

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

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**DEBTOR'S OBJECTION TO 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**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**” or “**USAG**”), objects to 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* [Dkt. 936] (“**Application**”), filed by the Additional Tort Claimants Committee Of Sexual Abuse Survivors (“**Committee**”). In support of this Objection, the Debtor states as follows:

OBJECTION

In the Application, the Committee seeks authority to retain Gibbins Advisors, LLC (“**Gibbins**”) as the Committee’s financial advisor for the primary purpose of conducting an investigation into the financial condition of the United States Olympic & Paralympic Committee (“**USOPC**”) (Application ¶¶ 7-8.). This Court should deny the Application because the Committee’s retention of a financial advisor is premature, and an unnecessary drain on estate resources, for at least three reasons. Alternatively, this Court should impose a cap of \$35,000.00

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.

on the proposed advisor's fees, subject to modification by further Court Order.

First, the Application states that the Committee's proposed financial advisor will assist the Committee in "investigating the assets, liabilities and financial condition of the USOPC" (Application ¶ 13(b)), but it is entirely unclear at this point whether the Committee has any authority to conduct such an "investigation" of a third-party, non-debtor, beyond the documents and information the USOPC previously produced in response to the Committee's Rule 2004 motion and this Court's Order. (*See* Dkt. 591.) Moreover, the USOPC's documents that set forth its "assets, liabilities and financial condition," including the USOPC's annual reports, audited financial statements, and tax disclosures, and the USOPC Foundation's audited financial statements and tax disclosures, are readily available to the Committee and its lawyers on the USOPC's website at: <https://www.teamusa.org/footer/finance>. The Application does not explain why these documents are insufficient to resolve the Committee's inquiry or why the Committee's sophisticated and experienced counsel need the assistance of a financial advisor to present this information to this Court.

Second, the Committee's stated bases for retaining a financial advisor only pertain to evaluating provisions of the Plan's Settlement Election, not the Plan's Litigation Election.² In light of the recent public statements by counsel representing nearly half of the sexual abuse claimants, as well as by Committee members themselves, that the Plan's Settlement Election is unacceptable and should be rejected, it makes little sense for the Committee to spend estate resources evaluating third-party releases that exist only under the Settlement Election.³ The \$217,125,000.00 that

² Capitalized terms used herein and not defined have the meaning set forth in the *First Amended Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics* [Dkt. 928].

³ Collectively, two firms represent at least 256 of the 517 sexual abuse claimants (excluding sexual abuse claims that are duplicative, withdrawn, disallowed, or subject to pending objection). Statements by lawyers at those firms and individual committee members opposing the Settlement Election are available at:

certain of the insurers for the Debtor, the USOPC, and Twistars agreed to contribute under the Settlement Election is the best offer the Debtor has been able to obtain from the insurers. Those insurers made that offer with the express condition that the Plan contain the third-party releases. If that offer is not acceptable—and, regrettably, it appears at present from counsels’ many media statements that it is not—then USAG will pursue confirmation of the Plan under the Litigation Election. USAG, of course, remains committed to working with all constituents to achieve a resolution to which all parties can agree.

Third, the Committee does not need the services of a financial advisor to prepare an objection to the Disclosure Statement, nor is it necessary for the Committee to present expert testimony at the hearing on the Disclosure Statement. If the Committee believes that the Disclosure Statement should not be approved because it fails to provide adequate information to creditors, that is a legal objection that the Committee’s existing professionals can capably make without a financial advisor.

Finally, and in light of the premature nature of the Application, to the extent the Court is inclined to permit the Committee to retain a financial advisor, the Debtor requests that the Court impose an initial cap of \$35,000.00 on the financial advisor’s fees, subject to modification by further Court Order. The Debtor made this proposal to the Committee in an attempt to resolve the Application without objection, but the Committee refused to agree to the \$35,000.00 cap.

<https://www.ocregister.com/2020/03/04/survivors-overwhelmingly-reject-usa-gymnastics-settlement-offer/>; <https://www.nytimes.com/2020/03/03/sports/olympics/biles-gymnastics-settlement-nassar.html>; www.washingtonpost.com/sports/2020/02/29/simone-biles-aly-raisman-blast-usa-gymnastics-settlement-proposal/; <https://www.ocregister.com/2020/02/21/usa-gymnastics-asks-nassar-survivors-to-release-steve-penny-usopc-karolyis-don-peters-from-legal-claims/>; <https://www.nytimes.com/2020/01/30/sports/USA-gymnastics-nassar.html>; <https://www.cnn.com/2020/01/31/us/usa-gymnastics-larry-nassar-settlements/index.html>.

For each of the foregoing reasons, the Debtor respectfully requests that the Court enter an Order denying the Application, or, in the alternative, imposing a cap on the financial advisor's fees of \$35,000.00, subject to further Order by this Court.

Dated: March 6, 2020

Respectfully submitted,

JENNER & BLOCK LLP

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