

**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

**THE ADDITIONAL TORT CLAIMANTS
COMMITTEE OF SEXUAL ABUSE SURVIVORS' CONSOLIDATED
OBJECTION TO MOTIONS TO FILE CLAIM AFTER BAR DATE**

The Additional Tort Claimants Committee of Sexual Abuse Survivors (the “**Survivors’ Committee**”), respectfully objects to (a) *Creditor’s Motion to Allow Late Filed Claim to be Treated as Timely* (the “**DOE JJ Motion**”) [Doc 1218] filed by Jane Doe JJ (“**Doe JJ**”) and (b) *Motion to Allow Late Filed Claim to be Treated as Timely Filed* (the “**Humphrey Motion**”) and, collectively, with the Doe JJ Motion, the “**Motions**”) [Doc 1213] filed by Katherine Humphrey (“**Humphrey**”) and, collectively, with Doe JJ, the “**Movants**”).

INTRODUCTION

1. At this stage of this chapter 11 case, it would be irresponsible to allow additional claims to be asserted against the USA Gymnastics (the “**Debtor**”). This case has been widely reported in the general media, as well as sports and gymnastics focused media. The bar date was widely noticed and publicized. As such, there is no basis for a finding of excusable neglect to allow claims to be filed sixteen months after the bar date.

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.

BACKGROUND

2. On January 31, 2019, the Debtor filed its *Motion For Order Establishing Deadlines For Filing Proofs Of Claim And Approving Form And Manner Of Notice Thereof* (“**Bar Date Motion**”) [Doc 203]. The Bar Date Motion explained in detail the notice procedures that the Debtor intended to follow if the Bar Date Motion was granted. Although three objections were filed to the Bar Date Motion, none of the objectors argued that the Debtor should be required to locate addresses and provide direct mail notice of the bar date to every current or former member of the Debtor going back to the organization’s beginning. [See Docs 257, 260, and 261.]

3. On February 25, 2019, the Court entered its order (the “**Bar Date Order**”) [Doc 301] fixing April 29, 2019 (the “**Bar Date**”) as the bar date for individuals to file claims arising from sexual abuse. The Bar Date Order included notice provisions (including publication requirements) requested by the Survivors’ Committee which were designed to provide broad publication notice of the Bar Date. No party appealed the Bar Date Order and the Bar Date Order is now a final order. The Debtor fulfilled its notice obligations under the Bar Date Order.

4. Since the Bar Date Order, the Survivors’ Committee, counsel for hundreds of Sexual Abuse Claimants, the Debtor, the Debtor’s insurers, the Future Claims Representative, the United States Olympic and Paralympic Committee and its insurers engaged in mediation to resolve the sexual abuse claims against the Debtor. That mediation was predicated on the claims filed against the Debtor. As such, inclusion of additional claims at this late stage would not reasonably allow for additional funding based on the additional claims.

5. Mediation was last conducted on August 11, 2020. After that session, the mediators informed the parties that the mediation is at an impasse.

6. On January 21, 2020, the Survivors' Committee filed its *Motion of the Additional Tort Claimants Committee of Sexual Abuse Survivors for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 349 and 1112(b) Dismissing the Bankruptcy Case and Granting Related Relief* [Doc 892], seeking dismissal of this case. A status hearing on that motion is currently scheduled for October 19, 2020.

7. 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]. A hearing to consider approval of the Disclosure Statement is scheduled for October 19, 2020.

8. On May 19, 2020, the Survivors' Committee filed its objection to the Disclosure Statement (the "**DS Objection**") [Doc 1060]. The DS Objection was joined by hundreds of sexual abuse survivors who asserted timely claims against the Debtor. [See Doc Nos. 1064, 1066, 1067, 1076, 1090, 1091.] The Survivors' Committee believes that the Plan is patently unconfirmable for the reasons stated in the DS Objection, and may supplement such objection in advance of any hearing to consider approval of the Disclosure Statement.²

² Pursuant to the *Order on Pretrial Conference* ("**Pretrial Conference Order**") [Doc 1145] entered on June 19, 2020, the Debtor may file an amended plan and disclosure statement any time up until August 27, 2020. In addition, the Pretrial Conference Order provides that any objections to the Debtor's anticipated amended disclosure statement are due 28 days after the filing of the Debtor's amended disclosure statement. Accordingly, the Survivors' Committee reserves its right to file an objection to any amended disclosure statement filed by the Debtor and/or supplement its current DS Objection.

9. The Debtor's Plan is premised on the timely filed claims. If the Court allows untimely claims to be filed at this juncture, the assumptions underlying the Debtor's Plan will not be reliable and the Plan may require even further amendment. While the Survivors' Committee opposes the Plan, creditors are entitled to know the number of timely claims and how those claims could impact distributions to creditors.

OBJECTION

10. The Court should deny the Motions on the bases that (a) the Movants have not established excusable neglect and (b) allowing additional claims to be filed is futile given the impasse of this case.

A. The Movants Have Not Shown Excusable Neglect.

11. Because the Debtor's creditors all received the notice required by due process, the Bar Date Order should not be vacated. Instead, to the extent that additional creditors come forward seeking to have their late claims allowed as timely, those creditors should only be granted such relief if they can establish excusable neglect. *See* Fed. R. Bankr. P. 9006(b)(1).

