendants Grossfeld, Ward, USOC and USAG were put on notice, knew and/or should have known that the Perpetrator Carlson was engaging in unlawful sexual conduct with Ms. Frederick, and had committed other misconduct for his own personal sexual gratification, and that it was foreseeable that he was engaging, or would engage in sexual activities with Plaintiff, and others, under the cloak of the authority, confidence, and trust, bestowed upon him through Defendants Grossfeld, Ward, USOC and USAG.

169. Defendants Grossfeld, Ward, USOC and USAG were placed on actual or constructive notice that the Perpetrator Carlson had molested participants and dues paying member, Plaintiff Frederick, during his employment with Defendants Grossfeld, Ward, USOC and USAG.

170. Defendants Grossfeld, Ward, USOC and USAG should have been informed of molestations of Ms. Frederick committed by the Perpetrator Carlson, and of conduct by the

Perpetrator Carlson that would put a reasonable person on notice of such propensity to molest and abuse children.

171. Even though Defendants Grossfeld, Ward, USOC and USAG knew or should have known of these sexual activities by the Perpetrator Carlson, Defendants Grossfeld, Ward, USOC and USAG did not reasonably investigate, supervise or monitor the Perpetrator Carlson to ensure the safety of the minor participants and dues paying members, including Plaintiff Frederick.

172. Defendants Grossfeld, Ward, USOC and USAG's conduct was a breach of their duties to Ms. Frederick.

173. Defendants Grossfeld, Ward, USOC and USAG, and each of them, breached their duty to Plaintiff by, inter alia, by failing to adequately monitor and supervise the Perpetrator Carlson and stop the Perpetrator Carlson from committing wrongful sexual acts with Plaintiff Frederick.

174. As a result of the above-described conduct, Ms. Frederick has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses therapy and counseling.

FOURTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(By Plaintiff Frederick, Individually, Against All Defendants)

175. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

176. Defendants' misconduct conduct as described herein constituted negligence and caused significant emotional distress and physical injury to Ms. Frederick.

177. Defendants could reasonably foresee that Perpetrator Carlson's actions would have caused the emotional distress.

178. Defendants acted with negligence, recklessness, and disregard, knowing that Ms. Frederick would likely endure emotional distress because of what she was subjected to while under the care and control of Defendants.

179. Defendants' conduct directly caused Ms. Frederick suffering that no person should have to endure.

180. Any reasonable person in under the same circumstances that Plaintiff Frederick was placed by the Defendants' misconduct would have also suffered emotional distress.

181. As a result of the above-described conduct, Ms. Frederick has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress including embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for therapy and counseling.

PRAYER FOR RELIEF

On behalf of herself and all others similarly situated, Plaintiff prays this Court enter judgment against each of the Defendants and grant:

A. Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

B. Economic losses on all claims allowed by law;

C. Special damages in an amount to be determined at trial;

D. Punitive damages on all claims allowed by law against individual Defendants in an amount to be determined at trial;

E. Injunctive relief as allowed by law;

F. Attorney's fees and costs associated with this action

G. Pre- and post-judgment interest at the lawful rate; and,

H. Any further relief that this Court deems just and proper, and any other appropriate relief at law and equity.

Plaintiff hereby demands a trial by jury on all claims so triable.

Respectfully submitted this 20th day of June, 2018.

RESPECTFULLY SUBMITTED,

PLAINTIFF,

/s/ Kimberly A. Dougherty
Kimberly A. Dougherty (BBO. No. 658014)
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AND

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JS 44 (Rev 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

MARCIA FREDERICK, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Bristol County, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Kimberly A. Dougherty, Andrus Wagstaff PC
19 Belmont Street, South Easton, MA 02375
(508) 230-2700

DEFENDANTS

UNITED STATES OLYMPIC COMMITTEE, USA GYMNASTICS (formerly known as the United States Gymnastics Federation), RICHARD CARLSON, MURIEL GROSSFELD, and GEORGE WARD

County of Residence of First Listed Defendant El Paso County, CO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U S Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U S Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
☐ 196 Franchise				☐ 864 SSID Title XVI	☒ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	☐ 870 Taxes (U S Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 1332(d)(2), 18 U.S.C. § 2255, and 34 U.S.C. § 20341

Brief description of cause:
Violations of the Safe Sport Act for failing to report suspected abuse of amateur athletes to law enforcement and other claims

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ In excess of 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 06/20/2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Kimberly A. Dougherty

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** MARCIA FREDERICK, individually, and on behalf of all others similarly situated v. UNITED STATES OLYMPIC COMMITTEE, et al.

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

☐ I. 410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.

☐ II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.

☑ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**
YES ☐ NO ☑

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**
YES ☐ NO ☑

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**
YES ☐ NO ☑

7. **Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).**
YES ☑ NO ☐

A. **If yes, in which division do all of the non-governmental parties reside?**
Eastern Division ☑ Central Division ☐ Western Division ☐

B. **If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?**
Eastern Division ☐ Central Division ☐ Western Division ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kimberly A. Dougherty
ADDRESS 19 Belmont Street, South Easton, MA 02375
TELEPHONE NO. (508) 230-2700

Exhibit C

February 21, 2019 Omnibus Hearing Transcript

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:	.	Case No. 18-09108-RLM-11
	.	
USA GYMNASTICS,	.	
	.	U.S. Courthouse
	.	46 East Ohio Street
	.	Indianapolis, IN 46204
Debtor.	.	
	.	February 21, 2019
. . . . .	.	1:30 p.m.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE ROBYN L. MOBERLY
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

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THE COURT: Okay, we are on the record on 18-9108, USA Gymnastics. Would everyone in Court who anticipates wanting to take an opportunity speak identify yourselves and then we'll read off the people who I think are on the telephone.

Let's start with the debtor's counsel.

MS. STEEGE: Good afternoon, Your Honor. Catherine Steege on behalf USA Gymnastics.

MR. GOTWALD: Your Honor, Greg Gotwald on behalf of USA Gymnastics.

THE COURT: Hi, Greg. I haven't seen you in a while.

MR. GOTWALD: I know. It's good to be back in front of you.

THE COURT: Thanks.

MR. SCHARF: Good morning, Your Honor. Ilan Scharf on behalf of the Sexual Abuse Survivors Committee. On the phone is my partner, Jim Stang.

THE COURT: Okay.

MS. CARUSO: Good afternoon, Your Honor. Debbie Caruso and I am also representing the Sexual Abuse Survivors Committee.

THE COURT: Okay. Meredith?

MS. THEISEN: Meredith Theisen on behalf of the Sexual Abuse Survivors Committee as well.

THE COURT: Ms. DuVall?

MS. DuVALL: Laura DuVall on behalf of the United States Trustee, Your Honor.

MR. KUNZ: Good afternoon, Your Honor. Carl Kunz from Morris James on behalf of National Casualty Insurance Company.

MR. WEINBERG: Good afternoon, Your Honor. Joshua Weinberg on behalf of Great American Insurance Company.

MR. HESTER: Good afternoon, Your Honor. Jeff Hester on behalf of claimant Kelly Doe.

MR. KAMRACZEWSKI: Good afternoon, Your Honor. Kevin Kamraczewski on behalf of Virginia Surety Insurance Company.

MR. MILLNER: Robert Millner on behalf of Virginia Surety Insurance Company.

MR MOLOY: Good afternoon, Judge. Jim Moloy for Virginia Surety Company.

THE COURT: Are you sheparding these -- this crew, this team for Virginia? Anybody else?

Okay, and on the phone. Please tell me who's on the phone.

MS. COFFINO: Dianne Coffino from Covington and Burling on behalf of the U.S. Olympic Committee.

MR. STANG: Good morning, Your Honor. James Stang, Pachulski Stang Ziehl and Jones for the Abuse Survivors Committee.

THE COURT: Okay.

MR. JOHNSON: Good afternoon, Your Honor. John Piggins, Miller Johnson, with the debtor.

THE COURT: Okay.

MS. LEHMAN: Your Honor, Martha Lehman on behalf of the Indiana Attorney General.

THE COURT: Okay. Is that it?

MR. CALHOUN: Good afternoon, Your Honor. George Calhoun of Ifrah PLLC on behalf of TIG Insurance Company.

THE COURT: Okay, great. Does that take care of it?

(No audible response)

THE COURT: All right, good. Okay, let's get on with our agenda for today. I think you've teed up the debtor's motion for order extending a period within which it may remove the state court actions.

MS. STEEGE: Yes, Your Honor, and that motion is uncontested. We're asking for an extension for an additional 90 days through June 3rd of 2019 which we think cause exists to do so rather than running around and removing everything in the next two weeks because the date would expire at the beginning of March. It makes sense as we work through with the committee and various parties about how we might resolve these claims to keep everything kind of in a status quo place so we would ask that the order be entered.

THE COURT: Okay, anybody want to make any comments with respect to this?

(No audible response)

THE COURT: Okay, we'll grant the motion extending the period in which the debtor may remove state court actions to federal court.

Onto Number 2 on the agenda, the debtor's application to employ Pierce Atwood LLP as an ordinary course counsel. I think this is regarding one of the Sexual Abuse Survivors claims?

