

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
) Chapter 11
USA GYMNASTICS,¹)
) CASE NO. 18-09108-RLM-11
DEBTOR.)

MOTION TO ALLOW LATE FILED CLAIM TO BE TREATED AS TIMELY FILED

Comes now creditor, Terin Humphrey (“Claimant”), by counsel, and files her *Motion to Allow Late Claim to be Treated as Timely Filed* (the “Motion”), pursuant to 11 U.S.C. § 502(b)(9) and Fed R. Bankr. P. 9006(b)(1) and hereby petitions the Court for the Court to allow the proof of claim, filed confidentially today, confirmation of which filing was received via electronic correspondence to undersigned counsel at 3:26 p.m. EDT in the above-referenced Bankruptcy Case under Claimant’s name and signed by Claimant (the “Claim”), to be treated as timely filed, and in support thereof states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), and the Court may enter a final order consistent with Article III of the U.S. Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 3003 and 9006 of the Bankruptcy Code.

¹The 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.

RELEVANT PROCEDURAL BACKGROUND

3. Debtor filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on December 5, 2018 (the “Petition Date”), in the United States Bankruptcy Court for the Southern District of Indiana as Case No. 18-09108-RLM-11 (the “Bankruptcy”).

4. On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Committee”).

5. On February 25, 2019, the Court entered an order (the “Bar Date Order”) fixing April 29, 2019 as the bar date for general claims and claims asserting sexual abuse (the “Bar Date”). [Doc. No. 301].

6. On May 17, 2019, the Court approved a Future Claims Representative as proposed by the Debtor [Doc. No. 516].

7. On February 21, 2020, Debtor filed its First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics [Doc. No. 928] (the “Amended Plan”), as well as its Disclosure Statement for First Amended Plan [Doc. No. 930] (the “Disclosure Statement”), and Debtor’s Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures [Doc. No. 931] (the “Plan Confirmation Procedure Motion”), to which numerous objections have been filed by the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “Survivors Committee”) [Doc. No. 1060], and others, which Plan Confirmation Procedure Motion and objections thereto are currently set for hearing October 19, 2020 at 1:30 p.m. (the “Hearing”).

ADDITIONAL FACTS RELATING TO CLAIMANT’S DELAY IN FILING THE CLAIM

8. Claimant was born on August 14, 1986, and has been a member of USA Gymnastics (“USAG”) from 1989 through the present. [Affidavit of Terin Humphrey, attached hereto as Exhibit “A” (“Humphrey Aff.”), ¶1].

9. In 2002, likely at the July 2002 U.S. Classic gymnastics meet in Virginia Beach, VA, hosted by Excalibur Gymnastics, while she was fifteen (15) years of age, Claimant was sent by her coaches to be examined by Dr. Larry Nassar (“Nassar”) for a hip injury, during which examination Claimant was sexually abused by Nassar for approximately fifteen (15) minutes. During the same tournament, Claimant was re-directed by her coaches to Nassar for treatment at the same competition, at which point she was abused by Nassar again in the same fashion. [Humphrey Aff. ¶2].

10. At the time she suffered the abuse from Nassar, Claimant was a member of USAG and Nassar was working in his capacity as a physician for USAG. [Humphrey Aff. ¶3].

11. Claimant has not filed a claim against Michigan State University relating to her claims against Nassar. [Humphrey Aff. ¶4].

12. In 2004, at the age of 18, Claimant earned two silver medals in gymnastics at the Olympic Games in Athens, Greece. [Humphrey Aff. ¶5].²

13. Although Claimant received notice of the Bankruptcy and of the opportunity to file a claim in the Bankruptcy prior to the Bar Date, she did not do so because it was only within the past

² Thus, to the extent the Amended Plan is confirmed and Claimant’s claim is allowed, she would become a member of Class 6, subclass 6A (Elite Gymnasts). The Class 6A Elite Gymnasts are to receive a total of \$82,550,000.00 under the currently proposed Amended Plan, which, based on the 66 members of this subclass identified in the Disclosure Statement, would receive \$1,250,757.58 per subclass member [Disclosure Statement, p. 13]. If the Motion is granted, and Claimant’s claim is allowed as a deemed-timely filed Class 6A Elite Gymnast claim, it would increase the number of claimants of this subclass from 66 to 67, thus decreasing each of the other 66 Elite Gymnasts claims to \$1,232,089.52—a per subclass member reduction by 1.49% percent or \$18,668.03 per Elite Gymnast.

month that Claimant came to recall and realize that she had been abused by Nassar. [Humphrey Aff. ¶6].

14. More specifically, Claimant became pregnant with her first child in May of 2019, which was born in January, 2020. [Humphrey Aff. ¶7].

