

**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

**REORGANIZED DEBTOR'S MOTION FOR
ENTRY OF FINAL DECREE CLOSING THE CASE**

USA Gymnastics (the “**Reorganized Debtor**” or “**USAG**”), by and through its undersigned counsel, hereby moves this Court (the “**Motion**”), pursuant to 11 U.S.C. §§ 350 and 554, Fed. R. Bankr. P. 3022 and Rule 3022-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Southern District of Indiana (“**Local Rules**”), for entry of a final decree substantially in the form attached hereto as Exhibit A, closing the above-captioned chapter 11 case (the “**Chapter 11 Case**”). In support of the Motion, the Reorganized Debtor respectfully states as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief sought herein is 11 U.S.C. §§ 105(a), 350 and 554 of the Bankruptcy Code, Fed. R. Bankr. P. 3022, and Local Rule 3022-1.

¹ The last four digits of the Reorganized Debtor's federal tax identification number are 7871. The location of the Reorganized Debtor's principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.

Background

1. On December 5, 2018 (the “**Petition Date**”), USAG filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. From the Petition Date through the effective date of USAG’s chapter 11 plan, USAG remained in possession of its property and continued to operate and maintain its organization as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request was made for the appointment of a trustee or examiner in this Chapter 11 Case.

2. On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee of Sexual Abuse Survivors (the “**Survivors’ Committee**”), comprised of nine survivors asserting sexual abuse claims against USAG.

3. On December 16, 2021, the Court entered its *Findings Of Fact, Conclusions Of Law, And Order* [Dkt. 1776] (the “**Confirmation Order**”) confirming the *Modified Third Amended Joint Chapter 11 Plan Of Reorganization Proposed By USA Gymnastics And The Additional Tort Claimants Committee Of Sexual Abuse Survivors* [Dkt. 1764] (the “**Plan**”).² The Plan implements a global settlement between USAG, the Survivors’ Committee, insurers for USAG and the United States Olympic and Paralympic Committee (“**USOPC**”), and other parties to fund a Trust to make distributions to survivors asserting Abuse Claims. (Plan §§ 3.2, 9.2.2).

4. Section 17.1 of the Plan conditioned the effectiveness of the Plan on satisfaction of the following conditions precedent:

- i. the Bankruptcy Court shall have entered the Confirmation Order on or before December 31, 2021, in form and substance reasonably acceptable to the Reorganized Debtor, the Survivors’ Committee, the Participating Parties, and the Settling Insurers;

² Capitalized terms used herein but not defined shall have the meanings given to them in the Plan.

- ii. the Confirmation Order shall have become a Final Order, unless the Debtor, the Survivors' Committee, and the Settling Insurers, agree to waive such requirement;
- iii. the Settlement Trustee, the FCR, and the Reorganized Debtor have signed the Trust Agreement;
- iv. the Settling Insurers have made their Agreed CGL Insurer Payments to the Debtor and the transfers to the Trust contemplated in Section 9.2.2 of the Plan have been made to the Trust;
- v. the Bankruptcy Court has approved the USOPC Loan, and the Debtor has delivered the promissory note evidencing the USOPC Loan to the USOPC;
- vi. USOPC has made the USOPC Out-of-Pocket Contribution;
- vii. USAG has made the USAG Contribution;
- viii. the Bankruptcy Court has approved, by Final Order (unless the Debtor, the Survivors' Committee, and the Settling Insurers, agree to waive such requirement for a Final Order), the Buy-Back Agreement of each Settling Insurer in form and substance reasonably acceptable to each Settling Insurer, the Reorganized Debtor, and the Survivors' Committee; and
- ix. the Settling Insurers have been dismissed from the Insurance Coverage Adversary Proceeding with prejudice, with each party to bear its own costs.

(Id. § 17.1).

5. On February 3, 2022, the Court entered an Order authorizing the Settlement Trustee “to begin the process of allocating the expected funds to be paid to the Trust to Abuse Claimants as contemplated by the Plan and Trust Agreement . . . and to perform all actions necessary to complete the allocation pending the occurrence of the Effective Date.” [Dkt. 1836].

6. On April 25, 2022, the Reorganized Debtor filed a notice announcing that “all conditions precedent to the Effective Date set forth in Section 17.1 of the Plan ha[d] been satisfied or waived pursuant to Section 17.2 of the Plan, such that the Plan was substantially

consummated, and the Effective Date occurred, on April 25, 2022.” [Dkt. 1888] (the “**Effective Date Notice**”).