MS. STEEGE: Yes, Your Honor. This firm represents the debtor in a lawsuit that's pending in the District of Massachusetts and this application along with Zuckerman Spaeder application, we had conversations with Ms. Caruso and Ms. Theisen about resolving this. What they asked and we uploaded new orders on Monday to reflect this is that the order provide that in the monthly operating report we would, which I think we would be required to do anyway, but we would show a line item if any amounts were paid by the debtor to either of those firms so that if the committee believed that the amount was becoming significant, they could come in as the order provides absent further order of Court they don't have to file fee petitions but they could come in and ask for a fee petition to be filed.

THE COURT: Okay, so why don't we lump the two together? So, we're going to deal with Item 2 and 3. 3 is an application to employ Zuckerman Spaeder LLP since they're pretty much identical in substance and in form. Do you want to

make any comments, Ms. --

UNIDENTIFIED ATTORNEY: No, Your Honor. Ms. Steege properly represented the revisions that are going to be made and incorporated into the order.

THE COURT: Okay, all right, so we will approve both applications.

And now we'll move on to the debtor's application to employ Barnes and Thornburg LLP.

MS. STEEGE: Yes, Your Honor. Barnes and Thornburg is different from the other ordinary course counsel in that we do anticipate that they will be required to continue to do work. They are representing USAG in connection with inquiries that have been made by the Indiana Attorney General. And, again, at the request of Ms. Caruso and Ms. Theisen, they had asked that they file fee petitions to Barnes and Thornburg. Barnes and Thornburg is willing to do so we did upload a new order on Monday indicating that they would file fee petitions unlike the other ordinary course professionals.

THE COURT: Okay, anyone have any comments with respect to this one?

(No audible response)

THE COURT: Okay, we'll approve the application to employ Barnes and Thornburg.

The next one is the final hearing on the first day motion to pay pre-petition employee wages, et cetera.

MS. STEEGE: Yes, Your Honor. I think that there are no objections to this. We filed a final order. The only change that is made is that it reflects it's a final order and takes out any reference to a final hearing and date and time for that. And we, as Your Honor knows, we did withdraw the bonus request.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: Based on the withdrawal of the bonus request, the committee has no objection to the motion.

THE COURT: Okay, thank you. So we will grant the motion for the pre-petition wages. See, I'm beating your time estimate here today.

MS. STEEGE: You are.

THE COURT: Usually, I'm not that quick. Okay, the next one, the sixth item on the agenda is the first day motion for approval of a cash management system.

MS. STEEGE: Yes, Your Honor, and two things to note about that motion. First, with regard to the issue that caused it to be continued with the U.S. trustee which was the liquidation of the securities that we had at this PNC brokerage account is we had told the Court we were planning on getting that liquidated over the course of the winter months into the spring and we reached an agreement with Ms. DuVall that there would be a temporary modification of 345(b) through March 29th

of 2019 when we anticipate that everything will be liquidated and then after that date we'll be fully compliant with the 345(b) investment criteria. And we have uploaded an order, again, on Monday or Tuesday that reflects the agreement that we've reached with the U.S. Trustee with regard to that.

The other point to note is that we did file a supplement to this motion because we learned from Wells Fargo Bank that Region 8, which is a region of gymnastics clubs mainly out of Alabama and in the south, they had -- one of the officers of that region had opened up an account in her own name but used our tax ID number and so the bank shut down the account. The funds in that account --

THE COURT: I bet she regretted doing that, didn't she?

MS. STEEGE: Yeah.

THE COURT: Probably better than using her own Social Security number.

MS. STEEGE: Right, I guess, but she didn't inform us and so we were not aware of it. There was approximately $207,000 that was in something called this Tim Rand Legends Fund. He was a coach who apparently was beloved and passed away and a fund was created through bake sales and other things and it uses the money to --

THE COURT: Really good bake sales, right?

MS. STEEGE: I guess. And something I've never heard

of, a cartwheel-a-thon where I guess you just do cartwheels over and over again. And so anyway --

THE COURT: It's because you and I aren't gymnasts, right?

MS. STEEGE: Yes.

THE COURT: I do one.

MS. STEEGE: I can't do one. I never could. So, there's that money that they use to send athletes to various meets and things where there's entry fees and then they had about $50,000 that they used for uniforms, prizes and those types of things. In talking with them, they were willing to move that money into the state and region account that we maintain at PNC Bank that's referenced in this order. They sent cashier's checks to USG which we received and deposited yesterday so the money should be -- is in the state and region account as of today which I think takes care of any issue that the committee had raised with regard to these funds.

THE COURT: Okay on that?

MR. SCHARF: So, Your Honor, we did receive the motion. We did receive an e-mail about the issue shortly before the motion was filed. The concern the committee has with regard to the ultimate disposition of the money is there's a question of what exactly is a region. Is it -- we think it's a geographic demarcation and the question is anything that may be asserted to be property of a region may actually be property

of the estate and we ask the debtor to move it to the state and region accounts so we can all take a stop, look and listen and figure out exactly what it is.

At the same time the committee recognizes that this money and proceeds of the money are being used to fund scholarships and does not object to that money being used in the ordinary course to fund scholarship. Clearly the committee full of gymnasts encourages young gymnasts and would like to see them receive their scholarships and continue practicing. So we've resolved this but we will have to figure out exactly what this money is and who it belongs to.

THE COURT: Ms. DuVall, do you have any comments?

MS. DuVALL: Ms. Steege is correct. We agree to that waiver language up to March 29th. Based on what the debtor has proposed, we anticipate that there won't be any further investment income at issue and I believe -- and I understand the debtor would come back. If that account hasn't been fully liquidated by that time, we would seek to modify the order.

MS. STEEGE: Yes, Your Honor.

THE COURT: It's probably a better time than it's been recently to be liquidating things but you might want to do it fast. You never know what'll be in the news tomorrow.

MS. STEEGE: I'll let Mr. Schoenberger know that he should get right on it.

THE COURT: Okay, the next one is debtor's motion to

assume the executory contract with Spencer Stuart.

MS. STEEGE: And the good news is, Your Honor, we're going to keep on a roll. The committee has withdrawn its objection. This is our application to assume the agreement with the search firm that helped us locate our new CEO, and we found someone which we're very excited about. And I believe that she's an excellent person to bring the organization forward and to work with making the changes that we all hope will be made at USA Gymnastics to get it back to where it should be.

The cure payment is approximately $83,000 and there's about 12,000 to $15,000 of travel expenses associated with the work they did in locating, interview candidates for the firm so we would ask that the assumption be approved and that we be authorized to make the payments to them pursuant to the contract.

THE COURT: So, it's less than the 125,000?

MS. STEEGE: Yes. They had made the first installment payment before the filing of the bankruptcy.

THE COURT: And you don't know -- somehow I was thinking it was a single fee that was paid in installments. No?

MS. STEEGE: It was 125,000 paid in three installments. Typically, they charge a percentage of the compensation that the new CEO will receive but they gave USAG a

different prices structure at their request which actually results in a slight discount and it was to be paid in three installments but the bankruptcy caught the last two installments.

THE COURT: Oh, okay, okay, okay. So, you had paid some of that 125 beforehand?

MS. STEEGE: We have, yes.

THE COURT: Okay, I had it backwards. Okay, and any comments about that?

MR. SCHARF: The thrust of our objection -- sorry. Ilan Scharf for the committee. The thrust of the committee's objection was that we did not understand where were in the process in terms of having -- whether to hire someone or not based on the filing that was put on the docket I believe Tuesday. We now understand where they are in the process. And we had also reviewed the contract and looked at some of the economic terms and the debtor did answer our questions so we had gotten comfortable with the economic discussion for filing our objection.

THE COURT: Okay, all right. So, we will then approve the motion and assume the executory contract with Spencer Stuart. She did sound very impressive according to the news bulletin anyway. Let's hope she is as good or better than propheced.

The next one is the debtor's application to employ

APCO Worldwide LLC as ordinary course communications advisor.

MS. STEEGE: Yes, Your Honor. We hired APCO in November of 2018 prior to the filing of the bankruptcy. USAG hired them. They replaced the prior outside communications firm. USAG has historically always had an outside communications firm helping it with filling in communication needs that the organization has.

APCO by way of background is a large communications firm. It has over 30 offices, 600 employees. It serves a wide variety of clients with crisis management, media outreach, things of that nature. It has represented debtors in the past in connection with communication needs they have, in connection with bankruptcy proceedings. So, for example, when we file bankruptcy, there's a need to reach out to a variety of folks to make them understand what the process is. So in addition to the survivors, there are other stakeholders in this proceeding.

There are employees and they organized and helped us answer and communicate with the employees about what was going to be happening to them in their jobs because there was a lot of concern and angst about that. They helped us with outreach to all of the member gyms and the regions and the officers and organized, you know, webinars is I guess for lack of a better word but a way to communicate via a conference call on the day of the filing so folks would understand that USAG was still here, it was still in business in the ordinary course.

They worked with us in talking with suppliers and other parties who all have a lot of questions. That is very typical in any type of sizable Chapter 11 case to have a communications firm to help you with that so that you can communicate to everybody who has an interest in the organization so that they can understand the Chapter 11 process.

