

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

In re:

USA GYMNASTICS,

Debtor.<sup>1</sup>

Chapter 11

Case No. 18-09108-RLM-11

**STATEMENT AND RESERVATION OF RIGHTS OF  
THE UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE  
IN RESPONSE TO THE APPLICATION TO EMPLOY  
GIBBINS ADVISORS, LLC AS FINANCIAL ADVISOR TO THE  
ADDITIONAL TORT CLAIMANTS COMMITTEE OF SEXUAL ABUSE SURVIVORS**

The United States Olympic and Paralympic Committee (“USOPC”), by and through its undersigned counsel, hereby submits this Statement and Reservation of Rights (“**Statement**”) in response to the Application to Employ Gibbins Advisors, LLC (“**Gibbins**”) as Financial Advisor to the Additional Tort Claimants Committee (“**Committee**”) of Sexual Abuse Survivors, Effective *Nunc Pro Tunc* as of February 26, 2020 (Dkt. No. 936) (“**Retention Motion**”). In support of this Statement, the USOPC represents and states as follows:

**STATEMENT AND RESERVATION OF RIGHTS**

1. The USOPC has for nearly a year been an active participant in the mediation process established by this Court to seek a resolution of the claims brought by the survivors of sexual abuse by Larry Nassar (and their families) and other alleged perpetrators. Although the mediation remains ongoing, USA Gymnastics (“**USAG**”) has filed a proposed Plan that provides Abuse Claimants with the option of a Settlement Election<sup>2</sup> and a Litigation Election.

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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> See First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics (Dkt. No. 928 (“**Plan**”). Capitalized terms not otherwise defined in this Statement shall have the meaning given to them in the Motion or the Plan.

2. In the Retention Motion, the Committee indicates that it will be seeking disclosures and discovery from the USOPC regarding the USOPC's financial condition and "ability to pay" on the ground that Abuse Claimants and the Court require this information to evaluate the Settlement Election under the Plan and the third-party releases that the USOPC would receive if the Settlement Election is accepted in requisite numbers by Abuse Claimants. *See* Retention Motion, ¶¶ 7, 13(b). Indeed, the Committee has already reached out to USOPC to seek financial information, either informally or through discovery. USOPC indicated that it could not make any commitment without seeing the Committee's specific requests. In any event, as a non-profit organization, the USOPC's audited financial statements and tax returns are public and available online. *See* <https://www.teamusa.org/footer/finance>. And USOPC long ago provided its insurance policies to the Committee, which has retained counsel to evaluate them. The Committee also was provided copies of insurance policies purchased by USAG that also insure USOPC.

3. The USOPC takes no position on the Committee's general request to retain a financial advisor; however, the Committee seeks authorization to retain Gibbins for a variety of reasons, among them "[a]dvising the Survivors' Committee in investigating the assets, liabilities and financial condition of the USOPC". *See* Retention Motion, ¶ 13(b). Because the USOPC's financial condition or "ability to pay" is not a relevant factor under applicable law governing the grant of a release and channeling injunction, the USOPC files this Statement to correct errors and misstatements in the Retention Motion regarding the legal standard for assessing the USOPC's contribution to the proposed Plan and the nature of that contribution.<sup>3</sup> The USOPC also expressly reserves the right to object to any improper or irrelevant discovery requests propounded by the Survivors' Committee in connection with confirmation of the Plan.

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<sup>3</sup> The USOPC will more fully address these errors and misstatements, as well as other issues relevant to the Disclosure Statement and Plan, in its response to the Disclosure Statement.

4. Under the prevailing standard in the Seventh Circuit regarding the approval of third-party releases, a third party's financial condition or "ability to pay" is not relevant to the determination of whether to approve a release and channeling injunction. The applicable factors include: whether the release was narrowly tailored; whether the release was necessary for the reorganization; and whether the nondebtor party contributed valuable consideration to the proposed reorganization such that, without its contribution, the reorganization "simply would not have occurred." See *In re Ingersoll*, 562 F.3d 856, 864-65 (7th Cir. 2009) (finding nondebtor third-party release to be "narrowly tailored and critical to the plan as a whole," and that the releases were "an essential component of the plan, the fruit of long-term negotiations and achieved by the exchange of good and valuable consideration" that enabled unsecured creditors to receive a distribution in the case) (internal citations omitted); *In re Airadigm Communications, Inc.*, 519 F.3d 640, 657-58 (7th Cir. 2008) (same).