15. During the course of her pregnancy, Claimant became acutely anxious when anyone touched her stomach without permission and she experienced severe anxiety when she required pelvic examinations during this time, and her distress rose even further at the time of childbirth when she “felt helpless and overwhelmed because people were staring at me (my genitals) and examining me, especially when the male doctor, not my usual doctor, did it.” [Humphrey Aff. ¶¶8-9].

16. During and after her childbirth, Claimant suffered numerous other negative psychological outcomes, including distressing memories and flashbacks to the repressed sexual abuse she suffered from Nassar. [Humphrey Aff. ¶10].

17. As the recurrence of these memories intensified and clarified in June of 2020, Claimant first began to realize that she may have suffered abuse by Nassar. [Humphrey Aff. ¶11].

18. Claimant was psychologically examined by Dr. Steven A. Elig, M.D. (“Dr. Elig”) on July 18, 2020, and Dr. Elig made the following observations:

Following the powerful external cue of being genitally examined and manipulated prior to and after childbirth, which resembled and symbolized a developmentally inappropriate sexual experience, Ms. Humphrey reports the following resulting symptoms:

a. Intrusion/reexperiencing - Intrusive distressing memories, flashbacks, and intense psychological distress with marked physiological reactions upon exposure to cues that symbolize or resemble an aspect of the traumatic events.

b. Avoidance - Efforts to avoid distressing memories, thoughts, feelings, and external reminders of the traumatic events.

c. Negative cognitions - Persistent negative beliefs and expectations about herself and the world, distorted cognitions about the consequences of the traumatic events, persistent negative emotional state, markedly diminished interest and participation in significant activities, feelings of detachment or estrangement from others, and persistent inability to experience positive emotions.

d. Hyperarousal - Irritable behavior and angry outbursts, hypervigilance, exaggerated startle response, problems with concentration, and sleep disturbance.

e. Depression - Depressed mood, markedly diminished interest and pleasure in activities, insomnia, psychomotor agitation, fatigue, feelings of excessive guilt, and diminished ability to concentrate.

These disturbances have caused clinically significant distress and impairment in social, occupational, and other important areas of functioning. Ms. Humphrey reports negative impact on her general sense of life contentment and emotional outlook, intimate relationships, family relationships, friendships, work motivation, and interests and activities.

[Declaration of Licensed Mental Health Practitioner, Steven A. Elig, M.D. (dated July 28, 2020), attached hereto as Exhibit “B” (the “Elig Dec.”), ¶¶8-9].

19. As a result of the foregoing symptoms and Dr. Elig’s analysis, Dr. Elig concluded that Claimant satisfied diagnosis criteria for Child Sexual Abuse, Post-Traumatic Stress Disorder, and Major Depressive Disorder. [Elig Dec, ¶¶13-17].

20. As to Claimant’s Posttraumatic Stress Disorder diagnosis, Dr. Elig states:

The psychiatric diagnosis of Posttraumatic Stress Disorder is based on a pattern of intrusion symptoms, avoidance of stimuli, negative alterations in cognitions and mood, and alterations in arousal and reactivity following exposure to actual or threatened death, serious injury, or sexual violence. For children, sexually violent events may include developmentally inappropriate sexual experiences without physical violence or injury. 1 Ms. Humphrey reports a multitude of these specific symptoms in a clinically valid manner. These **symptoms were not present prior to the visceral reminder of sexual abuse occasioned by genital examination during pregnancy** and childbirth, and they are thematically closely related to the incidents of sexual abuse. Therefore, it is my opinion to a reasonable degree of medical certainty that Ms. Humphrey meets psychiatric criteria for Posttraumatic Stress Disorder **with delayed expression**, as a direct result of her experience of child sexual abuse by Dr. Larry Nassar.

[Elig Dec, ¶16 (emphasis added)].

21. As to Claimant's Major Depressive Disorder diagnosis, Dr. Elig states:

17. The psychiatric diagnosis of Major Depressive Disorder is based on a pattern of depressed mood and/or loss of interest or pleasure in almost all activities, accompanied by symptoms such as weight loss, insomnia, psychomotor retardation, fatigue, feelings of worthlessness or excessive guilt, diminished ability to concentrate, and recurrent thoughts of death, suicidal ideation, or suicide attempt. (See American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, 5th edition, 2013). Ms. Humphrey convincingly describes the initial onset of severe symptoms beginning in January 2020. She had never before experienced similar symptoms. Therefore, it is my opinion to a reasonable degree of medical certainty that Ms. Humphrey meets psychiatric criteria for Major Depressive Disorder, single episode, with anxious distress and peripartum onset, as a direct result of child sexual abuse by Dr. Larry Nassar.

