

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

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**APPLICATION TO EMPLOY  
GIBBINS ADVISORS, LLC AS FINANCIAL ADVISOR TO THE  
ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE  
SURVIVORS, EFFECTIVE *NUNC PRO TUNC* AS OF FEBRUARY 26, 2020**

The Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors’ Committee”), appointed in this case, requests entry of an order, pursuant to 11 U.S.C. §§ 327, 328 and 1103, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule B-2014-1, authorizing the Survivors’ Committee to retain and employ Gibbins Advisors, LLC (“Gibbins”) as its financial advisor in this case, effective *nunc pro tunc* as of February 26, 2020. In support of this application, the Survivors’ Committee submits the declaration of Ronald M. Winters, co-founder and principal of Gibbins (the “Winters Declaration”), attached hereto as **Exhibit A**. In further supports of this application, the Survivors’ Committee respectfully states as follows:

**I. JURISDICTION**

1. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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

2. The statutory predicates for relief requested are sections 327, 328 and 1103 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## II. BACKGROUND

3. On December 5, 2018 (the “Petition Date”), USA Gymnastics (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate and maintain its organization as debtor in possession.

4. On December 19, 2018, the United States Trustee (the “UST”) appointed nine members to the Survivors’ Committee.

5. On February 21, 2020, the Debtor filed its *First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics* (the “Plan”) [Doc 928] and its *Disclosure Statement for First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics* (the “Disclosure Statement”) [Doc 930].

6. The Plan requires the Abuse Claimants<sup>2</sup> to choose between a Litigation Election and a Settlement Election. The Settlement Election, if approved by the class of Abuse Claimants would impose non-consensual third party releases on the Abuse Claimants who did not select the Settlement Election and channeling injunction and non-consensual releases in favor of certain third parties, including but not limited to, the United States Olympic and Paralympic Committee (the “USOPC”). The non-consensual third party releases and channeling injunction would extinguish all Abuse Claims for compensatory, punitive and exemplary damages against USOPC. USOPC is not contributing any of its own funds as consideration for the release and

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Plan.

channeling injunction. The Disclosure Statement contains no information relating to USOPC's financial condition or its ability to make a contribution of its own funds as consideration for its release while maintaining viability to fulfill its mission.

7. Following the filing of the Plan and Disclosure Statement, the Survivors' Committee determined it was necessary to retain a financial advisor in connection with this case. In particular, the Survivors' Committee believes the Disclosure Statement must contain robust disclosures concerning USOPC's financial condition to enable the Abuse Claimants to make an informed decision on whether to select the Litigation Election or the Settlement Election. If the Litigation Election is made, the Abuse Claimants' claims against USOPC (including claims for punitive damages) will survive. If the Settlement Election is chosen, those claims will be effectively extinguished. The prepetition litigation against USOPC was initiated in several states under both applicable state and federal law. Some of the jurisdictions in which cases against USOPC are pending permit discovery of a defendant's financial condition in connection with punitive damages claim. Therefore, the Abuse Claimants need disclosure concerning USOPC's financial condition to evaluate what they would be giving up by making the Settlement Election. The Court will also need this information to determine if the payments under the Plan constitute sufficient consideration to release the claims against USOPC, including the punitive damages claims. A financial advisor will also be critical to evaluating the financial data provided by USOPC and advising the Survivors' Committee (and the Court) with respect to USOPC's "ability to pay."

8. After careful consideration of proposals from potential financial advisors and conducting interviews on February 26, 2020, the Survivors' Committee selected Gibbins.

9. Gibbins specializes in “ability to pay” analysis, interim management, crisis management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring. Gibbins’ professionals have extensive experience and excellent reputations in providing financial advisory services and not-for-profit expertise. Cases in which Gibbins’ professionals provided financial advisory services in connection with prior employers are described in the Winters Declaration.

10. The Survivors’ Committee is familiar with the professional standing and reputation of Gibbins’ professionals and understands and recognizes that Gibbins’ professionals have a wealth of experience in providing financial advisory services in restructuring and reorganizations and enjoy excellent reputations for services they have rendered in large and complex bankruptcy cases.

11. The Survivors’ Committee also believes that Gibbins is well qualified and able to perform financial advisory services to the Survivors’ Committee in a cost-effective, efficient and timely manner.

### **III. RELIEF REQUESTED**

12. The Survivors’ Committee requests entry of an order, substantially in the form annexed hereto as **Exhibit B**, authorizing the Survivors’ Committee to retain and employ Gibbins as its financial advisor in this case, effective *nunc pro tunc* as of February 26, 2020.