5. Other courts, including one bankruptcy court within the Seventh Circuit, also consider whether the affected claimants have accepted the plan in an overwhelming majority. See *In re Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125, Dkt. No. 1278, at \*2-3 (Bankr. D. Minn. Aug. 10, 2018) (finding that the debtor had numerous liabilities for which Protected Parties were also possibly liable, the Protected Parties and Settling Insurer Entities made substantial contributions that were essential to the implementation of the plan, without which, the plan would not be feasible, and that the affected creditors accepted the plan in an overwhelming majority); *In re Archdiocese of Milwaukee*, Case No. 11-20059, Dkt. No. 3322, at \*5-6 (Bankr. E.D. Wis. Sep. 25, 2015) (same). A party's ability to pay was not a factor.

6. The Committee also incorrectly states that USOPC "is not contributing any of its own funds as consideration for the release and channeling injunction." See Retention Motion, ¶ 6. Pursuant to insurance requirements in numerous contracts between USAG and USOPC, USOPC was required to be and is insured under most of the USAG policies ("USAG Policies") implicated in this case. See Disclosure Statement, at \*4. Specifically, the USAG Policies provide both USAG and USOPC with defense and indemnification coverage for the

Sexual Abuse Claims. *See* Disclosure Statement, at \*9-10. In addition to the insurance maintained directly by USAG, for decades USOPC paid substantial premiums for its own policies (“**USOPC Policies**”), which cover USOPC for liability that derives from its own independent conduct and also provide supplemental or excess coverage for USOPC’s liability that derives from USAG’s operations.<sup>4</sup> Of course, the coverage available under these policies is a substantial asset of USOPC, and one intended specifically to deal with the claims under consideration here.

7. The Debtor’s proposed Plan provides that, in the event of a Settlement Election, a Plan Payment in the amount of \$215 million will be contributed to a trust for subsequent distribution to Abuse Claimants. *See* Disclosure Statement, at \*3. The source of that Plan Payment is the proceeds of certain USAG Policies that insure both USAG and USOPC. *Id.* The USOPC (which will only receive a release and channeling injunction under the proposed Plan in the event of Settlement Election) will—in exchange for the release—waive its right to what could be hundreds of millions of dollars of insurance coverage under the USAG Policies as well as its indemnification claims against USAG. *See* Disclosure Statement, at \*9. In addition, a portion of the Plan Payment is funded by proceeds of certain USOPC Policies. *See* Disclosure Statement, at \*3. It is essential to confirmation and implementation of the proposed Plan that the USOPC receive a release and channeling injunction because neither USAG’s insurers nor the USOPC’s insurers will contribute to the Plan Payment unless all of their insureds receive releases such that they have no further exposure to liability arising from the Abuse Claims. *See* Disclosure Statement, at \*19 (“The Settlement Election would not exist without the protections provided to the USOPC.”).

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<sup>4</sup> Neither Larry Nassar nor any other alleged abusers that give rise to the Abuse Claims filed in the USAG chapter 11 case were employed by the USOPC. Moreover, the vast majority of Abuse Claimants did not compete in any USOPC-related event or have any other affiliation or contact with the USOPC.

8. Courts have recognized that the contribution of these kinds of insurance rights for the purposes of plan funding constitutes a substantial contribution that justifies the granting of a third-party release in favor of the settling insured. *See, e.g., In re Crosier Fathers and Brothers Province, Inc.*, Case No. 17-41681, Dkt. No. 175, at \*2 (Bankr. D. Minn. Mar. 26, 2018) (nondebtors granted releases after contributing their interests in insurance policies as part of settlement approved pursuant to plan); *In re the Christian Brothers' Institute*, Case No. 11-22820 (RDD), Dkt. No. 652 at \*18 (Bankr. S.D.N.Y. Jan. 13, 2014) (same); *In re Roman Catholic Bishop of Helena, Montana, a Montana Religious Corporation Sole*, Case No. 14-60074, Dkt. No. 475 at \*9-10 (Bankr. D. Mont. Mar. 5, 2015) (same). Moreover, because the USOPC is a not-for-profit corporation with no shareholders, any requirement that the USOPC provide a “cash” contribution from its balance sheet would only mean that it has fewer assets available for the purpose of its charitable mission, serving amateur athletics in the United States. The notion that the USOPC will not be making a substantial contribution to the Plan if it has not contributed “its own funds”—as opposed to contributing funds from the insurance program it established and paid into for years—fundamentally misunderstands and misstates the nature of the USOPC, its proposed contribution and applicable law.

Dated: March 6, 2020

Respectfully submitted,

UNITED STATES OLYMPIC AND  
PARALYMPIC COMMITTEE,

/s/ Andrew T. Kight

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 6, 2020, a true and accurate copy of the foregoing was filed using the Court's CM/ECF electronic filing system, which will provide notice of the filing to all parties entitled to receive electronic service in this case, including counsel for the Survivors' Committee, James I. Stang at jstang@pszjlaw.com, and Meredith R. Theisen at mtheisen@rubin-levin.net.

/s/ Andrew T. Kight  
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