18. Due to the severity of her condition and the resulting functional interferences, Ms. Humphrey's prognosis is guarded. Although not expressed formally in the DSM-V diagnostic format, the most clinically worrisome aspect of her presentation is the potential impact on her ability to care for and to promote the healthy development of her baby. The maternal tasks of providing protection and promoting attachment and basic trust without undue worry and anxiety have been directly and substantially affected by her experience of child sexual abuse.

[Elig Dec, ¶¶17-18 (emphasis added)].

22. With respect to Claimant's inability to recognize or disclose her prior abuse by Nassar,

Dr. Elig concluded:

Delayed symptoms and disclosure of sexual abuse are not uncommon, and must be understood individually with respect to content, context, and developmental stage. Ms. Humphrey clearly recalled the incident of child sexual abuse during adolescence and early adulthood, but **she did not experience significant psychological symptoms until genital examination during pregnancy and childbirth served as a powerful reminder and precipitated a feeling of recurrence of sexual abuse**. She was then flooded with feelings of vulnerability, helplessness, guilt, defectiveness, and lack of trust. Prior to that time, she had also been in the child sexual abuse, creating a potent loyalty bind. **These factors credibly explain Ms. Humphrey's pattern of delayed symptoms and disclosure from a psychiatric viewpoint.**

[Elig Dec, ¶19 (emphasis added)].³

RELIEF REQUESTED

23. By this Motion, Claimant seeks the Court's authority to treat the Claim as timely filed.

LEGAL AUTHORITY SUPPORTING REQUESTED RELIEF

24. Claimant's sexual abuse by Nassar occurred in Virginia, thus, Virginia law applies with respect thereto. Pursuant to Va. Code Ann. § 8.01-243(D) "Every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person as set forth in subdivision 6 of § 8.01-249 shall be brought within 20 years after the cause of action accrues."

25. Va. Code § 8.01-249 (6) provides: "In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person, upon the later of the removal of the disability of infancy or incapacity as provided in § 8.01-229 or when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist. As used in this subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2."

26. Thus, Claimant's claims for sexual abuse by Nassar in July of 2002 are timely filed under Virginia law, because they are not time-barred until, at the earliest, 20 years after her 18th birthday-August of 2024.

³ Fragmented and incomplete memories in rape and trauma survivors is a well-documented phenomenon. See James Hopper, Ph.D. and David Lisak, Ph.D., *Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories*, TIME MAGAZINE, December 9, 2014 (viewable at: <https://time.com/3625414/rape-trauma-brain-memory/>).

27. 11 U.S.C. §502(b)(9) permits allowance and payment of tardily-filed claims “. . . as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure.”

28. Fed. R. Bankr. P. 9006(b)(1) provides, in pertinent part:

(b) Enlargement (1) In general. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

29. *Pioneer Investment Svcs. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 392-395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), provides the cornerstone for determining excusable neglect under Fed. R. Bankr. P. 9006(b)(1), providing generally that excusable neglect is an “elastic concept”, which requires analysis of “all relevant circumstances surrounding the party's omission”, with specific focus on:

[1] the danger of prejudice to the debtor;

[2] the length of the delay and its potential impact on judicial proceedings;

[3] the reason for the delay, including whether it was within the reasonable control of the movant; and

[4] whether the movant acted in good faith.

30. More generally, the Supreme Court in *Pioneer* explained that “by empowering the courts to accept late filings where the failure to act was the result of excusable neglect, Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings

caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Id.* at 388.

***Pioneer* Factors 1 and 2: There is no danger of prejudice to the Debtor and the length of the delay has no impact on the judicial proceedings.**

31. "The first *Pioneer* factor, prejudice, does not refer to an imagined or hypothetical harm; a finding of prejudice should be a conclusion based on the facts in evidence." *In re New Century TRS Holdings, Inc.* 2014 WL 2198247 (Bankr. D. Del. May 23, 2014) (citing *Manus Corp. v. NRG Energy, Inc.* (*In re O'Brien Envtl Energy, Inc.*), 188 F.3d 116, 127 (3d Cir.1999)).

32. "When addressing the issue of prejudice under the *Pioneer* test, the *O'Brien* Court discussed several relevant considerations, including: (i) whether the debtor was surprised or caught unaware by the assertion of a claim that it had not anticipated; (ii) whether payment of the claim would force the return of amounts already paid out under the confirmed plan or affect the distribution to creditors; (iii) whether payment of the claim would jeopardize the success of the debtor's reorganization; (iv) whether allowance of the claim would adversely impact the debtor; and (v) whether allowance of the claim would open the floodgates to other late claims." *Id.*

33. At this stage of the Bankruptcy, although the Amended Plan has been proposed, it has not been voted upon, nor has the Plan Confirmation Procedure Motion been ruled upon as it is currently set for Hearing on October 19, 2020.

