

**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 SIXTH MOTION FOR ORDER EXTENDING PERIOD WITHIN WHICH
IT MAY REMOVE STATE COURT ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND
RULE 9027 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**”), hereby moves (the “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to section 1452 of title 28 of the United States Code (the “**Judicial Code**”) and Rules 9006(b) and 9027 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), further extending the periods set forth in Bankruptcy Rule 9027(a) during which the Debtor may seek to remove actions to federal court under section 1452 of the Judicial Code and Bankruptcy Rule 9027 through and including December 31, 2020, without prejudice to the Debtor’s right to seek further extensions. In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION

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 the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C.

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.

§§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are section 1452 of the Judicial Code and Bankruptcy Rules 9006(b) and 9027.

BACKGROUND

2. On December 5, 2018, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 105-1532 (the “**Bankruptcy Code**”).

3. The Debtor remains in possession of its property and continues to operate and maintain its organization as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

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

5. The Court previously extended the period within which the Debtor may remove actions to federal court under Bankruptcy Rule 9027. (*See* Dkts. 293, 512, 814, 900, 1075.) That deadline now expires on September 28, 2020 (the “**Current Removal Deadline**”). (Dkt. 1075 ¶ 2.)

RELIEF REQUESTED

6. By this Motion, the Debtor seeks the entry of an order extending the time within which the Debtor may file notices of removal with respect to any proceedings that are eligible for removal under section 1452 of the Judicial Code, through and including December 31, 2020 (the “**Proposed Removal Deadline**”). The Debtor requests that the Proposed Removal Deadline apply to all removal actions specified in Bankruptcy Rules 9027(a)(2) and (3), including but not limited to those set forth in Exhibit B attached hereto, and that the Court grant the relief requested herein without prejudice to the Debtor’s right to seek further extensions of the period within which it may file notices of removal under Bankruptcy Rule 9027.

BASIS FOR REQUESTED RELIEF

7. Section 1452 of the Judicial Code provides for the removal of pending civil claims pursuant to which the district courts have jurisdiction under section 1334 of the Judicial Code.

Section 1452 provides in pertinent part as follows:

- (a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise. . . .

28 U.S.C. § 1452.

8. Bankruptcy Rule 9027 establishes the deadline for filing notices of removal of claims or causes of action. Bankruptcy Rule 9027(a)(2) provides in pertinent part as follows:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed [in the bankruptcy court] only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

9. Bankruptcy Rule 9006(b)(1) provides that the Court can extend unexpired time periods, including the removal period in Bankruptcy Rule 9027, without notice, upon a showing of cause:

[W]hen 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 . . . 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....

Fed. R. Bankr. P. 9006(b)(1).

10. It is well settled that this Court is authorized to extend the removal periods provided under Bankruptcy Rule 9027. *See e.g., In re hhgregg, Inc.*, No. 17-01302-RLM-11, Dkt. 130 (Bankr. S.D. Ind. Mar. 13, 2017) (ordering extension of removal periods); *In re Lauth Investment Properties LLC*, No. 09-06065-BHL-11, Dkt. 418 (Bankr. S.D. Ind. Aug. 24, 2009) (same); *see also Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W.Va. 2000) (explaining that Bankruptcy Rule 9006(b) allows a court to enlarge the time period for removing actions under Bankruptcy Rule 9027(a)(3)); *In re Lawrence*, 233 B.R. 248, 253-54 (N.D.N.Y. 1999) (stating that Bankruptcy Rule 9006 can be used to extend the time for removal of state court litigation to federal court); *Jandous Elec. Constr. Corp. v. City of New York (In re Jandous Elec. Constr. Corp.)*, 106 B.R. 48, 50 (Bankr. S.D.N.Y. 1989) (stating that the removal period may be extended under Bankruptcy Rule 9006).