7. On the Plan’s Effective Date, in accordance with sections 1141 and 1123(a)(5) of the Bankruptcy Code, paragraph 18.2 of the Plan, and paragraph 7 of the Confirmation Order, the Revested Assets (as defined in the Plan) vested in the Reorganized Debtor, and the Reorganized Debtor has operated its organization without court oversight since that time.

8. Section 21.6 of the Plan requires the Reorganized Debtor to, “as soon as practicable after the Effective Date, when the Reorganized Debtor deems appropriate, . . . seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules[.]” (Plan, § 21.6).

9. On February 15, 2019, the Court entered its *Order Approving Debtor’s Motion for Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [Dkt. 301] (the “**Bar Date Order**”) which fixed April 29, 2019 as the deadline for creditors other than governmental units to file proofs of claim. As of the filing of this Motion, there are no pending objections to any proof of claim filed in the Chapter 11 Case. On July 18, 2022, the United States Court of Appeals for the Seventh Circuit affirmed this Court’s Order denying a creditor’s request to have an untimely claim treated as timely. Thus, there are no disputes pending involving claims against the estate.

10. Pursuant to section 4.1 of the Plan, any requests for allowance and payment of administrative expense claims were required to be filed and served within thirty days after the filing of the Effective Date notice. Pursuant to section 4.2 of the Plan, final fee applications for retained professionals were required to be filed and served within forty-five days after the filing

of the Effective Date notice. As of the filing of this Motion, there are no pending requests for allowance and payment of an administrative expense claim, nor any pending fee applications.

11. The Reorganized Debtor is informed and believes that following the Effective Date, the Settlement Trustee began making distributions to the holders of Sexual Abuse Claims.

12. Under section 7.1.2 of the Plan, “the Holders of Allowed General Unsecured Claims will receive payment from the Reorganized Debtor of 80% of their Allowed General Unsecured Claims, payable in equal installments on August 15, 2022, August 15, 2023, and August 15, 2024” (or earlier at the Reorganized Debtor’s discretion). The Debtor will make the payments to the unsecured creditors when those payments due.

13. On February 1, 2019, USAG commenced an adversary case seeking declaratory judgment against certain of the Debtor’s insurance carriers. (*See* Adv. No. 19-50012 (the “**Insurance Lawsuit**”). As of the filing of this Motion, USAG has settled with each of the defendants in the Insurance Lawsuit except for Liberty Insurance Underwriters, Inc. (“**LIU**”) The litigation against LIU continues in this Court.

14. With the exception the remaining disputes involving LIU in the Insurance Lawsuit, all other adversary proceedings have been resolved, all claims against the estate have been liquidated, and the Trust’s and estate’s assets have been fully administered. Distributions and any existing or further objections to Claims will be administered by the Reorganized Debtor and/or Settlement Trustee (as applicable) consistent with the terms of the Plan, regardless of whether the Chapter 11 Case is closed. Closing the Chapter 11 Case will have no impact on the resolution of the Insurance Lawsuit, distributions or other legal entitlements under the Plan, or the substantive rights of any party in interest.

15. The Debtor has consulted with the United States Trustee's office and they have no objection to the Court closing the Chapter 11 Case notwithstanding the continued litigation in the Insurance Adversary Proceeding against LIU.

Relief Requested

16. The Reorganized Debtor respectfully requests entry of an order substantially in the form submitted with this Motion, consistent with the Plan and Confirmation Order, issuing a final decree closing this Chapter 11 case.

Basis for Relief Requested

17. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Rule 3022 of the Bankruptcy Rules, which implements section 350 of the Bankruptcy Code, further provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bank. P. 3022. In addition, pursuant to Local Rule 3022-1, an application seeking entry of a final decree “shall include the percentage paid or proposed to be paid to general unsecured creditors.”

18. The term “fully administered” is not defined by either the Bankruptcy Code or the Bankruptcy Rules. The Notes of the Advisory Committee on the 1991 amendments in respect of Bankruptcy Rule 3022 (the “Advisory Notes”) note that “[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed.” The Advisory Notes set forth certain factors that should be considered when evaluating whether a case has been fully administered. These factors are:

- (a) whether the order confirming the plan has become final;
- (b) whether deposits required by the plan have been transferred;

- (c) whether the property proposed by the plan to be transferred has been transferred;
- (d) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property dealt with by the plan;
- (e) whether payments under the plan have commenced; and
- (f) whether all motions, contested matters and adversary proceedings have been finally resolved.

See In re JMP-NewCor International, Inc., 225 B.R. 462, 465 (Bankr. N.D. Ill. 1998) (citing Advisory Notes); *accord In re AOG Ent., Inc.*, 569 B.R. 563, 584–85 (Bankr. S.D.N.Y. 2017) (same).