34. As of the filing of the Amended Plan, there were 553 Abuse Claims filed, 33 of which were duplicative, one of which has been disallowed, one of which is subject to a pending objection and

one of which has been withdrawn. Of the remaining 517 claims, seven were filed after the Bar Date. [Disclosure Statement, p.4, n.2]

35. Further, the Disclosure Statement provides “Special Considerations If Your Claim Was Filed After the Bar Date. For those seven Claimants who filed their Abuse Claims after the Bar date, the Settlement Election is the only option that allows you to recover. . . **Under the Settlement Election, untimely Abuse Claims will be treated the same as timely Abuse Claims without any requirement that the Claimant seek Bankruptcy Court approval for such treatment.**” [Disclosure Statement, p. 9 (emphasis added)]. Thus, it is unclear from the proposed Disclosure Statement if Bankruptcy Court approval of this Motion is even necessary—with the possibility that Claimant’s Claim will be allowed notwithstanding this Motion.

36. Also, as previously noted (p. 3, note 2, *supra*) to the extent that the Motion is granted and Claimant’s Claim treated as timely filed, under the current Amended Plan, the only parties impacted would be the 66 claimants of the current Class 6A Elite Gymnasts subclass, via a 1.49% reduction of each of their \$1,250,757.58 claims to \$1,232,089.52—a per subclass member reduction of \$18,668.03.

37. Thus, although the Claim was filed on July 30, 2020, 458 days after the Bar Date, in light of the foregoing unresolved status of the Amended Plan, the ambiguity of same as it relates to untimely Abuse Claims, and (assuming that the Amended Plan is ultimately approved) the overall limited impact on the 66 existing Class 6A Elite Gymnasts in their recovery if the Claim is allowed, each of the first two *Pioneer* factors mitigate in favor of the Motion being granted and the Claim being deemed timely filed.

38. Further, of the five *O’Brien* subfactors deemed relevant under the first *Pioneer* factor, the facts of Claimant’s claim support the granting of the relief sought via the Motion, because: (i)

USAG is not surprised or caught unaware by the assertion of the Claim—it understands the existence of, and the Disclosure Statement specifically contemplates treatment of, untimely Abuse Claims, which are potentially treated the same as timely filed Abuse Claims ; (ii) there have been no payments made to creditors of Claimant’s class under the Amended Plan, so nothing would need to be returned—although there would be an impact to the payment made to the existing Class 6A Elite Divers, that impact, distributed amongst each of those 66 claimants is less than a 1.5% reduction; (iii) payment of the Claim would not jeopardize the success of USAG’s reorganization, because there are sufficient funds being contemplated for distribution under the Amended Plan for Claimant’s claim to be paid as a Class 6A Elite Diver claim; (iv) allowance of the Claim would not adversely impact USAG because it already has allocated funds for claims in the class of Claimant’s Claim; and (v) there are no facts to suggest that allowance of this claim would open the floodgates to other late claims—the universe of potential Class 6A Elite Divers generally is very small, 66 of them have already filed claims, and it appears extraordinarily unlikely that there are numerous other potential Class 6A Elite Diver future claimants with psychological symptoms similar to Claimant’s that have not yet filed claims.

39. It must be emphasized that impact to the **Debtor** on the treatment of Claimant’s Claim as timely filed is the central inquiry, not impact to other parties. In a similar situation, where, as of the date of Debtor’s receipt of notice of the late claim the reorganization plan was unconfirmed, being negotiated, and was expected, the Fifth Circuit Court of Appeals has stated:

Under *Pioneer*, the central inquiry is whether the *debtor* will be prejudiced. We note that Greyhound’s reorganization plan was negotiated and approved *after* Greyhound had notice of these claims. **This is not a situation where the debtor’s plan was formulated, negotiated, and confirmed before notice was given of a substantial late claim** See, e.g., *In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. 1002, 1007 (S.D.N.Y.1993) (“acceptance of a substantial late claim after consummation of a vigorously negotiated claims settlement and Plan of Reorganization thereon and a

distribution of a major part of the assets thereunder, would disrupt the economic model on which the creditors, the debtor and the stockholders reached their agreements”); *In re Alexander's Inc.*, 176 B.R. 715, 722 (Bankr.S.D.N.Y.1995) (“Debtors and other creditors will be prejudiced because the Proof of Claim was filed *after* the Debtors' Plan was formulated, negotiated and confirmed. Debtors had proposed the Plan based upon a claims analysis ... which did not include [claimant's] substantial claim.... Creditors who had timely filed their claims voted on a Plan based on this estimate.... Thus, allowance of [claimant's] claim would disrupt the ‘economic model’ on which all parties reached their agreements.”) (emphasis added). **Quite the contrary, these late filed claims were clearly expected by the debtor.** *In re Alexander's Inc.*, 176 B.R. at 722 (expectation of claim is one factor to consider in determining if the debtor is prejudiced).