Here it was particularly critical because the debtor has downsized its staff as a result of the crisis that it faces itself in. It has an in-house communications director and she has four individuals who are support for her but they have to work on all of the debtor's websites, providing notices and advertisements with regard to the meets, managing the social messaging that goes on, hiring the photographers, arranging for the gymnast when folks want to interview them. They handle all of that. They have a very full plate with a staff that was reduced.

One of the parties who manages the social media platform is out on leave. APCO has helped and filled in with some of the needs within the department. As a result of that we get a tremendous amount of media inquiries. Just the other day when the new CEO was announced, they were flooded with requests from various media outlets to talk with her, to find out information about her. There was a whole communications plan put together to make sure that that information was out

there.

Going forward, for example, with the bar date, we want to make certain -- that's the motion we're going to come to next -- we want to make certain that there is as much notice as possible of that bar date so that if there is anyone out there who has a claim, they have notice of this and they can make that claim so that we can get it resolved in this bankruptcy and do it one time and do it right.

Omni is going to take care of mailing out the notices and doing all of those types of things but what APCO can do for us is there's been an expression by the committee they'd like to see something on sports media and the like so that folks who are sports minded like the gymnasts would be might see that. They can work with us in arranging for stories about the claims bar date as opposed to just ads that run on the back of a publication. And so they're going to be working on those types of things. We think that it's an appropriate use of the debtor's resources. It's necessary. They've historically always had an outside communications firm that helps them and we would ask that the Court approve this.

We understand the committee does object and they object basically on three different grounds. One of those grounds I think we have resolved. They say that they duplicate Omni but they don't. They're not a mailing service. They're not handling the claims. They're doing a totally different

type of communication than what Omni is doing although Omni is communicating with folks by virtue of the e-mails and mailings that they do. It's a totally different service.

They object on the grounds that they, the committee, don't want that service employed by the debtor but, again, respectfully, while we agree that the survivors are a very, very important constituency in this case, there are other parties that we do need to communicate with and bring forward the message of USAG and let people know what changes are being made in the organization. And so we think that while we appreciate the survivors' input on this issue, we think that there are other parties at stake here as well and that they are best served by a communications firm.

And then finally there were some objections they had to things in the letter agreement that APCO had for its retention and we did file with our reply a modification to the letter agreement to reflect changes to the contract. Specifically, they wanted to have a change that provided that APCO would safeguard any confidential information it received. If it walked away from the engagement, it would take efforts to make certain all confidential information it had would be returned to the debtor safeguarded. We made that clear in the agreement.

They wanted the agreement to provide that if APCO were to obtain any confidential information about any of the

survivors, it wouldn't provide that to any third party consultants or subcontractors that they might be using and we included that in the agreement.

There was kind of a standard limitation on liability that they aren't responsible for consequential damages and they wanted to change to that particular paragraph which we have made. And then they wanted -- the agreement had language in it that provided that if APCO merged with someone, that the agreement could be assigned without our consent. They asked that that be taken out and we took that out.

So, we think we have resolved the letter agreement issues by virtue of the changes that are reflected in the red line and we would ask that Your Honor overrule the objections to the retention and allow us to hire APCO.

THE COURT: Okay, comments?

MR. SCHARF: Good afternoon, Your Honor. Ilan Scharf, Pachulski Stang Ziehl and Jones, on behalf of the committee. At first as an initial matter, Your Honor, we do recognize that the committee, sorry, that the debtor has revised the engagement letter to address some of the technical concerns such as inappropriate limitations on liability, et cetera.

There's still I think though one issue on the terms of the contract that is still an issue for us and the contract in the engagement letter where the court order should very

clearly specify that APCO is not going to be getting any confidential information about survivors or from the survivors' proof of claim forms. We think that that -- to the extent they're retained. We don't think they should be retained for the following reasons, Your Honor.

First, Your Honor, one of the questions we've always had is what exactly is APCO doing in this case? And there's different descriptions of the types of services that are being provided first in the engagement letter which provides a very broad range of services but only specifies assisting with noticing essentially which is duplicative of what Omni is doing.

We then in the reply there was a little expansion on addressing media inquiries and I think for the first time we've heard specific issues today for the first time during counsel's discussion, heard other activities that they may be -- that they're engaged in such as messaging to employees and creating these webinars.

The question is we look at the terms of the engagement letter and what does the engagement letter say. And the engagement letter says that the debtor is retaining APCO to provide communications, advice and counsel including but not limited to assisting the clients in providing public notices of events in the bankruptcy case including the claims bar and date and the notice of any disclosure statement and plan and that's

it. That's the description of services. There's nothing beyond that.

And the only -- and we should break that down. Omni, the only specific services being described in this engagement letter relate to the claims bar date, notice of a claims bar date which Omni is perfectly capable of noticing out and has been hired to do.

In addition, the debtor then said in the reply that they need APCO to help placing ads in the various sports outlets that we've asked for with respect to the bar date notice. But we're a little bit confused by that argument because the bar date motion was filed on January 31st, the same day the APCO application was filed. And the bar date motion specifies four outlets for publication, the debtor's Twitter account, the debtor's website, The New York Times and the USA Today. You don't need APCO to help file anything on those outlets and at the time this engagement letter was entered they certainly didn't contemplate that they would have anything beyond that. In addition, having -- this is a sports organization. I think they probably know how to call the Sports Illustrated and ask them to place an ad.

In addition, Your Honor, so that really does bring forth what exactly is APCO doing and, again, we've heard this evolving explanation and the concern the survivors have is that is APCO merely placing ads, is it undertaking a broader mission

of communications? Is it going to do something that, frankly, would hurt survivors? Are they going to be engaged in addressing social media campaigns or responding to survivors on social media or responding to articles that address the USA Gymnastics situation?

THE COURT: So are you saying the survivors want no balance, they just want their view?

MR. SCHARF: The survivors --

THE COURT: Obviously that's not a fair question to you but that's how it came off in your comment.

MR. SCHARF: Sure.

THE COURT: So, I assume, that's not what you meant that they want to be the only policy voice that's heard.

MR. SCHARF: No. The survivors don't believe they're going to be the only voice that's heard but first of all, the committee itself is not engaging in these activities. To the extent that individual survivors are talking on social media, we think the debtor has -- again, and we're confused because APCO's engagement letter doesn't actually specify these are the services they're going to be providing so we're just wondering what it is.

And I did look at the debtor's website this morning. Last year -- they put out hundreds of press releases a year. They're all on the debtor's website. Last year there were approximately 38 press releases that dealt with abuse

responding to issues in the abuse realm that the debtor put out so they're fully capable of doing it themselves.

Finally, again, going to the issue of disclosure, we were curious to see what APCO had been paid pre-petition because it's not disclosed in the engagement letter and we did see that APCO was paid a $50,000 retainer. It was not disclosed anywhere in the application. We found it in the SOFA.

So, you know, it's just (a) the terms of the engagement letter are a little bit mushy but the only descriptive services they provide are things that Omni is already doing and there's no understanding of what exactly they're doing based on the engagement letter or the application.

THE COURT: You want to make any further comments, Ms. Steege?

MS. STEEGE: Your Honor, the only comment I would make is there's no intention to provide the survivor claim forms to APCO. It's very clear whatever claim form Your Honor approves when you address the claims bar date order that there's a very limited number of parties who will receive those claims forms absent the consent of the committee and the debtor with notice to the survivors so there was never any suggestion I don't think in the papers that we would provide that to APCO and there would be no reason for them to have it. I would say

so whatever, if they want language in the order saying that, we could certainly put it in there but I think if Your Honor grants the bar date order, it's already in that particular order that they wouldn't be able to get that.

In terms of what we're asking them to do, the engagement agreement says to provide communications, advice and counsel and then it says including and that is not meant to be limiting and to say that all they were going to do is to provide advice with regard to the bar date. As we explained to them when we talked through these objections, they are doing communications work. Yes, the debtor did issue press releases last year and they had an outside communications consultant that assisted them with that.

There was a feeling by the board that they wanted to make a change and that's why APCO came in in November and replaced the prior firm that had been there for a number of years previous to that because we felt that or the board felt that APCO had better experience with regard to addressing the unique needs that arise in a Chapter 11 case with communicating with third parties that need to be communicated with. And it is certainly not our intention to harm the survivors through the use of a communications consultant.

We have not engaged and do not believe that the debtor has engaged in any type of anti media campaign against the survivors. That would be ridiculous for us to do. That

would destroy this organization. We have made it clear, the chairman of the board every time that she has spoken publicly about this or privately with anyone that our goal is to try to solve the problem, fix the culture at USAG and bring the sport forward. That's what the new CEO has stated that that's why she got involved. She's leaving a very good job at the, you know, NBA, an organization that, I don't know, but I don't think it has the kind of problems USAG --

THE COURT: NBA probably doesn't have sexual harassment issues like USOC or maybe gymnastics or swimming or other young girl sports.