19. Moreover, when the only remaining disputes before the Court are limited to an adversary proceeding, retaining jurisdiction over the adversary proceeding as part of a final decree closing the underlying chapter 11 case constitutes “a reasonable compromise between the policy against delaying the closing of cases and the need for the [c]ourt to adjudicate pending matters ancillary to the administration of the bankruptcy estate.” *JMP-NewCor*, 225 B.R. at 465.

20. Here, as of the filing of the Motion, (a) the Confirmation Order has been entered and has become final; (b) the Plan has become effective; (c) all payments from third parties required under the Plan have been received; (d) all transfers into the Settlement Trust provided for in the Plan have been completed; (e) the Revested Assets have vested in the Reorganized Debtor, which has assumed the management of its organization; (f) the Settlement Trustee has commenced making distributions to the creditors holding Sexual Abuse Claims and the Debtor has paid outstanding administrative expense claims and will shortly commence distributions to general unsecured creditors; and (g) with the exception of the disputes remaining against LIU, the sole remaining defendant in the Insurance Lawsuit, there are no remaining contested matters

or disputes involving the Reorganized Debtor or the estate, and all material claims, liabilities, and issues have been fully resolved.

21. The Reorganized Debtor submits that the relevant factors support a finding that the estate has been fully administered within the meaning of section 350(a) of the Bankruptcy Code, the Plan has been substantially consummated, and the entry of a Final Decree is appropriate at this time. Accordingly, the Reorganized Debtor requests that the Court enter a Final Decree pursuant to section 350(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3022 closing this case.

22. Although the Insurance Lawsuit remains pending against the sole remaining defendant, LIU, the remaining disputes in that matter can be adjudicated without keeping the Chapter 11 Case open. *See, e.g., JMP-Newcor*, 225 B.R. at 465 (“The only matters remaining are certain disbursements to be made under the plan and an adversary proceeding. The Court does not believe these matters warrant keeping this case open.”); *see also In re 24 Hour Fitness Worldwide, Inc.*, 2022 WL 605661, at *2 (D. Del. Jan. 4, 2022) (noting that bankruptcy court had entered final decree notwithstanding that an adversary proceeding seeking declaratory judgment against the debtor’s insurance carrier was still pending).

23. Moreover, in the unlikely event there is a need to reopen the Chapter 11 Case, the Reorganized Debtor or a party in interest will have the ability to do so in order to address specific matters that may arise. Keeping the Chapter 11 Case open at this point serves no purpose, and entry of the Final Decree will allow the Reorganized Debtor to avoid incurring unnecessary quarterly United States Trustee fees.

Notice

24. 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 Trustee respectfully requests that this Court enter an order, substantially in the form of the Proposed Order filed herewith, issuing a final decree closing the Chapter 11 case; and granting such other and further relief as the Court deems equitable and just.

Dated: July 21, 2022

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

FINAL DECREE CLOSING CHAPTER 11 CASE

THIS CAUSE COMING TO BE HEARD upon the Reorganized Debtor's Motion for Entry of Final Decree (the "**Motion**") (capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion) filed by USA Gymnastics, as Reorganized Debtor in the above-captioned chapter 11 case (the "**Chapter 11 Case**"); due and sufficient notice of the Motion having been given under the circumstances and no other or further notice

¹ The last four digits of the Reorganized Debtor's federal tax identification number are 7871. The location of the Reorganized Debtor's principal office is 1099 N. Meridian St., Suite 800, Indianapolis, Indiana 46204.

being necessary; and the Court having jurisdiction over this core proceeding and being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, the Bankruptcy Court hereby enters this Final Decree and orders this Chapter 11 Case closed. The adversary proceeding docketed as *USA Gymnastics v. Liberty Insurance Underwriters, Inc.*, Adv. No. 19-50012, shall remain open.
3. Entry of this Final Decree is without prejudice to the rights of any party in interest to seek to reopen these cases for good cause shown pursuant to section 350(b) of the Bankruptcy Code.
4. To the extent not already paid, the fees required to be paid to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) shall be paid as soon as reasonably practicable after the date of the entry of this order.
5. The Court shall retain (a) jurisdiction to enforce, by injunctive relief or otherwise, the Confirmation Order, and any other orders entered in this Chapter 11 Case, and the obligations created under the Plan and the Plan Documents; (b) all other jurisdiction and authority granted to it under the Plan and the Plan Documents; and (c) jurisdiction over any pending adversary proceeding brought in connection with the Chapter 11 Case.

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