In re Eagle Bus Mfg., Inc., 62 F.3d 730, 737-738 (5th Cir. 1995) (italicized emphasis in original, bold emphasis added).

40. Thus, there is essentially no impact on Debtor due to the delay in Claimant’s filing of the Claim, and thus no prejudice to Debtor relating to same.

Pioneer Factors 3 and 4: Claimant’s delay was the result of a medically-recognized phenomenon of repressed memory, not in her reasonable control, and she acted in good faith upon discovering the basis for the Claim.

41. Claimant did not begin to realize that she may potentially have a claim in the Bankruptcy until the nature of her medical examinations in the late stages of her pregnancy during the end of 2019 and early 2020 triggered memories of the abuse she suffered at the hands of Nassar. Claimant’s realizations did not fully crystallize until June of 2020, and Elig’s Declaration confirming Claimant’s abuse, Post-Traumatic Stress Disorder, Major Depressive Disorder and delayed expression thereof, was not completed until June 28, 2020—two days prior to the Claim being filed.

42. As Dr. Elig notes in his Declaration, Claimant’s expression of her Post-Traumatic Stress Disorder and Major Depressive Disorder did not occur until the birth of her child in 2020, and Claimant’s presentation and symptoms match a diagnosis for delayed expression—this delayed expression is the reason for Claimant’s delay in filing the Claim.

43. Claimant's circumstances are somewhat similar to that of the movant in *In re SunCruz Casinos, LLC*, 377 B.R. 741 (Bankr. S.D. Fla. 2007). The *SunTrust* court, holding in favor of the late-filed claim asserted by a claimant for an injury attributable to the debtor, determined that

[Claimant testified that] he did not file a claim before the bar date because **he was not aware that he had a claim under the Bankruptcy Code**. He realized of course that he was injured during the 2002 incident, but the pain had subsided and he no longer thought he had any reason to file a claim. [Claimant] points to the Florida Department of Labor Maximum Medical Improvement form prepared by Dr. Warren (Sheridan's Ex. 4), a physician engaged by SunCruz, which states that [claimant] achieved maximum medical improvement on October 8, 2003 and that the percentage of permanent impairment to his body as a whole was zero percent. . . .

I find that the facts in this case more closely resemble those in *Needy v. CSX Transp., Inc.*, 2000 WL 34249112, 2000 U.S. Dist. LEXIS 22603 (W.D. Ky. Mar 21, 2000). The claimant Needy was put on notice that he had suffered an injury after consulting with several of physicians but the information he received from them was insufficient to suggest to him to file a claim against his employer for causing him injury, in light of the fact that he was not having any pain that he could connect to the performance of his job. . . . The court noted that at the time, he was not necessarily suffering from any illness causally related to his exposure to chemicals. It was only when he progressed from headaches and eye problems to total blindness that the court found that he should have been aware of his injury and its relation to his employment. *Id.* at *3, 2000 U.S. Dist. LEXIS 22603, * 8. . . . [claimant] credibly testified that he was pain-free after the 2002 accident and that the doctor to whom his employer SunCruz had referred him told him that he had reached his maximum recovery. It is understandable that [claimant] would not be able to draw a connection between his post-2005 accident pain and the accident in 2002.

SunCruz/Foothill correctly argues that the claims bar date is established to create finality in the process and further argues that it is prejudiced by Sheridan's attempt to pursue the claim after the bar date. I am required to **balance the important finality that bar dates and other statutory limitations provide with fairness and justice for those who seek recovery**. Certainly the Debtor (or at least Wells Fargo Foothill) would be prejudiced by allowing a late filed claim which it would otherwise not have to defend against, but the Court finds that the prejudice is not so great as to outweigh the rights of [claimant] to pursue a claim which I find he honestly **did not believe he had until well after the applicable bar date of September 15, 2004**. . . . After observing [the claimant's] testimony, and after carefully considering the third *Pioneer* factor, I find that [claimant]'s delay in filing the claim was not unreasonable and that Sheridan has acted in good faith in all matters relating to the filing of the claim. I am convinced that [claimant] did not knowingly delay in filing a claim and that he promptly filed one once he believed he had a claim. I find [claimant]'s explanation that he did not think he had a claim because the Debtor's doctors told him

he was not permanently injured and because he felt minimal pain from the incident to be entirely credible. . . . I accordingly find that [claimant]'s actions have been taken in good faith. In sum, I find that in applying the factors set forth in *Pioneer* to the facts in this case, those factors weigh in favor of a finding that [claimant]'s failure to file a claim before the applicable bar date was the result of excusable neglect, and that [claimant] should be allowed to pursue his late filed claim.

Id. at 746-748.