MS. STEEGE: Right. And she's coming because she was a young gymnast who competed at an elite level, competed at the University of Michigan, coached a team when she was getting her MBA at the University of Massachusetts and is coming because she wants to help fix and solve the problem. The last thing we would do is hire a communications consultant to do something to harm the survivors.

It is true that there are survivors who have made many a negative comment about USAG in the press or probably more likely their lawyers, the lawyers that are representing them and they are quoted. But it's not our goal to hire someone to go tit for tat with them. It's to be able to communicate with the people we need to communicate, our members, the coaches, judges, the young athletes so that we can

better promote this organization in a way that every Chapter 11 debtor does when they come into bankruptcy. Every debtor with any kind of significant public presence is going to have a communications consultant so we would ask that this motion be granted.

THE COURT: Any comments from anyone else?

(No audible response)

THE COURT: Okay, I'm going to grant the application. I think one of the chief goals of this, not the only one by any means, but one of the many chief goals of this Chapter 11 ought to be to regain the confidence of many constituencies. I mean obviously the confidence of the survivors that the organization has changed but also fans, sponsors, everyone who cares about who represents the United States at the Olympics.

Constituency is very broad and I can't imagine that it would be fruitful to do anything that was -- I mean no one can possibly have a feeling that's antagonistic at this point to the survivors. It's not fruitful for this organization. Even individually as a human being it wouldn't be fruitful to make a negative comment.

So -- and this isn't an easy thing to communicate well. Bankruptcies, Chapter 11s are complex. People don't understand how they work. In fact, I'm a news watcher like everybody else and unfortunately the comments of the survivors after the first meeting of the creditors reflected that they

anticipated something different than an educated, informed person would have expected from the first meeting and they were sadly disappointed in what information was available and what the purpose of that meeting was and I thought that was really unfortunate that they hadn't been better educated and as a result of their fair comments, as a result of where they're coming from every listener to the news thought that the organization didn't come forward with all the information that they were required to at that time when they weren't showing up obviously and whether they gave all the financial information I don't know and never will know what happened at the first meeting.

But, clearly, the policy of changing the culture of the organization was not -- is not, was not the purpose of the first meeting. And the whole purpose of this bankruptcy hopefully is to come out with a better successful organization than it was before, not to eliminate it and leave young girls with nothing.

So, I mean, clearly to me there needs to be better messaging than there has been on this in terms of education if nothing else. So I think that the employment of APCO, assuming that they do what Ms. Steege has indicated and I get why every task that they're going to do is not enumerated in the agreement and if they aren't doing the task that we anticipate and what's been reflected by counsel's comments today, if

they're not doing that, then we take another look at it.

Clearly, the order needs to include that absolutely no confidential -- and, again, I can't imagine why the communications firm would have any interest or need in any way of individuals' confidential information. That's not what they're there to do. But let's include it. If it gives -- certainly these young women deserve confidence that their personal information is not going to be shared with anyone that they don't already know about in advance. So let's just throw that in there so that everyone's mind is put at rest.

Okay, the ninth item on our agenda is the debtor's motion for an order establishing deadlines for filing proofs of claim, et cetera.

MS. STEEGE: Yes, Your Honor. There are really four issues with this motion, three of which I'm happy to say are resolved in an agreement and then we have one issue that Your Honor will have to address. First is the timing of the bar date. We are asking for a 60-day bar date, April 26th of 2019 as the date for filing claims. There was one objection to that filed by Kelly Doe. Mr. Hester is here. We had a conversation yesterday.

He is no longer objecting to the timing of the bar date. He wanted it to be made clear as we made clear on our reply that his client apparently is thinking about wanting to try to file a class proof of claim. We don't think that's

appropriate here but we aren't trying to get that litigated under the radar in this particular motion and I wanted to make that clear and we said that in our reply.

If they come forward and seek to represent a class in the bankruptcy case, we may object but Your Honor is going to decide that, you know, with an appropriate motion and so my understanding is with that representation on the record as it was in our reply, Mr. Hester has no longer any objection to the April 26th bar date.

THE COURT: Is that right, Jeff?

MR. HESTER: That's right.

THE COURT: Okay.

MS. STEEGE: The second issue was access to the claims forms by the survivors. The Indiana AG had asked that they be given access, one of the parties who would automatically be able to get access to that. That really isn't USAG's issue per se. It is really the issue of the committee. My understanding from a phone message that I got from Ms. Lehman this morning is that she and Mr. Stang had reached an agreement that they would continue to discuss it but that the motion could go forward without Your Honor deciding whether the Indiana AG would have access to those forms at this time and they would work on resolving, you know, whatever Ms. Lehman's needs are to see those forms.

The third issue is the noticing that we are giving

and as I said before, we have every incentive to make certain that this notice is as broad as possible and we've had conversations with the committee about how we're going to go about doing that noticing. And so for the Court's benefit what we intend to do is obviously everybody who's on our schedules which is everyone who has filed a claim against USAG or has told us they are filing a claim we are giving notice to and they have been scheduled.

But in addition to that what we are doing is we are going through the organization's files to cull the names of anybody who's ever made a complaint about anything including whether it's sexual abuse or whatever it is and we are going to, you know, to the extent we have information, their names and addresses and things which we do for most of them, we are sending them a notice of the bar dates so that they can bring forward their claim if they think they have one.

In addition, we are sending notices to all of the gyms that are members and the regions that are members. We are sending notice to all of the -- we have a member database and so we are going to do e-mail notice to our members because, you know, we can do an e-mail blast so that anybody who's a member of USAG if they believe they have a claim or know of someone who has a claim, they will get notice.

Ms. Lehman asked us to send notice to a variety of governmental agencies, so we're sending it to the House Energy

and Commerce Committee, the House Oversight and Government Reform Committee, the Senate Finance Committee, the Indiana AG but Ms. Lehman would get that in any event, the Texas AG, the Michigan AG, the Texas Rangers and the U.S. Attorney for the Western District of Michigan so all of those governmental authorities will get the notice.

We've talked about where this should be published and as counsel has commented before, all the older lawyers are spending all their time trying to figure out what all these different ways of communicating are but we're going to publish in USA Today, a traditional publication, but we're also going to pin the notice to our Twitter feed so that people will see that when we do Twitters. We are going to --

THE COURT: They're tweets

MS. STEEGE: They're tweets.

THE COURT: You tweet. You don't Twitter.

MS. STEEGE: Okay. We're going to provide notice on one or more gymnastics podcasts, MeetScores website, Inside Gymnastics, International Gymnastics and we are working to try to get this on the ESPN women's website but as I said, one of the things we might do if they won't put it on the website is try and see if they can run a story about this. We have asked Safe Sport if we can post something on their website. We don't obviously control that website and we're hopeful that they will let us do that. It will be on our website. It will be on the

Omni website. And all of that is laid out in the order.

We also were going to I guess take a picture of a publication notice and put it on Instagram. And there was a request that we include it on Snapchat but I found out this morning that we actually don't do anything on Snapchat anymore so we don't have any followers on Snapchat so it probably doesn't make any sense to do it on Snapchat and they were going to go back and talk to their committee about that because we'd be setting up a new account to do it there and no one actually follows us there so that may be a modification to the order. We may take out Snapchat.

So, that's what we're doing on notices which leads us to the big issue which is the claim form and what we're doing there. It is common in cases like this involving debtors that have many, many claims against them whether it's sexual abuse or asbestos claims or whatever, whatever mass tort claim might have resulted in a bankruptcy filing for the parties who are making claims related to the allegations of whatever the tort is to use a specialized claim form.

And the reason why we need and would hope that Your Honor will use the specialized claim form that we've advanced is because what our goal is as we said back in December when we were here the first time is we really want to efficiently and expeditiously get this case resolved. Our hope is is that we're not in bankruptcy here a year from now, that we are done,

we've confirmed a plan, we've provided compensation to the survivors and that we've made changes in the organization and we're back on our way to doing what we should be doing.

And the way to get there as we see it once this claims bar date passes on April 26th is there will be a period of time where we and the committee look at that information and our insurance carriers will be looking at that and we hope to bring everyone together in some form of a mediation by late May/early June and pick up where the parties had left off before the filing where there were mediations that resulted in the Michigan State settlement so that we can get to a resolution to create some sort of a trust or other vehicle so that there can be compensation paid to the victims, to the survivors as quickly as possible.

And the key to getting there frankly is to get the insurance carriers the information that they are looking for to be able to assess what their exposure is. And we think -- we're somewhat in the middle here in the sense that we have been working and Mr. Gotwald more than I has been working with the insurance carriers to get them comfortable with the form and also working with the committee.

But here we were really, we thought, far ahead of the game because we had a form that had already been agreed to and negotiated between these same insurance carriers and the survivors' lawyers, the lawyers who are representing them in

the state court lawsuits. So the form that we are advancing and would like to used has already been filled out by 223 of the claimants in this case. That's what they filled out in the participation in the mediations that occurred prior to the bankruptcy.

THE COURT: Is that in the Michigan State?

MS. STEEGE: Yes, but we were part of that mediation process. We did not end up with an agreement as part of it.

THE COURT: Okay.

