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Dalton Maddox

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Getting Out of the Woods:

Boy Scouts Bankruptcy

By:

Dalton Maddox

&

Savannah McMillan



BOY SCOUTS
OF AMERICA®

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Cast of Characters

The Debtors

1. Boy Scouts of America – (“BSA”)
2. *Delaware BSA, LLC* – A single member LLC of which BSA is the only member that has pledged substantially all of its assets to secure BSA’s obligations under the 2019 Revolving Credit Facility (RCF) Agreement,¹ 2020 Prepetition Security Agreement,² and the 2010 and 2012 Bond Agreements.³
3. *Arrow WV, Inc.* – A non-stock, non-profit organization under the laws of West Virginia that was formed in 2009 for the development and formation of the Summit Bechtel Reserve. Arrow owns these properties and leases them to the BSA. Arrow is governed by a separate board of directors.

Related Non-Debtors

4. *BSA Asset Management, LLC and BSA Commingled Endowment Fund, LP* – (“BSAAM”), a single member LLC of which BSA is the only member that manages the BSA’s and certain Local Councils’ investments through the BSA Commingled Endowment Fund, LP. BSAAM is also the settlor of the BSA Endowment Master Trust.
5. *BSA Endowment Master Trust* – A non-profit Delaware trust organized exclusively for the purpose of investing funds contributed to the Partnership by both the BSA and participating Local Councils. Global Trust Co. is the trustee of the Master Trust as of the Petition Date. Further, the Master Trust is also a limited partner of the Endowment Fund.

¹ Entered into on March 21, 2019, this agreement matured on March 21, 2021, and under it, BSA owed \$71.5 million with JPMorgan, with Arrow as the guarantor. The Debtors granted JPMorgan a security interest in the Prepetition Collateral. This agreement is secured *pari passu* with other Prepetition Secured Agreements. [Disclosure Agreement 1](#) at 22.

² On February 3, 2020, Delaware BSA pledged its accounts and other property, except to the extent excluded by the Prepetition Security Agreement (2020), as security for the Prepetition Obligations. *Id.* at 23.

³ In 2010 the BSA entered into a Bond Agreement that provided for the issuance of the 2010A Bonds in an aggregate principal amount of \$50,000,000 and Series 2010B Bonds in an aggregate principal amount of \$50,000,000, the proceeds of which were loaned to the BSA. On November 5, 2015, BSA paid off the 2010A Bonds in full. As of Petition Date, the BSA still owes over \$40 million to JPMorgan under the 2010B Bonds. In 2012 the BSA entered into the 2012 Bond Agreement with the Issuer and JPMorgan for an aggregate amount not to exceed \$175 million. The 2012 Bonds were secured *pari passu* in the same collateral as the loans under the 2010 Credit Agreement and the 2010 Bonds. *Id.* at 22.

6. *National Boy Scouts of America Foundation* – (“The Foundation”) A non-stock, non-profit organization formed under the laws of the District of Columbia. The Foundation helps to secure future Scouting by providing support for major gift fundraising efforts and is managed by a separate board of directors.
7. *Learning for Life* – (“LFL”) A non-stock, non-profit organization formed under the laws of the District of Columbia that encourages students to obtain excellence through a research-based curriculum. Additionally, LFL houses the BSA Exploring program.
8. *Atikaki Youth Ventures Inc.* – A non-share capital corporation registered under the laws of Canada that maintains the Manitoba base of the Northern Tier High Adventure Base facility and is governed by a separate board of directors.
9. *Atikokan Youth Ventures Inc.* – A non-share capital corporation registered under the laws of Canada that maintains the Don Rogert Canoe Base of the Northern Tier High Adventure Base facility and is governed by a separate board of directors.
10. *Texas BSA, LLC* – (“Texas BSA”) A non-profit LLC formed under the laws of Texas which, as of Petition Date, is an inactive entity.
11. *NewWorld 19, LLC* – (“NewWorld”) An LLC formed in connection with the 2019 World Jamboree and, as of Petition Date, is an inactive entity. The formation laws of NewWorld are unknown.

Introduction

On February 18, 2020, the Boy Scouts of America (BSA, Boy Scouts, or the Debtor) filed a voluntary petition for Chapter 11 bankruptcy in the U.S. Bankruptcy Court in Delaware.⁴ It was driven to do so because of the numerous lawsuits the organization was facing alleging abuse by adult members against youth members dating as far back as the 1950's. The chapter 11 case is still on-going with the creditors set to approve the final plan sometime during the summer of 2022, under which the BSA hopes to begin the long process of recovering both its size and image throughout the United States and the world.

BSA is headquartered in Irving, TX and employs approximately 1,650 people who work across the United States and its territories.⁵ Funding for BSA comes from membership fees, High Adventure Base (HAB) fees, donor contributions, legacies and bequests, corporate sponsorships, grants from foundations, and from Scout Shop sales both online and in local councils.⁶ In 2019 BSA claimed total gross revenues of \$394 million with 30% coming from sales, 16% from membership fees, 15% from the HABs, and the remaining portion coming from investments, contributions, and event fees.⁷

BSA has announced that its two goals after what they hope will be a successful reorganization are to (1) equitably compensate all victims and (2) preserve the mission of the organization, which goes back to its congressional charter.⁸ The purpose of this paper is to describe the history of the BSA, what led to filing for bankruptcy, and what the reorganization plan for the future of the organization looks like.