44. As to good faith, “an honest oversight that is not part of a sinister, well-conceived plan to frustrate” the opponent will not bar a finding of excusable neglect. *Kimberg v. Univ. of Scranton*, 411 Fed.Appx. 473, 478 (3d Cir. 2010).

45. Claimant’s actions are in good faith because her failure to file the Claim prior to the Bar Date was not part of any plan or deliberate action—she simply did not realize that she had a claim until her pregnancy and birth of her first child triggered traumatic memories of Nassar’s abuse, and the nature of her prior abuse and memory representation were only elucidated after psychological examination this month.

Conclusion

Claimant is an Olympic-medal winning gymnast that was twice sexually abused by Nassar as a minor. Claimant has been diagnosed by a licensed mental health physician with the medically-recognized conditions of Post-Traumatic Stress Disorder and Major Depressive Disorder as a result of this abuse. Claimant’s recollection and memory of her abuse were not triggered until her pregnancy, grew stronger with her child’s birth in January of 2020, and did not fully form until June 2020, after which she was evaluated and diagnosed, and after which diagnosis her Claim was immediately filed. This repression of memory and piecemeal recall is a known medical fact to be a common side effect of sexual abuse. Claimant’s situation, viewed in its entirety within the context of the Bankruptcy, the state of plan reorganization, the Plan

itself, and the relative impact to other Class 6A claimants establishes that Claimant's failure to file the Claim prior to the Bar Date constitutes excusable neglect, such that Claimant's Claim should be treated as timely filed.

WHEREFORE, Claimant respectfully petitions the Court for an order: (1) approving this Motion; (2) determining Claimant's Claim filed on July 30, 2020 to be treated as timely filed; and (3) for all other just and proper relief.

Respectfully submitted,

MULVEY LAW LLC

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2020, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent to the following parties of record through the Court's Electronic Case Filing System.

/s/ Joseph L. Mulvey
Joseph L. Mulvey

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE:)
) Chapter 11
USA GYMNASTICS)
)
) CASE NO. 18-09108-RLM-11
DEBTOR.)

VERIFIED AFFIDAVIT OF TERIN HUMPHREY

Comes now Terin Humphrey, and, being first duly sworn upon her oath, deposes and says:

1. I was born on August 14, 1986, and have been a member of USA Gymnastics ("USAG") from 1989 through the present.

2. In 2002, at a USA Gymnastics meet on the east coast, which I believe to have been the 2002 U.S. Classic gymnastics meet in Virginia Beach, VA, hosted by Excalibur Gymnastics, while I was fifteen (15) years of age, I was sent by my coaches to be examined by Dr. Larry Nassar ("Nassar") for a hip injury, during which examination I was sexually abused by Nassar for approximately fifteen (15) minutes. During the same tournament, I was re-directed by my coaches to Nassar for treatment at the same competition, at which point I was abused by Nassar again in the same fashion.

3. At the time I suffered the abuse from Nassar, I was a member of USAG and Nassar was working in his capacity as a physician for USAG.

4. I have not filed a claim against Michigan State University relating to my claims against Nassar.

5. In 2004, at the age of 18, I earned two silver medals in gymnastics at the Olympic Games in Athens, Greece.

6. Although I received notice of the USA Gymnastics Bankruptcy (the "Bankruptcy") and of the requirement to file a claim in the Bankruptcy prior to April 29, 2019, I did not do so because it is only since June of 2020 that I came to realize that I had been abused by Nassar.

7. I became pregnant with my first child in May of 2019, which was born in January, 2020.

8. During the course of my pregnancy, I became acutely anxious when anyone touched my stomach without permission and experienced severe anxiety when I had to undergo required pelvic examinations during this time.

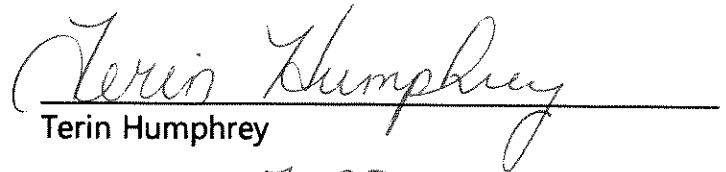
9. My distress rose even further at the time of childbirth when I felt helpless and overwhelmed because people were staring at me (my genitals) and examining me, especially when the male doctor, not my usual doctor, did it.

10. During and after childbirth, I suffered distressing memories and flashbacks to the the sexual abuse from Nassar.

11. As the recurrence of these memories has intensified and clarified, I began to realize that I suffered abuse by Nassar, and it was not until June of 2020 that I fully began to recall and comprehend what had happened to me.

FURTHER AFFIANT SAYETH NAUGHT.