MS. STEEGE: But our carriers had that form. Everyone negotiated that form and we don't see any reason why we're reinventing the wheel because anyone who has filled out that form and, you know, given what the numbers are today as we know them, we don't know what will come in as a result of the claims bar date but we have close to two-thirds of the claimants having already filled out the form. All they will need to do is put their name on the new form, check the box and if there's anything that they think has changed, they can say that but otherwise that's all they're going to need to do because they've already had -- they themselves or their lawyers or whomever that is helping them has filled out that form already.

And that's really why we want to proceed with that. The carriers believe that they need that information in order to be able to assess what their exposure is, what they are

going to put into the pot. We think that's in the best interest of the survivors because the alternative is going to be if we use the stripped down form, the carriers will have questions and then we're going to have to figure out how we get the answers to those questions which is going to delay the resolution process in getting to an agreement.

It may provide for a more intrusive way of getting the information. You know, I think filling out a form is probably easier than doing a deposition or an interview or any of the other kind of ways you might get this information, at least I would think that that would be the case that it would be easier to do that in your own privacy of your home rather than having lawyers examine you to get the same information that the carriers are requiring.

And they are here. They can speak to why they need these forms. As I said, Mr. Gotwald has been working with them in terms of trying to see if there's any way we can modify the form to accommodate the committee. Unfortunately, we were not able to do that. We did make some changes. It was suggested that the form just because of the formatting looking longer, that we should try to make it look shorter which we did do. There was, again, the suggestion just attach the old claim. We did that. There was a suggestion about employment history and the like which only becomes relevant if someone is asking for lost income damages which some of the survivors may not be so

that's voluntary depending on what type of damages you are seeking.

We, you know, attempted to use all of the boilerplates that the committee suggested but we do have this basic disagreement about what the form should be and we would urge that we use what has already been used and what has already been filled out by 223 people already.

THE COURT: Okay. All right, response?

MR. SCHARF: Your Honor, Ilan Scharf for the committee. The committee met and reviewed the bar date motion, the scope of the notice, the publication notice and the committee, as you may have gathered, you said you're a news watcher, you may have gathered from the group of people, women involved in this case is very focused on justice for every survivor out there and wants to make sure that every survivor with a possible claim is reached.

And in that regard suggested, the committee members themselves, it didn't come from counsel, committee members themselves suggested the various news outlets which were more focused on gymnasts and websites and podcasts that gymnasts may watch or listen to. And we're happy that the debtor has taken the scope of notice that we've asked for in terms of the publication as well as the broad reach that the debtor has undertaken.

In that regard, the concern the committee has is not

just with respect to the 223 women who filled out the bar date -- filled out claim forms in the MSU mediation. They're concerned with everybody else that may not have participated in that mediation including people who may not be victims of Larry Nassar. There may be other abusers out there. We know there are other allegations of abuse against gymnasts, gym coaches or other parties across the country but we have to let that shake out and see what comes in by the bar date.

I will note, for example, that one committee member is a survivor of abuse by somebody who is not Larry Nassar so we do have people who are not Larry Nassar survivors in this committee and in this constituency. I think there's also another 160-odd people who may have come forward in the context of another wave of -- another group of claims beyond those who have participated in that original mediation.

You know, it's a basic tenant, for example, Your Honor, of writing that you have to write to your audience and you have to give -- you have to write to your audience and our audience here is a very specific group of people. It's not attorneys. It's not people who are necessarily represented by attorneys. And, in fact, if we just look at the Larry Nassar group of survivors, we know Larry Nassar's abuse ended a short time ago, just a few years ago. He was abusing very young children. There are still minors out there, Your Honor. There are still minors who may not be represented and may not have

come forward yet. We have young adults. We have two college students on our committee and there's young college students throughout this group who, again, may not be represented by counsel outside the people we don't know about.

And it's to those people that we think the claim form needs to really be directed to. The people represented by counsel have already provided this information. The debtor has the information from the 223 people who participated and we understand that that was the claim form used in the context of that particular mediation and in the mediation context I think every single person is represented by very capable counsel. So we have our issues with the proof of claim form.

We've provided a number of examples of proofs of claim form that had been used in previous bankruptcy cases that dealt with abuse and they're a lot shorter and they ask more open ended questions and they're really designed to elicit information. So instead of -- the first question on this form is were you abused by Larry Nassar or were you sexually abused by Larry Nassar? You know, it just says who was your abuser. We don't have to -- this form is replete with Larry Nassar in virtually every question. A person who's not a Larry Nassar survivor may be turned off by this, may say look, I'm looking at this form and it doesn't apply to me because it says Larry Nassar. And again, I'm not assuming a lawyer is looking at it. I'm assuming a 20-year-old person is looking at it or a 16-

year-old child is looking at it.

In addition, Your Honor, let me just go back and start with just kind of the basic scope of where we're coming from here. For a tort claimant to file a proof of claim in a bankruptcy case all that tort claimant has to do is say I was injured and my damages are "X" dollars, or I'm entitled to run on a liquidated amount, then file the standard form, 410.

In this case we recognize the need to provide additional information in order to analyze the claims, deal with the insurers and get to a mediation and we've used those claims that we've attached in other cases. Every single one of those cases, Your Honor, resulted in a confirmed plan with insurance money and insurers involved. And to the extent insurance companies need additional information or a debtor may need additional information or frankly the creditors committee may need additional information about a proof of claim, we can get that informally. You can get it by formal process, deposition, interrogatories. It can also be obtained by a followup questionnaire if it's necessary.

So, again, we think that if we're going beyond the scope of information that's necessary, we'd like a claim form that's limited in scope and asks the questions in a more appropriate manner, open ended questions as opposed to very closed ended questions asking for very specific information.

In addition, Your Honor, there are a number of

questions throughout this form that ask for very specific information. Describe all the times you were abused, describe all the times you received treatment from Larry Nassar. We know that Larry Nassar abused some of these women hundreds of times, perhaps thousands of times depending on the length of the abuse and the number of treatments they were receiving per week. We actually don't have an actual number and it's going to be impossible for someone to fill that out, hundreds of times or thousands of times.

So, the form is intrusive and asks questions that we think are irrelevant and we describe the irrelevant --

THE COURT: Are you -- is it a hyperbole to say one young woman could have been abused --

MR. SCHARF: No.

THE COURT: -- thousands of times? How could you see the doctor daily for years, for six years?

MR. SCHARF: If somebody was treated from the ages of 6 to 22 and saw the doctor three or four times a week and got treatments three or four times a week as a gymnast, it's possible.

THE COURT: Okay.

MR. SCHARF: It's not a hyperbole, Your Honor, and I'm being very careful. We don't know if it is because there's no -- we don't know if it is. We're analyzing the -- we're extrapolating from the number of years a person was treated.

THE COURT: Okay.

MR. SCHARF: But we know it was definitely hundreds for some of these women.

THE COURT: Well, hundreds I can swallow. Thousands just seemed high to me, but if they start at 6 and they go to 22 to the same doctor many times a week for that many years if that's likely, I'll accept the number and not that that's significant anyway. It is to them but I mean in terms of the decision today it's not significant.

MR. SCHARF: Your Honor, I don't think there's a big difference. I don't think for purposes of describing hundreds versus thousands --

THE COURT: Hundreds of thousands it's still too many. I got you.

MR. SCHARF: Exactly, Your Honor. So -- and again, the form breaks down a lot of questions. You can ask the question please tell me what happened, please describe your abuse versus describe who abused you, please tell me what happened, please tell me what kind of treatment you received versus asking -- and a lot of these questions, frankly, are repetitive, they ask for extremely detailed information, extremely detailed medical history.

And in addition, another concern in part is they really do have a pro se claimant try to explain the relationship between USAG and the abuser. Now, Your Honor, I

was a Boy Scout. My father was my scoutmaster. I don't think I can stand here today and explain to you the relationship between my father and the Boy Scouts from a legal perspective.

THE COURT: My husband is on the board of the Boy Scouts and I was trying to get a grasp on it just last week so I hear you. And these not-for-profit kinds of organizations have different structures than most of us expect.

THE COURT: Again. And going back to the 16-year-old kid or the 22-year-old kid or the 45-year-old adult who's trying to fill out a claim form, how are they supposed to explain exactly what this legal relationship is or extrapolate or describe it? I was -- who were you abused by? What did this person do? What was your involvement in gymnastics? I was abused by Joe Smith. He was my coach. I practiced at Joe Smith Gym. I was abused between when I was 7 to 9.

I mean if you look at our claim form, it elicits that information. What it doesn't do is go and start eliciting information about defenses because that's -- and we understand that the debtor -- we haven't seen the insurance policies yet but I presume that the insurance policies like every other insurance policy has an obligation for the debtor to cooperate and they're trying their best to cooperate so as not to blow the coverage and we appreciate them doing so, but insurance companies are as we all know in the business of collecting premiums and holding onto them.

So, eliciting defenses on a claim form which can trip someone up -- if somebody doesn't understand you're being asked a question that goes to a defense on a claim form, that person may fall into a pit or a trap that they really shouldn't be falling into on an initial claim form.