#### **Scope of Proposed Representation**

13. The Survivors’ Committee desires to retain Gibbins, at the expense of the Debtor’s estate, to render professional services as required by the Survivors’ Committee, including, but not limited to, the following:

- (a) Advising in the review and/or preparation of information and analyses necessary for approval of the Disclosure Statement and/or Plan, or for any objection to the Disclosure Statement and/or Plan;
- (b) Advising the Survivors' Committee in investigating the assets, liabilities and financial condition of the USOPC;
- (c) Attendance at meetings and assistance in discussions with the Debtor, the Survivors' Committee, the UST, and other parties in interest and professionals hired by the above-noted parties as requested;
- (d) Attendance at hearings and depositions, including providing expert testimony, as needed;
- (e) Assisting the Survivors' Committee and its counsel in evaluating other potential expert testimony; and
- (f) Providing such other services to the Survivors' Committee as may be necessary in this case.

14. Gibbins intends to work closely with the Survivors' Committee's other professionals to ensure that there is no unnecessary duplication of services performed or charged to the Debtor's estate.

#### **Terms of Employment**

15. Subject to Court approval of this application, the Survivors' Committee proposes to engage Gibbins to perform services based on Gibbins' ordinary and customary hourly rates in effect on the date the services are rendered, plus reimbursement of actual and necessary out-of-pocket expenses. Gibbins' schedule of 2020 standard hourly rates and special hourly rates<sup>3</sup> are set forth in the Winters Declaration.

10. It is Gibbins' policy to charge its clients for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand

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<sup>3</sup> Special hourly rates apply to preparation for expert testimony, providing expert testimony in court or depositions, and assistance in deposing opposing witnesses.

delivery charges, document retrieval, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by Gibbins to outside copying services for use in mass mailings, travel expenses, expenses for “working meals,” computerized research, and transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime.

**No Adverse Interest and Disclosure of Connections**

11. The Survivors’ Committee believes that Gibbins does not hold or represent any interest that is adverse to the Survivors’ Committee and the Debtor’s estate and does not hold or represent any interest adverse to and has no connection with the Survivors’ Committee, the Debtor, its creditors or any party in interest herein in the matters upon which Gibbins is to be retained, except as set forth in the Winters Declaration. Therefore, to the best of the Survivors’ Committee’s knowledge, Gibbins is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code.

12. The Winters Declaration, executed by Ronald M. Winters, a co-founder and Principal of Gibbins, and attached as **Exhibit A** to this application, verifies that neither Gibbins nor any of its professionals or employees has any connection with any party in interest, or their attorneys or accountants, other than as set forth in the Winters Declaration.

13. Except as provided in the Winters Declaration, to the best of the Survivors’ Committee’s knowledge, neither Gibbins nor any of its professionals or employees holds or represents any interest adverse to the Survivors’ Committee or the Debtor’s estate in the matters on which Gibbins is to be retained. The Survivors’ Committee submits that the proposed employment of Gibbins is in the best interests of the Survivors’ Committee, the Debtor, and its estate and creditors.

14. To the best of the Survivors' Committee's knowledge, and except as disclosed in the Winters Declaration, Gibbins has had no other prior connection with the Debtor, its known creditors or any other party in interest. Upon information and belief, Gibbins does not hold or represent any interest adverse to the Debtor's estate or the Survivors' Committee in the matters upon which Gibbins has been and is to be engaged.

#### **IV. NOTICE**

15. A copy of this application, along with the attached Exhibits, will be served on the following: (a) the UST; (b) the Debtor; (c) the Debtor's counsel; and (d) those parties who have appeared in this case or have requested notice pursuant to Bankruptcy Rule 2002.

16. The Survivors' Committee is contemporaneously filing herewith a "9006(c) Request" requesting the Court to shorten notice on this application to seven (7) days, setting the objection deadline for Friday, March 6, 2020 at 4:00 p.m. (prevailing Eastern time) and scheduling a hearing on this application and any objections thereto for a date and time as reasonably soon thereafter that the Court can schedule the matter on its calendar.

**WHEREFORE**, the Survivors' Committee respectfully request the Court enter an order, substantially in the form attached hereto as **Exhibit B**, authorizing the employment and retention of Gibbins as financial advisors to the Survivors' Committee effective *nunc pro tunc* as of February 26, 2020, and granting all other just and proper relief.

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

Dated: February 28, 2020

/s/ James I. Stang

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-and-

RUBIN & LEVIN, P.C.