I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Terin Humphrey
7-30-2020

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10 Attorneys for Plaintiff

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

16 In re
 17 USA GYMNASTICS,
 18 Debtor.

Chapter 11
 Case No. 18-09108-RLM-11

**DECLARATION OF LICENSED
 MENTAL HEALTH PRACTITIONER**

22 I, STEVEN A. ELIG, M.D., do hereby declare and certify:

23 1. I am a California licensed mental health care practitioner. I currently practice in
 24 the state of California.

25 2. I have prepared this report in response to your request for a psychiatric
 26 evaluation by an independent medical expert of Terin Humphrey (DOB 8/14/1986). It is
 27 intended to present a summary of my evaluation and recommendations for your use in legal
 28 proceedings. Because this information is presented in abridged fashion, additional information

1 and opinions may be offered upon further request. My opinions are based on the information
2 that is currently available to me, and they may be modified or expanded in the future if
3 supplementary information becomes available.

4 Diagnostic Interview

5 3. I interviewed Terin Humphrey for 4 hours and 15 minutes on July 18, 2020. Due
6 to travel and interpersonal contact limitations imposed by the COVID-19 pandemic, Ms.
7 Humphrey participated in this interview via Zoom video conferencing from her home in Blue
8 Springs, Missouri

9 Brief Developmental History:

10 4. She began full-time training for the Olympics immediately after finishing high
11 school, and she earned two silver medals just after turning 18 years old in 2004. She then
12 attended the University of Alabama, where she continued competing in gymnastics. She earned
13 a degree in Criminal Justice with a minor in Psychology in 2008, with a GPA of about 3.4.

14 5. She was married in October 2019, and her daughter was born after a healthy
15 pregnancy in January 2020. She now works as a homemaker, and her future career direction is
16 uncertain.

17 History of Relevant Events:

18 6. Ms. Humphrey reports that she was sent by her coaches to be examined by Dr.
19 Larry Nassar when she injured her hips in 2002 at age 15. The sexual abuse lasted
20 approximately 15 minutes. Nassar positioned his body so the coach couldn't see what he was
21 doing. "He didn't even stretch my hips or do any other kind of exam.... I was so embarrassed
22 and uncomfortable. I didn't know what he was doing or how it could help, but he was so
23 knowledgeable so I thought it must be okay."

24 7. During her pregnancy in 2019, Ms. Humphrey became acutely anxious when
25 anyone touched her belly without permission. She experienced severe anxiety when she
26 required pelvic examinations during this time, and her distress rose even further at the time of
27 childbirth when "I felt helpless and overwhelmed because people were staring at me (my
28 genitals) and examining me, especially when the male doctor, not my usual doctor, did it."
These events reminded her directly of her confusion and embarrassment when being examined

1 by Dr. Larry Nassar. Further reminders immediately followed when she needed physical
2 therapy for pelvic/back pain caused by childbirth with a previous spinal injury. She ended
3 treatment prematurely because she could not endure it any longer, prolonging her physical pain.

4 Resulting Psychological Symptoms and Psychosocial Impact:

5 8. Following the powerful external cue of being genitally examined and
6 manipulated prior to and after childbirth, which resembled and symbolized a developmentally
7 inappropriate sexual experience, Ms. Humphrey reports the following resulting symptoms:

- 8 a. Intrusion/reexperiencing - Intrusive distressing memories, flashbacks, and intense
9 psychological distress with marked physiological reactions upon exposure to cues
10 that symbolize or resemble an aspect of the traumatic events.
- 11 b. Avoidance - Efforts to avoid distressing memories, thoughts, feelings, and external
12 reminders of the traumatic events.
- 13 c. Negative cognitions - Persistent negative beliefs and expectations about herself and
14 the world, distorted cognitions about the consequences of the traumatic events,
15 persistent negative emotional state, markedly diminished interest and participation in
16 significant activities, feelings of detachment or estrangement from others, and
17 persistent inability to experience positive emotions.
- 18 d. Hyperarousal - Irritable behavior and angry outbursts, hypervigilance, exaggerated
19 startle response, problems with concentration, and sleep disturbance.
- 20 e. Depression - Depressed mood, markedly diminished interest and pleasure in
21 activities, insomnia, psychomotor agitation, fatigue, feelings of excessive guilt, and
22 diminished ability to concentrate.

23 9. These disturbances have caused clinically significant distress and impairment in
24 social, occupational, and other important areas of functioning. Ms. Humphrey reports negative
25 impact on her general sense of life contentment and emotional outlook, intimate relationships,
26 family relationships, friendships, work motivation, and interests and activities.