So, Your Honor, we did provide a detailed chart with all of our issues on the old claim form. The issues remain generally with respect to the new claim form. I'll make the offer but unless you want to take me up on it, I won't go through it. We can go through any one of the questions question by question. Some of the questions are okay but most of the questions we still have the same concerns with that we outlined in our original chart.

THE COURT: Can you speak -- I'm sorry, 223 people I think have already filled this out for MSU?

MR. SCHARF: Two hundred twenty-three people filled out a claim for MSU. I think --

THE COURT: A more detailed form than what you're proposing?

MR. SCHARF: The more detailed forms. It was probably very close to the original form I think. There's a mediation privilege and we're not privy to what happened at that mediation as committee counsel. Let me back up. I did attend one mediation session but I was not privy to what was going -- we were not privy to what was going on. We don't know

and can't discuss what was happening with respect to those claim forms.

I don't know if these claim forms were filled out before there was a settlement announced, when they were close to a settlement. They were definitely filled out by experienced counsel. And the legal relationships that are at issue may be different between MSU and USAG and any other gymnast out there.

And again, the other concern, again, this form clearly comes from there because it focuses on Larry Nassar and --

THE COURT: And they want to be able to extrapolate the information so these folks, these ladies don't have to go back and redo it and that's not an inconsequential concern.

MR. SCHARF: Right. But they have -- but USAG was part -- they have those 223 forms. They have the information.

THE COURT: Right. I mean that's the point. The women have filled them out.

MR. SCHARF: Right.

THE COURT: They're already in their possession. Do they really want to ask these women to go through the whole damn thing again? And you're telling me yeah, sure, we want to ask 223 women to go through and fill out a different form, that their old form isn't good enough, right?

MR. SCHARF: Your Honor, I think if they have a

complaint or the old form which has all the -- the new form has all the information that the old form asks. Sorry. The new form -- the old form provides -- the old form -- I'm going to call it the MSU form. The MSU form provides all the information that we're asking for in our proposed form in a different way.

If they want to staple that to the back of the form, they can staple that to the back of the form. I don't need them to just change their wording. We are concerned though about, and the committee is extremely concerned, about the people who were not part of that process, the people who have 60 days to file a claim and may not get notice until Day 30 or whenever they get notice. And, again, the audience that we see is not a represented person who's been litigating this for two years. It's an unrepresented person who has not been litigating this and they come into grips with their abuse for the first time and being asked to fill out something that's more onerous than a DMV form or an application for a mortgage.

THE COURT: I'm not familiar with how MSU approached resolution of these claims so a young woman who might have been abused by Dr. Nassar at MSU who did not hire a lawyer would not have been in that mediation or represented -- her interest would not be represented at that mediation? Because you said everyone was represented by experienced counsel.

MR. SCHARF: So, there may have been -- let me say

this. There may a pro se person in the mediation. This is not a bankruptcy mediation where a committee or a class, class action or a committee or a steering committee is negotiating on behalf of a whole group. These are -- every attorney who was at that mediation had actual lists of clients that they were representing and they may have had participation by a group of survivors but it's not as though this was a class action where some -- or a bankruptcy mediation where a committee is negotiating on behalf of them because there's no fiduciary duty owed by a plaintiff to somebody else with a similar claim outside of -- in that context.

THE COURT: Okay, so maybe you can disabuse me of how I envision this unfolding. I presume that one marshals all the available insurance proceeds and there is somewhat of a categorization which may sound insensitive but for lack of a better word I'm going to use categorization of numbers of opportunities for abuse, loss of wages, you know, all those elements of damages and there's some sort of, you know, database not necessarily related and shared as to the individual's name in this, but then numbers are somehow assigned to that so that there's some fairness maybe, you know, a goal but at least it's consistent in terms of people who have similar claims and similar damages are treated the same way and you're telling me that MSU, that whole process was more individualized and each individual --

MR. SCHARF: I don't know how MSU did its own analysis and I don't want to --

THE COURT: And I guess doesn't per se matter about MSU per se how they did it but am I anticipating the process accurately or am I totally off base on this?

MR. SCHARF: You're anticipating it in general terms fairly well but I mean I think it may be helpful for us to describe the process we've used. The forms we've attached are a sample of forms from cases --

THE COURT: I'll let you speak in just a moment.

MR. SCHARF: -- are a sample of forms that we've had from prior committees that we've represented in abuse cases. And those cases I believe there are 14 cases where Mr. Stang was lead counsel I think I was involved in. Seven of them? So we've had a lot of -- unfortunately for the world we've had a lot of recent experience in this. And those cases have resolved thousands, thousands of claims collectively including cases where there were between 400 and 600 claims.

Sexual abuse is a little bit different than an asbestos case which is a little more --

THE COURT: I understand that.

MR. SCHARF: -- typical mass tort we'd see in a bankruptcy context.

THE COURT: It's very difficult to measure these kinds of damages. We have a lot of data on what a -- cancer,

we have a lot of data on broken arms. We don't have that much empirical data on what -- on these kinds of damages I presume.

MR. SCHARF: We do and we don't. I mean we do have -- there's more and more empirical research being done on what the traumas are associated with sexual abuse but from a -- and I'm going to switch to bankruptcy lawyer speak for a minute -- from a valuation perspective. You know, you can't look at a chart and say well, here's -- you know, this is worth X and that's worth Y and there are two issues I think we're addressing here, Your Honor. One is the settlement of the -- a global settlement which has a fund established for everybody and the second issue is how do you allocate that between the different people.

THE COURT: Right.

MR. SCHARF: And there's actually two separate processes. In terms of resolving the claims and we've used, again, those same forms in many cases, we get them, the insurance company gets them, the debtor gets them and everybody assesses them and we look at who are the abusers, the various legal issues involved, what were the damages described in the claim form, what was the type of abuse because there are different types of sexual abuse, so the actual act itself be it touching over the clothes touching, under the clothes touching, penetration, et cetera. And that provides some basis for assessing the type of damage that occurred.

And we do have it on an individual basis so we have a chart of what happened to every single person who filed a claim. We do have then the metrics of overall what happened. In addition, we have to take that information and overlay that with the insurance because different insurance covers different periods of abuse and figure out what's an incident and I'm sure that these are discussions the debtor is having with its insurance company, what is an incident, what is the coverage period, does this person fall within the coverage period. And there are a number -- there's mediators who do this inside of bankruptcy and outside of bankruptcy and figure out what available the pot to be available for payment is.

There are times where an insurance company will say or a claim form filled out information that needs followup just because -- and again, going back to the assumption that the people were being abused as children here, I may remember my second grade teacher as Mrs. Judy, I don't necessarily know her last name so we may get forms that say I was abused by Coach Jim or Coach Joe so we'll have to go -- at such and such a gym. And there may be followup. Who is Coach Joe? What exactly is this person? There will be followup and there will be that kind of process.

In addition, there have been cases where as part of a mediation process people have filled out followup questionnaires or provided followup information or counsel has

provided followup information directly to the insurance company and the debtor. So, there is an opportunity for a followup. Again, we're trying to make sure that people who are not represented by counsel have not participated in this process today don't look at this claim form and go, (a) this is all about Larry Nassar, it doesn't really apply to me as they're reading it quickly.

And, again, we can read every question and every word and every question, understand that they're asking about somebody other than Larry Nassar, as well but, again, I'm trying to think about someone who's looking at this and is not used to reading proof of claim forms, is not used to reading legal documents with fake boilerplate at the beginning, and have them fill out their claim form, make it by the bar date and, you know, it's the committee's objective to make sure that justice in one form or another is provided to as many people as possible.

And, you know, what would be a shame is if we do get partial claim forms from those people didn't want to fill them out or they thought it was onerous and we get a wave of people coming in after the bar date saying well, I didn't understand it was mine, I didn't understand it was for me. We'd rather just have the simple form, tell us who, what, where and when just like you would on a tenth grade English essay. That's basically what these questions ask on the proposed claim form

we've attached and we can address the mediation in the manner that we've done successfully a dozen or so times already in other cases.

MR. STANG: Your Honor, this is Mr. Stang. May I make two comments --

THE COURT: Yes.

MR. STANG: -- regarding the bar date motion? And I appreciate that Mr. Scharf gave you a long presentation but could I touch upon two things quickly please?

THE COURT: Yes, go ahead.

MR. STANG: Your Honor, our committee consists of survivors who from an early -- well, for the last few years have had to process the conduct that is abusive, which they may not have understood it to be abusive at the time it happened, how to seek help both professionally in a legal sense and perhaps psychologically, counseling. They understand the audience that Mr. Scharf described. They know what it takes for a survivor to come forward and processing of that.

I dare say USAG does not have a clue about that. I would say that the insurance carriers who control the defense of these claims and to which USAG must cooperate don't have a clue about that. If I were -- had to put my finger on the scale as to who I should be listening to about how to get people to come forward with notice that they were abused, I would put it on the scale of the people who've been through

that experience and not through the -- on the scale of the people who I'm sure as human beings empathize and sympathize with the abused survivors but have not lived through the process of having to put their name down on a piece of paper that says I was sexually abused. That's number one.