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*Counsel for the Survivors' Committee*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2020 a copy of the foregoing *Application to Employ Gibbins Advisors, LLC as Financial Advisors to the Additional Tort Claimants Committee of Sexual Abuse Survivors Effective Nunc Pro Tunc as of February 26, 2020* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on February 28, 2020, a copy of the foregoing *Application to Employ Gibbins Advisors, LLC as Financial Advisors to the Additional Tort Claimants Committee of Sexual Abuse Survivors Effective Nunc Pro Tunc as of February 26, 2020* was served via electronic mail to the following:

**United States Olympic Committee:** Chris McCleary at Chris.McCleary@usoc.org  
**The Alexander, a Dolce Hotel and Wyndham Hotel Group, LLC:** Daniel M. Eliades at daniel.eliades@klgates.com and David S. Catuogno at david.catuogno@klgates.com

*/s/ Meredith R. Theisen*

\_\_\_\_\_  
Meredith R. Theisen

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**EXHIBIT A**

**[Winters Declaration]**

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

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**DECLARATION OF RONALD M. WINTERS IN SUPPORT OF  
APPLICATION TO EMPLOY GIBBINS ADVISORS, LLC AS FINANCIAL  
ADVISOR TO THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL  
ABUSE SURVIVORS EFFECTIVE *NUNC PRO TUNC* AS OF FEBRUARY 26, 2020**

RONALD M. WINTERS, declares under penalty of perjury as follows:

1. I am the co-founder and Principal of Gibbins Advisors, LLC (“Gibbins”), and maintain an office at 1900 Church Street, Suite 300, Nashville, Tennessee 37203. I am authorized to submit this declaration (the “Declaration”) in support of the *Application to Employ Gibbins Advisors, LLC as Financial Advisor to the Additional Tort Claimants Committee of Sexual Abuse Survivors Effective Nunc Pro Tunc as of February 26, 2020* (the “Application”).<sup>2</sup>

2. Gibbins specializes in “ability to pay” analysis, interim management, crisis management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring. Gibbins’ professionals have extensive experience and excellent reputations in providing financial advisory services and non-for-profit expertise. Cases in which Gibbins’ professionals provided financial advisory services in connection with prior employers include the following:

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings and definitions ascribed to such terms in the Application.

- (a) *In re Federation Employment and Guidance Services, Inc.*, Case No. 8-15-71074 (REG) (Bankr. E.D.N.Y. 2015) – Financial Advisor to the Official Committee of Unsecured Creditors;
- (b) *In re Daytop Village Foundation Incorporated, et al.*, Case No. 12-11436 (SCC) (Bankr. S.D.N.Y. 2012) – Financial Advisor to the Official Committee of Unsecured Creditors;
- (c) *In re Eastman Kodak Company*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. 2012) – Financial Advisor to the Official Committee of Unsecured Creditors;
- (d) *In re Nortel Networks Inc., et al.*, Case No. 09-10138 (KG) (Bankr. Del. 2009) – Financial Advisor to the Section 1114 Committee of Retired Employees and the Committee of Long-Term Disability Participants.
- (e) *In re Our Lady of Mercy Medical Center, et al.*, Case No. 07-10609 (REG) (Bankr. S.D.N.Y. 2007) – Financial Advisor to the Official Committee of Unsecured Creditors;
- (f) *In re Brotman Medical Center, Inc.*, Case No. 07-19705 (BB) (Bankr. C.D. Cal. 2007) – Financial Advisor to the Official Committee of Unsecured Creditors;
- (g) *In re Valley Health System*, Case No. 07-18293 (PC) (Bankr. C.D. Cal. 2007) – Financial Advisor to the Committee of Unsecured Creditors;
- (h) *In re Delta Air Lines, Inc., et al.*, Case No. 05-17923 (ASH) (Bankr. S.D.N.Y. 2005) – Financial Advisor to the Section 1114 Committee of Retired Pilot Employees; and
- (i) *In re US Airways, Inc., et al.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. 2004) – Financial Advisor to the Section 1114 Retiree Committee.

3. Neither I, Gibbins, nor any professional or employee thereof, insofar as I have been able to ascertain, has any connection with the Survivors' Committee, the Debtor, its creditors or any other parties in interest herein, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee, except as set forth herein.

4. Gibbins has made the following investigation of disinterestedness prior to submitting this Declaration. Gibbins reviewed its records and canvassed its employed and

contracted professionals to determine the existence of any conflicts and required disclosures.

Based on the results of Gibbins' investigation, it appears that Gibbins does not hold or represent any interest adverse to and has no connection with the Debtor herein, its known creditors, the Survivors' Committee, the U.S. Trustee or any party in interest herein in the matters upon which Gibbins is to be retained, and is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code. Gibbins will promptly supplement this Declaration if any conflicts or required disclosures are later discovered.

5. Gibbins and certain of its professionals may have represented in the past and in the future may represent creditors of the Debtor in connection with matters unrelated to the Debtor and this case. At this time, Gibbins is not aware of any such representations. If Gibbins identifies any such representations, Gibbins shall make further disclosures as may be appropriate at that time.