11. Here, cause exists to extend the Current Removal Deadline because matters that will contribute to the resolution of this chapter 11 case will not be resolved prior to the Current Removal Deadline. Over the summer, the Debtor worked diligently to advance the settlement negotiations between itself, the Survivors' Committee, the U.S. Olympic and Paralympic Committee (the "USOPC"), and the insurers for the Debtor and the USOPC. Importantly, the

Debtor spent significant time preparing for and participating in the mediation session that occurred in August. While that mediation session did not produce a settlement, the Debtor and the Survivors' Committee thereafter jointly requested that the Court conduct an additional settlement conference. (*See* Dkt. 1230.) On September 2, 2020, the Court directed the Debtor, the Survivors' Committee, the USOPC, and the respective insurers for the Debtor and the USOPC to participate in a settlement conference (the "**Settlement Conference**") before the Honorable James M. Carr. (*See* Dkt. 1262 ¶ 2.)

12. The parties are currently finalizing the logistics for the Settlement Conference and the Debtor anticipates that preparing its Settlement Conference presentation will demand a significant investment of resources. In addition, the Debtor continues to revise its proposed plan of reorganization and disclosure statement. The Debtor also continues to prosecute in this Court, the District Court, and the Seventh Circuit certain insurance coverage disputes with the goal of increasing the amount of insurance proceeds available for a settlement fund. These matters will not conclude prior to the Current Removal Deadline.

13. The Debtor therefore requests additional time to evaluate whether removal of any pending litigation is appropriate in light of the significant amount of resources and time the Debtor has had to devote to other complex matters in this case—including, most importantly, the Debtor's continued negotiations with the Survivors' Committee, the USOPC, the insurance carriers, and other parties in interest; its preparation for and participation in the August mediation session and the upcoming Settlement Conference; its continued revisions to the plan and disclosure statement; and its prosecution of the insurance coverage disputes in multiple fora. It is not an effective use of any party's resources for the Debtor to remove lawsuits before determining how they might be treated under a potential settlement and revised plan.

14. Critically, most of the pending litigation that is eligible for removal involves sexual abuse claims. Their resolution turns on the outcome of the Settlement Conference, plan negotiations, and insurance coverage litigation. It would be an inefficient use of resources, and would risk derailing sensitive and ongoing negotiations, if the Debtor is required to remove pre-petition litigation before the Settlement Conference occurs, the Debtor files amended versions of its plan and disclosure statement, and the insurance coverage disputes are finally resolved.

15. Further, pursuant to the *Agreed Stipulation And Order Pursuant To 11 U.S.C. §105 Enjoining The Continued Prosecution Of Certain Pre-Petition Lawsuits* [Dkt. 426], the plaintiffs in pending litigation previously agreed to an extension of the deadline to remove actions to federal court in exchange for the Debtor's agreement not to remove any pending pre-petition lawsuits asserting claims arising from sexual abuse.

16. Accordingly, the Debtor seeks an extension of the Current Removal Deadline to protect its right to remove those civil actions for which removal may be appropriate. The Proposed Removal Deadline will afford the Debtor additional time to determine whether to remove any pending civil action and will ensure that the Debtor does not forfeit valuable rights under section 1452 of the Judicial Code. Critically, the rights of other parties to the relevant litigation will not be prejudiced by the extension, because any party to any action ultimately removed may seek to have it remanded to the original court pursuant to section 1452(b) of the Judicial Code.

17. The Debtor also requests that the order approving this Motion be made effective as of September 27, 2020. As noted above, Bankruptcy Rule 9006 allows the extension of any time period when a request to extend "is made before the expiration of the period originally prescribed or as extended by a previous order." Fed. R. Bankr. P. 9006(b)(1). Here, the Debtor has moved to extend the Removal Deadline before it expires on September 28, 2020. To maintain the *status quo*

as agreed by the parties and to ensure that the Debtor does not lose valuable rights to remove any actions for the reasons given above, the Debtor requests that the Court grant the requested relief effective as of September 27, 2020—*i.e.*, the date immediately prior to the current expiration of the Removal Deadline.

18. The Debtor finally requests that the order approving this Motion be without prejudice to (a) any position the Debtor may take regarding whether section 362 of the Bankruptcy Code applies to stay any given civil action pending against the Debtor and (b) the right of the Debtor to seek further extensions of the period in which it may remove civil actions pursuant to Bankruptcy Rule 9027.