Number two, there are counsel in that courtroom who have represented insurance companies in the Catholic cases who settled claims based on exactly the kind of claim form that we are propounding. And so if the pitch is well, the insurance companies need this in order to settle as Mr. Scharf pointed out, we've settled thousands of claims in the context of Chapter 11 cases on the claim forms that we're advocating and some of the carriers and some of the counsel in that courtroom have been parties to those settlements.

And while Mr. Scharf is right sometimes there's the occasional I need more information which is forthcoming because you don't want to get into a claims objection process in these cases, the notion that this case cannot settle without the form propounded by the insurance companies because that's who's really propounding it is simply not true. That's it, your Honor. Thank you.

MR. KAMRACZEWSKI: Good afternoon, Your Honor. Kevin Kamraczewski on behalf of Virginia Surety Insurance Company. I'd like to speak up for my client and the other insurers and say first of all, we're interested in expediting a resolution

for the survivors. We have no interest in dragging this process out. We are interested in using the proof of claim form which is basically modeled on the previously submitted forms in the former, earlier mediation process as exactly for what you said, Your Honor. We want some fairness in the process. We want to be able to equally evaluate all the claims both those previously submitted and the ones that will be coming forward now.

We have no interest in delaying the process by saying well, we'll start here and we'll ask further questions later. We'll start here and ask for some sample depositions. The forms that were submitted in the previous mediation sessions were sufficient for the insurance carriers to evaluate the claims in conjunction with the records received from USAG substantiating that Nassar or the individual survivor was at a particular event for example. So this form in large part if filled out by the remainder of the claimants should allow us to fairly evaluate all the claims.

To the extent we're being accused of having previously settled sex abuse cases, and I've handled sex abuse cases for probably 12 to 15 years, I was involved in Catholic Church cases, the cases against USAG are actually more complex in terms of who was liable or what other parties may be liable as well. There's issues about the gyms, the coaches, USOC. All of these entities have separate insurance policies but all

of them may also be claiming indemnities against USAG and, therefore, under the insurance policies.

This is more complex. The questions were going to in large part that are additional to the claims submitted with regard to the Catholic Church cases have to do with, for example, what gym were you at or what event because that has to do with whether the gym personnel should have noticed what was going on or responsible for what's going on, whether their insurance should pick it up, whether there's indemnity obligation running back or forth to USOC for national events or international events. That is why there's some additional questions but these questions are sufficient in large part if they're fully filled out to answer.

The questionnaire we received I'd say with maybe one exception out of 225 submitted were complete. There was no need to go back. There was no missing information. It's not an impossible task to do this. Everyone in the prior mediations were able to do it so we think this is the right way to go to expedite the process of compensating the survivors.

MR. MILLNER: And, Your Honor, Robert Millner, and I'm co-counsel with Mr. Kamraczewski but I rise because Mr. Stang said there are lawyers in the courtroom who have settled cases based on the simple form in the church cases and I've been in several cases with Mr. Stang and Mr. Stang is a very good friend, I'll say that. But I think it's a huge mistake to

look at this case and say it's the same as a church case.

The issues here are more complex. For example, one of the principal abusers, you know, Dr. Nassar, was an employee of Michigan State so there will be issues, for example, as to whether a person abused by that doctor was in -- had that happen in connection with something for which USAG, the debtor here is responsible. This is much higher level of complexity than a case like the New Mexico case in which there's a proof of claim form attached where if the parish priest abused somebody, you'd probably know he was from the church.

Shared insurance issues here are huge because USOC in many instances shares policies. There's allocations problems. They're complex unlike the church cases.

And I want to say one more thing because Mr. Scharf was saying there will be time for followup and additional discovery. Not all church cases are the same but in one of the very large complex ones, Society of Jesus Western Province, where Mr. Stang was the committee counsel and that did involve hundreds of claims, the amount of depositions that took place after the mediation started was probably 40 or 50, millions of dollars and months of time was spent. The amount of other followup was large. That used a simplified form.

What we are trying to avoid here is that spending of that millions of dollars and time and it is our sincere belief that the use of the form that's been agreed to, in fact, in the

Michigan State mediation will either eliminate or vastly reduce the need for that type of discovery. So, I leave you with that. At the end of the day the insurers will not settle unless they feel they have the necessary information and the idea of streamlining here, making it efficient and saving money is important.

MR. WEINBERG: Briefly, Your Honor?

THE COURT: Yes.

MR. WEINBERG: Good afternoon, Your Honor. Joshua Weinberg on behalf of Great American Insurance Company. I agree with comments the other insurance counsel said so I'll try not to repeat them but I wanted to note that insofar as the information that we've requested here in many ways, what we need is, and to the extent that it's similar in some respects to what's been requested in some of the diocesan cases, the proposed form that the committee proposed fails even shorter than that.

One example, for example, is the two settlements. There's no question, for example, that prior complaints, prior suits, prior settlements are relevant for a variety of reasons. For example, they help provide initial factual information where a claimant may not remember or may not have all the information into the pleading and obviously the issue of settlements is relevant because sometimes there are releases.

That's something which is actually included in all

three of the forms that the committee attached to their objection. It was in Galant (phonetic), it was in Stockton, it was in Christian Brothers Institute, and so those are the danger in streamlining too far is that we're eliminating things that we know we're going to have to go back for. And if we are concerned about imposing burdens on survivors who haven't filed claims yet potentially and unrepresented survivors, the burden of coming back for a deposition or a mini deposition I think is much more onerous than getting information up front.

I think in other areas too the form is way too streamlined. We ask some pretty basic questions about the number of times a survivor was abused, where the abuse occurred. There are very good reasons for those questions both in terms of liability and in terms of there are coverage issues also in terms of how the insurer's burden breaks down. Those are questions that are going to have to be answered. I think it's easier to answer them up front so the form we believe that we've worked with the debtor does all that. Thank you.

MR. KUNZ: Your Honor? Good afternoon, Your Honor. Carl Kunz on behalf of National Casualty Insurance Company. I'll try not to repeat everything that the other carriers said. I will just make a few observations and that is this process started long before this bankruptcy case in trying to resolve the claims of the survivors.

To effectively put a halt to everything that's

happened before in favor of a new streamlined form doesn't seem to make sense to me. I don't think it seems to make sense to anybody on either the debtor's side or the carrier's side because that form was heavily negotiated in order to get the answers to the questions that parties needed to be able to look at, evaluate and analyze in order to reach some resolution.

There were a couple of points made by the claimant's committee, excuse me, the claimant's, yes, the survivors committee and that is that there were legal distinctions that needed to be made and all kinds of other things. Most of the questions that have been proposed in the debtor's form are do you believe, not please don't draw an affiliated flowchart in terms of how we get from Point A to Point B. How many times do you believe you were assaulted? How many times do you believe you were impacted by this? Those are questions that the claimants can answer. The claimants can answer them in the comfort of their own home and not around the table surrounded by lawyers asking them additional followup questions. That was the whole point of the earlier form. It's the whole point of this form and there doesn't seem to me to be any reason to start that process over again.

There are, as Mr. Weinberg indicated, there really are two sort of I'll say new questions. One at the request of the or to clarify at the request of the committee. That was that the original form that was proposed was too Nassar-

centric. We understood that. It was not our intention to try to limit the form to Mr. Nassar but we've clarified that in order and it's one question right after the other -- do you believe you were abused by Mr. Nassar, yes/no? Do you believe you were abused by somebody else who's affiliated with or associated with USAG, yes or no, and who that person might be. So it's now very clear in the form that this not a Nassar-centric form and there's ability to do that.

The other issue is the settlement issue. As Mr. Weinberg indicated, all the settlements that were proposed, excuse me, all the forms that were proposed as examples of the types of information that's available include information related to settlements. And as we know, MSU has settled. To my understanding, some of that money has been handed out, perhaps all of it. It's important to understand for purposes of evaluating the claims made in this case whether there have been summons. Have there been releases? Typical information that you would want to know. Mr. Weinberg indicated we're going to have to ask for that information anyway. It's a lot easier to simply attach the settlement form than it is to sit around a table and ask survivors a bunch of very difficult questions. And so in that vein we would certainly support the debtor's revised form that was attached to their reply. Thank you, Your Honor.

THE COURT: Anyone else in support of the debtor's

motion? Okay, one reply.

MR. SCHARF: Your Honor, for the record, Ilan Scharf, Pachulski Stang Ziehl and Jones, on behalf of the committee. Thank you for allowing me an opportunity to reply to a couple of issues. One with respect to looking at this form and I'm going to take these a little bit out of order just because that's where my notes are and I apologize for that.

THE COURT: That's fine.

MR. SCHARF: In terms of this form, the revised form attached, the reply being Nassar-centric, it's still Nassar-centric. Virtually every single question has the word Nassar in it. So I understand they're also asking about other people but it seems a lot simpler to us to say who committed the act of sexual abuse or who sexually abused you. That's just a simpler way to get to that information than were you abused by Larry Nassar, yes or no. Follow the chart down if you were not. Was it somebody else? Yes, okay, who was it? Who abused you, one question. Simple.

THE COURT: And if they say Joe Smith abused me, who the hell is Joe Smith? So they may have to follow up.