12. To determine whether excusable neglect exists, the Court must evaluate “(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 in the reasonable control of the movant, and (4) whether the movant acted in good faith.” *In re Kmart Corp.*, 381 F.3d 709, 713 (7th Cir. 2004). The burden is on the Movants to prove that these factors and they must do so by a “preponderance of the evidence.” *Kmart*, 381 F.3d at 714; *In re Nat'l Steel*

Corp., 316 B.R. 510, 515 (Bankr. N.D. Ill. 2004) (refusing to deem claim timely filed because of excusable neglect).

B. Ms. Humphrey's Motion Must Be Denied.

13. Ms. Humphrey admits that she “received notice of the Bankruptcy and or the opportunity to file a claim in the Bankruptcy prior to the Bar Date....” [Humphrey Motion at ¶ 13.] She further states that she did not file a claim because she did not recall the details of her abuse at the time of the notice. [*Id.*] This admission is fatal to Ms. Humphrey’s Motion. After receiving notice of the Bar Date, the burden shifted to Ms. Humphrey to file a timely claim. She did not do so, and should not be permitted to do so at this time. Such delay was in Ms. Humphrey’s reasonable control.

14. Ms. Humphrey was also a member of the Debtor’s Athlete’s Council prior to and subsequent to the Bar Date. She was removed from the position due to a posting on Facebook that was insensitive and hurtful to gymnasts and other athletes, especially in light of the abuse suffered by survivors of abuse by coaches and others that led to the Debtor’s chapter 11 filing. See CNN Wire, *Controversial meme costs Olympian her role with USA Gymnastics*, June 12, 2019 (<https://wgno.com/news/nationalworld-news/controversial-meme-costs-olympian-her-role-with-usa-gymnastics/>) (last visited August 18, 2020). Clearly, Ms. Humphrey was well aware of the Bar Date and the chapter 11 process due to her active participation as an athlete representative to the Debtor. Ms. Humphrey had a responsibility to come forward prior to the Bar Date, but failed to do so.

15. Ms. Humphrey argues that there is no danger of prejudice to the Debtor and the length of delay has no impact on judicial proceedings. [Humphrey Motion at ¶¶ 31-40.] She relies in large part on the provisions of the Debtor’s proposed Plan, which includes a settlement option that allows untimely abuse claims to be treated the same as timely filed claims. [Humphrey Motion at ¶ 35.] However, allowing late claims would be highly prejudicial to the Debtor and other creditors. First, as noted, the Survivors’ Committee asserts that the Plan is not confirmable. Second, any assertion that the Plan’s settlement option will be implemented is highly speculative. Third, the Survivors’ Committee and other survivors engaged in negotiations with the Debtor, its insurers and other parties based on the claims filed prior to the Sexual Abuse Claims Bar Date. While one late claim filed shortly before mediation commences might not affect negotiations, claims filed sixteen months after the Bar Date – and after mediation has concluded – would be highly prejudicial. There is also a risk of opening the floodgates to additional claims if any late claims are treated as timely at this late stage of the case, there is risk that additional survivors may come forward at this time. Based on negotiations, the Survivors’ Committee believes that allowing additional claims will reduce amounts available to pay survivors who filed timely claims prior to the start of mediation.³

³ The Survivors’ Committee notes that Ms. Humphrey appears to fall squarely within the definition of a *Future Claimant* pursuant to the *Order Authorizing Appointment of Future Claimants’ Representative and Appointing Fred C. Caruso as Future Claimants’ Representative* [Doc 516], which provides that a Future Claimant “is a Person who (a) held a Sexual Abuse Claim against the Debtor as of the Sexual Abuse Claims Bar Date and (b) meets one of the following criteria:...(ii) as of March 1, 2019, the statute of limitations for such Person was tolled under applicable state law...” *Id.* at ¶ 2. Given Ms. Humphrey’s assertion that she has viable claims under Virginia law, she should be able to avail herself of relief provided for Future Claimants. [Humphrey Motion at ¶¶ 24-26.]

C. Doe JJ's Motion Must Be Denied.

16. Doe JJ asserts that she lived in Michigan and was unaware of the Bar Date because she did not receive direct notice of the Bar Date. However, Doe JJ does not assert any facts to support an assertion that she was a known creditor of the Debtor entitled to direct notice. Rather, as an unknown creditor, she is entitled to constructive notice. The Debtor provided ample constructive notice through both general and specialized media pursuant to the Bar Date Order. Such notice is sufficient, and thus Doe JJ should have filed a timely claim.

CONCLUSION

17. The Sexual Abuse Survivors' Committee respectfully requests that the Court deny the Motions.

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

Dated: August 19, 2020

/s/James I. Stang

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2020, a copy of the foregoing *The Additional Tort Claimants Committee of Sexual Abuse Survivors' Consolidated Objection to Motions to File Claim After Bar Date* 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 August 19, 2020, a copy of the foregoing *The Additional Tort Claimants Committee of Sexual Abuse Survivors' Consolidated Objection to Motions to File Claim After Bar Date* was served via electronic mail to the following:

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