19. Accordingly, the Debtor submits that the relief requested herein is in the best interests of its estate and respectfully requests an extension of time by which the Debtor may file notices of removal through and including December 31, 2020 with respect to any proceedings that are eligible for removal under section 1452 of the Judicial Code.

NOTICE

20. The Debtor will provide notice of this Motion in accordance with the *Order Granting Debtor's Motion For Order Establishing Certain Notice, Case Management, And Administrative Procedures* [Dkt. 213]. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order substantially in the form attached as Exhibit A, granting the relief requested herein and granting all other just and proper relief.

Dated: September 21, 2020

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Catherine Steege

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EXHIBIT A

Proposed Order

**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

**SIXTH ORDER EXTENDING THE PERIOD WITHIN WHICH
THE DEBTOR MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452
AND RULE 9027 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

This matter came before the Court on the *Debtor's Sixth Motion For Order Extending Period Within Which It May Remove State Court Actions Pursuant To 28 U.S.C. § 1452 And Rule 9027 Of The Federal Rules Of Bankruptcy Procedure* (the “**Motion**”) filed by USA Gymnastics

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(the “**Debtor**”), for an order pursuant to section 1452 of title 28 of the United States Code and Rules 9006(b) and 9027 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and the Court finds that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and creditors, and all parties in interest; and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Motion should be GRANTED:

1. The Motion is granted as set forth herein.
2. The time period provided under Bankruptcy Rule 9027 within which the Debtor may file notices of removal of any and all civil actions, including but not limited to those actions listed on Exhibit B to the Motion, is extended to and including December 31, 2020, to the extent that the time period for filing such notices of removal expires on or before such date.
3. This Order shall be effective as of September 27, 2020.
4. This Order shall be without prejudice to (a) any position the Debtor may take regarding whether section 362 of the Bankruptcy Code applies to stay any given civil action pending against the Debtor and (b) the Debtor’s right to seek from this Court further extensions of the period within which the Debtor may file notices of removal under Bankruptcy Rule 9027.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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EXHIBIT B

Schedule of Litigation

Case Title	Court	Case Number
All Olympia Gymnastic Center Inc., et al v. Lawrence Nassar, et al.	Superior Court of the State of California County of Los Angeles, Central District	18STCV02484
Baker v. Larry Nassar, et al.	Superior Court of the State of California County of Santa Clara	18-cv-338090
BMK Training Facilities, Ltd, et al v. USA Gymnastics, et al.	State of Texas Walker County, 278th Judicial District	1828723
Davis & Kanaly v. Edward Gerald Spinelli, et al.	State of Oklahoma District Court of Oklahoma County	CJ-2018-3900
Efrain Gonzalez Jr., v. USA Gymnastics, Inc.	State of Texas Harris County, 127th Judicial District	2018-83861
Jane AJ Doe v. Doe 1, et al	Superior Court of the State of California County of Orange	30-2017-00899357
Jane Doe v. International Federation of Gymnastics, et al.	Circuit Court of Cook County Illinois County Department, Law Division	2018-L-008869
Jane ED Doe v. Doe 1, et al.	Superior Court of the State of California County of Los Angeles, Central District	18-stcv-04744
Jane EL Doe v. Doe 1, et al	Superior Court of the State of California County of Orange, Civil Complex Center	BC706935
Jordan Schwikert-Cobbs v. Doe 1, Doe 2, et al	Superior Court of the State of California County of Los Angeles, Central District	18STCV02707
Jane KR Doe v. United States Olympic Committee, et al.	Superior Court of the State of California County of Orange	30-2018-01019592-CU-PO-CJC

Case Title	Court	Case Number
Mihael Anton v. USA Gymnastics	State of Indiana Marion Superior Court, County of Marion	49D02-1802-PL-005398
Richard Carlson v. USA Gymnastics	State of New York Supreme Court, County of Nassau	613294-2018
Sabrina Vega v. USA Gymnastics, et al	State of Texas Walker County, 278th Judicial District	1828737
Tasha Schwikert-Warren v. Doe 1, et al	Superior Court of the State of California County of Los Angeles, Central District	18STCV02706
Tiffany Thomas Lopez v. Larry Nassar, et al.	Superior Court of the State of California County of Los Angeles	BC644417