MR. SCHARF: The next question, Your Honor. What is the position or relationship to you of the abuser, if you know, of the abuser individual who committed the sexual abuse? Who is this guy? Who is this -- who is this person? That's the next question that we ask.

THE COURT: What is the position, title or relationship to -- okay, I'm not going to wordsmith him to death. That's not the wording I would have certainly chosen.

MR. SCHARF: If the question is -- well, if the question is who is Joe Smith, tell us who Joe Smith is or what's his position, we can wordsmith that and clarify that a little bit for Your Honor. But the question of --

THE COURT: My point is we can wordsmith this til we're all really old a gray.

MR. SCHARF: Right. And the objective of the simple form is to have the survivor tell us who this person is in their own words. And if it's not clear to us who this person is, we can pick up a phone, say my name is Ilan Scharf, I'm counsel to the committee, I just wanted to follow up on a couple of questions and get some information that way and we'd certainly be able to share that with the debtor if we're clarifying.

And again, with respect to how this looks and we're modifying under the bankruptcy code and rules is a very simple form to something that asks for more information. I'd like to think of -- again, I'm going back to the pro se person or the person who has not appeared yet or the person has not set forth a claim yet and they're getting notice in a week or two or three or four or five and they're filling out a claim form.

That is the initial claim. It's akin to a complaint

or should be akin to a complaint. Here's what happened. Here are the facts. The series of questions that's being put forward in the insurance form or the MSU form is akin to a set of interrogatories. Now, when you get your interrogatories, you're usually 60, things are going fast, 90, 120, 180 days into your litigation you may have had some discovery already, there's been some back and forth and your counsel is engaged, you're engaged and there's more information available to you to help fill out these interrogatories. And again, we're not saying we should delay this 180 days. I don't want to. We don't want to. We want to move forward quickly. But that's the concern we have with this complicated form, one concern we have.

With respect to one counsel said this is a more complex situation and it is and it isn't and I won't get into the various relationships among diocesan entities and other entities and their corporations because I think that's a very long discussion that we don't need to bore you with here, Your Honor. But to the extent this is a complex situation as to what was the relationship between Coach Joe Smith to Joe Smith Gym and USA Gymnastics and we have lawyers who are going to maybe argue about that issue, perhaps litigate that issue.

That's something you can't ask a pro se person to think about on Day 1 on the claim form. You're asking them to draw a very complicated legal conclusion and factual conclusion

they may not have the facts for and they may not have the legal education to understand or to provide a proper answer, I'm not saying an answer tailored to, the answer that's given, but just, what is this.

In addition, looking at the tone of these questions, I'll tell you, the use of the words do you believe you were abused is, and I accept that it may have been put in there with good faith and, you know, I understand that everybody is reserving their rights about whether somebody maybe may not have been abused and may be filing a false claim or, you know, do you believe is a very bad phrase to use with abused survivors.

One of the issues abused survivors have is they have not been believed or they may not have been believed. To come along and ask them the question starting with do you believe you were abused is going to automatically shut -- again, going through that process of opening up and putting down on paper that you were sexually abused discourages people from filing a claim. And I'm not saying we're here to maximize the claim or get a lot of claims. You know, I think we're here to make sure that if somebody is out there to file a claim or somebody is out there and should properly file a claim, they're not discouraged by getting this type of form.

Again, just going through our form, we ask who did it, what is the position, where did the abuse take place, be as

specific as possible, tell us about the gym, tell us about the city, when did it take place, how many years, your age, what happened. Describe to us what happened. And people should be able to describe in their own words and that's a question that they want to know, we want to know, everybody wants to know but there's a way of asking it that just elicits the information as opposed to looks onerous and does not elicit the information or elicits the information in a very narrow way.

Did you tell anybody about the abuse? They want to know if anybody was told. If so, when did you tell them? And it's just a different one. It's a very simple tone. You tell us. Not do you believe that anybody knows this. Identify any gymnasium. So you have to tell us the gym you were abused in. Identify any gymnasium you are affiliated with. Training facility, gymnastics organization you belong to or are associated with. What injuries have occurred and have you sought counseling or other treatment? It elicits a lot of the same information. Some of it it doesn't. And, Your Honor, I do see that we didn't ask for the settlement information and part of that goes to some of that discussion I was having.

Again, if Your Honor approves our claim form and says we need to have the settlement, prior settlement information, you know, I think the committee will be able to live with that but, again, I want to go and just explain why we excluded it here.

Part of that issue goes to what was going on in this process and I did tell you that there's the settlement of the money and in a lot of these cases and I think in the MSU case as well there's a settlement of a fixed amount that will be available for survivors. That's the pot or the pool, the claim fund. The fund was not allocated by MSU, it wasn't allocated by the insurance companies. It was allocated by an independent third party who evaluated it. And there were various criteria that were decided on with survivor input in coming up with that decision.

So, it's not as though they had a litigation and they sued MSU and MSU either got a judgment or settled and agreed to pay. It wasn't a determination by another co-defendant as to what the liability is. And again, to the extent they need the MSU information from the people who filled out the MSU information, they have it. They don't need it again. That's all, Your Honor.

THE COURT: Did you want to make a comment, Ms. Steege?

MS. STEEGE: Only, Your Honor, to say two things. First, I mean, we're here because of Larry Nassar and we think it would be misleading not to indicate his name on this form. Someone might think that it's for something other than abuse by Mr. Nassar. I mean, he is the reason why we're here. There may be other claims that may come out but the reason we're here

is because of his, you know, bad criminal behavior.

But the only other point I was going to make, Your Honor, is if you had any specific questions about the questions on the form that the debtor proposed, if you had any questions or comments that you wanted to ask about that particular form. I didn't want to repeat what everyone else had said.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: Your Honor, I don't think there's a single person who's going to receive this form who hasn't heard the name Larry Nassar.

THE COURT: Okay. Obviously, there are a lot of factors that affect everyone's view of what should and shouldn't be included in the proof of claim. I think the driving forces are certainly we want as many people to accurately and truthfully fill them out as we can possibly reach and to some extent there is personal responsibility to respond. I get lots of these things like we all do because we bought a security and usually it's not worth it to me. I accept that. But, of course, my damages in no way could ever approach what these individuals have experienced and so I think the motivation to fill this out is compelling. But they have to fill it out.

And to make it so brief, and I think that yours does, your proposed form does make it so brief that it inevitably will require virtually every claimant to be interrogated again

because coverage periods are important, settlement set offs, it's important. I mean it's legally important. You can't get around it. And it's so brief that I don't think we're going to gather all the information and I certainly want to avoid even a followup phone call because every time somebody is recalling one of these instances, it's at a minimum unpleasant and that's certainly not even a serious enough word to describe it.

The time, everybody, the debtor of course is incentivized to resolve this as quickly as possible and get on with business if possible but the survivors, it's past due for them to get their compensation. So, time -- and if there's a lot of going back and gathering more information and we know people don't -- this isn't the only thing people are dealing with in their lives, the professionals. They're dealing with other things. So, it doesn't take a week or two weeks. It takes a month or two months to accumulate all of the information that's necessary to even address all of these. I certainly would like to avoid depositions if at all possible. Are these verified? I was sort of wondering. I didn't see verification. Is there --

UNIDENTIFIED SPEAKER: Yes, Your Honor, because it's a claim form.

THE COURT: Maybe I just missed it.

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Okay, so there's a verification on the

bottom of yours.

UNIDENTIFIED SPEAKER: Yes. It's --

THE COURT: If you say it is, that's fine. You don't even have to --

UNIDENTIFIED SPEAKER: I think it's Page 8, Your Honor.

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: We don't want to consume people's resources, anyone's resources unduly repeating investigations. I do think it's Nassar-centric. I just don't think it confuses anyone or ignores the fact that it could be a coach or, you know, maybe even a local doctor who had somehow abused them related to a meet. And also, you know, if you're thinking where did this occur, I do think giving examples helps jog memory. I mean you can argue it both ways and if I were a psychiatrist or a psychologist specialized in this, I'm sure I could come up with a better claim form than either of you have.

But if I'm going to follow one way or the other, I'd rather get this process done thoroughly, done expeditiously without more injury to any of the survivors that absolutely has to be done and be fair and transparent. So for all those reasons if I have to follow one way or the other, I would lean toward the debtor's proposed claim form for the survivors.

The only thing -- and this is so minor but it was addressed by the debtors, the tone, do you believe. Fair

enough. If that implies that someone else doesn't believe them, then there's better ways to word it. Again, that's not substantive but if it makes any difference to one person, it's an easy enough thing to change.

MS. STEEGE: Yes, Your Honor, we could make that change, of course, absolutely.

THE COURT: Let's make the tone --

UNIDENTIFIED ATTORNEY: Your Honor, the insurers agree to it. That's not a problem.

THE COURT: That's an easy thing and certainly no one would disagree with that. And I think that was the last matter that was to be teed up for today, correct?

MS. STEEGE: Yes, Your Honor.

THE COURT: Okay. All right, thank you. Appreciate it.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Have a nice afternoon.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

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C E R T I F I C A T I O N

I, MARY POLITO, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Mary Polito

MARY POLITO

J&J COURT TRANSCRIBERS, INC. DATE: March 7, 20019