6. Based on the foregoing, Gibbins believes that it can represent the Survivors' Committee in all of the matters for which the Survivors' Committee seeks to retain Gibbins.

7. Gibbins is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code in that Gibbins and its professionals and employees:

- (a) are not creditors, equity security holders or insiders of the Debtor;
- (b) are not and were not, within two (2) years before the Petition Date, a director, officer, or employee of the Debtor;
- (c) are not and were not, within three (3) years before the Petition Date, an investment banker for a security of the Debtor, or an attorney for such investment banker in connection with the offer, sale or issuance of any security of the Debtor; and
- (d) do not have an interest materially adverse to the interests of the Debtor's estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason, except as disclosed herein.

8. Gibbins has not received any retainer from the Debtor, the Survivors' Committee, or any member of the Survivors' Committee, nor has Gibbins received any payment or promise of payment, during the one-year period prior to the Petition Date. No compensation has been paid or promised to be paid from a source other than the Debtor's estate in this case. No promises have been received by Gibbins nor by any professionals or employees thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code. Gibbins has no agreement with any other entity to share with such entity any compensation received by Gibbins in connection with this case, except among the professionals and employees of Gibbins. Neither the Survivors' Committee nor any of its representatives are or will be liable for fees or costs incurred by Gibbins in its representation of the Survivors' Committee.

9. Subject to Court approval in accordance with section 330(a) of the Bankruptcy Code and any applicable orders of the Court, compensation will be payable to Gibbins on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by Gibbins.

10. It is Gibbins' policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document retrieval, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by Gibbins to outside copying services for use in mass mailings, travel expenses, expenses for "working meals," computerized research, and transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime.

11. Gibbins’ ordinary and customary hourly rates in effect as of January 1, 2020 are as follows:

	<b>Standard Hourly Rates</b>	<b>Special Hourly Rates<sup>3</sup></b>
Managing Director/Principal	\$675	\$810
Director/Senior Director	\$450 - \$525	\$540 - \$630
Associate/Senior Associate	\$325 - \$375	\$390 - \$450

The hourly rates set forth above are subject to periodic adjustments (generally on January 1 of each year) to reflect economic and other conditions.

12. Gibbins intends to work closely with the Survivors’ Committee’s other professionals to ensure that there is no unnecessary duplication of services performed or charged to the Debtor’s estate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 28, 2020

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Ronald M. Winters

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<sup>3</sup> Special Hourly Rates apply to preparation for expert testimony, providing expert testimony in court or depositions, and assistance in deposing opposing witnesses.

**EXHIBIT B**

**[Proposed Order]**

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

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**ORDER GRANTING APPLICATION TO EMPLOY  
GIBBINS ADVISORS, LLC AS FINANCIAL ADVISOR TO  
THE ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL  
ABUSE SURVIVORS EFFECTIVE *NUNC PRO TUNC* AS OF FEBRUARY 26, 2020**

Upon the *Application to Employ Gibbins Advisors, LLC as Financial Advisors to the Additional Tort Claimants Committee of Sexual Abuse Survivors Effective Nunc Pro Tunc as of February 26, 2020* (the “Application”) <sup>2</sup> [Doc \_\_\_\_], filed by the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors’ Committee”), requesting entry of an order pursuant to 11 U.S.C. §§ 327, 328 and 1103, Rule 2014 of the Federal Rules of Bankruptcy

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings and definitions ascribed to such terms in the Application.

Procedure (the “Bankruptcy Rules”) and Local Rule B-2014-1, authorizing and approving the retention and employment of Gibbins Advisors, LLC (“Gibbins”) as financial advisor to the Survivors’ Committee effective *nunc pro tunc* as of February 26, 2020; and upon the Declaration of Ronald M. Winters filed in support of the Application (the “Winters Declaration”); and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Application is in the best interests of the Survivors’ Committee, the Debtor and other parties in interest; and the Survivors’ Committee having provided adequate and appropriate notice of the Application under the circumstances; and after due deliberation and good and sufficient cause appearing therefor; and it appearing to the Court that the said Application should be approved.

It is HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. The Survivors’ Committee is hereby authorized to retain and employ Gibbins as its financial advisor, pursuant to sections 327, 328 and 1103 of the Bankruptcy Code and Bankruptcy Rule 2014, effective *nunc pro tunc* as of February 26, 2020.
3. Gibbins shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with this case in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, and any other applicable procedures and orders of this Court.
4. Gibbins is authorized to render professional services to the Survivors’ Committee as described in the Application.

5. The Survivors' Committee and Gibbins are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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