27 DSM-V Diagnoses

- 28 10. Child Sexual Abuse (T76.22XD)
11. Posttraumatic Stress Disorder, with delayed expression (F43.10)

1 12. Major Depressive Disorder, single episode, severe, with anxious distress, with
2 peripartum onset (F32.2)

3 Opinions and Discussion

4 13. Causes and consequences of events in a court setting are conclusory issues
5 properly left for a judge or a jury to determine. Therefore, I offer these opinions only as they
6 pertain to psychiatric evaluation and treatment planning. In arriving at these opinions, I have
7 integrated aspects of my training and experience with the information available to me. I have
8 considered symptom, content, and contextual validity, as well as the pattern of symptoms and
9 impact with respect to the subject's developmental history.

10 14. The psychiatric diagnosis of Child Sexual Abuse encompasses any sexual act
11 involving a child that is intended to provide sexual gratification to a parent, caregiver, or other
12 individual who has responsibility for the child.¹ Because this occurred during Ms. Humphrey's
13 interaction with Dr. Larry Nassar at age 15, it is my opinion to a reasonable degree of medical
14 certainty that Ms. Humphrey meets psychiatric criteria for Child Sexual Abuse.

15 15. Child sexual abuse is psychologically damaging because the child's immature
16 mind cannot healthily integrate the powerful overstimulation of complex thoughts and sexual
17 feelings in a situation involving a serious violation of trust from an adult in a position of
18 authority. This can result in observable symptoms and interference with developmental
19 progress. However, there is of course a range of responses to various childhood sexual
20 experiences in terms of onset, type, severity, and duration of symptoms and developmental
21 interference.

22 16. The psychiatric diagnosis of Posttraumatic Stress Disorder is based on a pattern
23 of intrusion symptoms, avoidance of stimuli, negative alterations in cognitions and mood, and
24 alterations in arousal and reactivity following exposure to actual or threatened death, serious
25 injury, or sexual violence. For children, sexually violent events may include developmentally
26 inappropriate sexual experiences without physical violence or injury. ¹ Ms. Humphrey reports a
27 multitude of these specific symptoms in a clinically valid manner. These symptoms were not
28 present prior to the visceral reminder of sexual abuse occasioned by genital examination during
pregnancy and childbirth, and they are thematically closely related to the incidents of sexual

1 abuse. Therefore, it is my opinion to a reasonable degree of medical certainty that Ms.
2 Humphrey meets psychiatric criteria for Posttraumatic Stress Disorder with delayed expression,
3 as a direct result of her experience of child sexual abuse by Dr. Larry Nassar.

4 17. The psychiatric diagnosis of Major Depressive Disorder is based on a pattern of
5 depressed mood and/or loss of interest or pleasure in almost all activities, accompanied by
6 symptoms such as weight loss, insomnia, psychomotor retardation, fatigue, feelings of
7 worthlessness or excessive guilt, diminished ability to concentrate, and recurrent thoughts of
8 death, suicidal ideation, or suicide attempt. (See American Psychiatric Association: Diagnostic
9 and Statistical Manual of Mental Disorders, 5th edition, 2013). Ms. Humphrey convincingly
10 describes the initial onset of severe symptoms beginning in January 2020. She had never before
11 experienced similar symptoms. Therefore, it is my opinion to a reasonable degree of medical
12 certainty that Ms. Humphrey meets psychiatric criteria for Major Depressive Disorder, single
13 episode, with anxious distress and peripartum onset, as a direct result of child sexual abuse by
14 Dr. Larry Nassar.


15 18. Due to the severity of her condition and the resulting functional interferences,
16 Ms. Humphrey's prognosis is guarded. Although not expressed formally in the DSM-V
17 diagnostic format, the most clinically worrisome aspect of her presentation is the potential
18 impact on her ability to care for and to promote the healthy development of her baby. The
19 maternal tasks of providing protection and promoting attachment and basic trust without undue
20 worry and anxiety have been directly and substantially affected by her experience of child
21 sexual abuse.

22 Pattern of Disclosure

23 19. Delayed symptoms and disclosure of sexual abuse are not uncommon, and must
24 be understood individually with respect to content, context, and developmental stage. Ms.
25 Humphrey clearly recalled the incident of child sexual abuse during adolescence and early
26 adulthood, but she did not experience significant psychological symptoms until genital
27 examination during pregnancy and childbirth served as a powerful reminder and precipitated a
28 feeling of recurrence of sexual abuse. She was then flooded with feelings of vulnerability,
helplessness, guilt, defectiveness, and lack of trust. Prior to that time, she had also been in the

1 child sexual abuse, creating a potent loyalty bind. These factors credibly explain Ms.
2 Humphrey's pattern of delayed symptoms and disclosure from a psychiatric viewpoint.

3 I declare under penalty of perjury, and pursuant to the laws of the state of California,
4 that the foregoing is true and correct and that the certificate was executed on July 28, 2020, at
5 La Jolla, California.

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8 _____
9 STEVEN A. ELIG, M.D.

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