⁴ See, generally, [BSA Press Release](#)

⁵ [Disclosure Statement 1](#) at 12-13

⁶ *Id.* at 13

⁷ *Id.*

⁸ *Supra* footnote 1

History of the Organization

Foundation

In 1908 Lord Robert Baden-Powell came back to England from his military service in Africa to discover that many young men and boys wanted or needed outdoor experience and training to be prepared for what was then the modern world. After the Scouting program in England began gaining global recognition, the Boy Scouts of America was founded on February 8th, 1910, by Ernest Thomas Seton, Daniel Carter Beard, William D. Boyce, and James E. West.⁹ Shortly thereafter, on June 15, 1916 President Wilson signed the law that granted the BSA federal incorporation, which protected both the insignia and name. The BSA was also granted its rare Title 36 congressional charter. This charter has only been given to a highly limited number of organizations throughout the history of the United States and is only given to those who Congress believes represent a national and patriotic mission and image.¹⁰

Throughout the next few decades the BSA focused on expanding its programs to encompass both younger and older youth, introducing both Cub Scouts and the Senior Scout division which included Sea Scouts, Explorer Scouts (later changed to Exploring), and Rover Scouts.¹¹ Around this same time the Boy Scouts wanted to broaden the horizons of what older Scouts could accomplish within the organization and, in 1923, BSA acquired its first HAB: Northern Tier, or Canoe Base. This first base is still active and is located on the boundary waters between Minnesota and Canada.¹² Shortly after, in 1938, the Philmont Scout Ranch, located in New Mexico, was gifted to the Boy Scouts by Waite Phillips.¹³ After these two bases were

⁹[BSA Founders](#). Seton was an American author and naturalist who wrote over 50 books all centered around the American wilderness. He was also selected to be the first Chief Scout of the BSA in 1910. [Seaton Info](#) ; Beard was an American illustrator who was passionate about young people having an outdoor experience. He also wrote the American Boy's Handy Book and founded the Sons of Daniel Boone which was later incorporated into the Boy Scouts of America in 1910. [Beard Info](#); Boyce incorporated the BSA after visiting London and meeting Scouts firsthand and being inspired by their helpfulness to a complete stranger. West was a successful attorney who became the first Chief Scout Executive in 1911 and developed the BSA into the largest youth-serving organization in the world. [Boyce & West Info](#)

¹⁰ [Bryan on Scouting](#) .

¹¹ [Venturing History](#)

¹² [Disclosure Statement 1](#) at 15. For more information about Northern Tier, please see this citation or [Northern Tier](#)

¹³ [Disclosure Statement 1](#) at 15; Personal interview: April McMillan: Former Director of Programs and Pilot, BSA. Feb 17. For more information about Philmont, please see this citation or [Philmont](#)

acquired by the BSA, the organization remained steady with relatively few changes for the next few decades.

Over time, Exploring became more career focused, with large numbers of units focusing on emergency responder job paths such as police, fire, and emergency medical technicians (“EMTs”). The first big change to the BSA came in 1971 when Exploring permitted young women full membership within the program and the upper age limit was moved from 20 to 21.¹⁴ Then, in 1980 another change was welcomed when the Florida Sea Base was commissioned by the BSA to become its third HAB.¹⁵ The final change in this set came in 1998 when the Venturing program was created to recapture the group of young adults who wanted to participate in Scouting without having to be around the younger boys or focus on a career path in Exploring.¹⁶

During this time the Boy Scouts were facing their first round of major criticism for denying membership to homosexual troop leaders.¹⁷ The landmark Supreme Court case *Boy Scouts of America v. Dale*¹⁸ permitted private organizations, such as the BSA, to discriminate upon the basis of sexual orientation under the First Amendment right of assembly.¹⁹ There, a Scout leader in New Jersey sued the BSA after being removed from his volunteer position in the troop after publicly coming out as homosexual. He claimed that this removal violated a New Jersey public accommodation law that said that places of public accommodation could not discriminate on the basis of sexual orientation. Since BSA troops generally meet in such places, Mr. Dale claimed that this prevented the organization from discriminating against gay men.²⁰ In a highly controversial opinion, the Supreme Court of the United States held that the Boy Scouts

¹⁴ Personal interview: April McMillan: Former Director of Programs and Pilot, BSA. Feb 17.

¹⁵ [Disclosure Statement 1](#) at 16. For more information about Sea Base, please see this citation or [Sea Base](#)

¹⁶ *Supra* footnote 8

¹⁷ [Britannica of BSA history](#)

¹⁸ *See, generally, BSA v. Dale*, 528 U.S. 1109 (2000).

¹⁹ *Id.*

²⁰ *Id.*

did, in fact, have the right to discriminate against any group or groups of people that they deemed inappropriate to be part of the organization. While the Boy Scouts won the case in SCOTUS, they did not necessarily win in the court of public opinion.

In the years after the suit, BSA focused on revitalizing its image and showing the nation that it was a modern and accepting program. By 2013, the National Executive Board voted to allow homosexual youth to be open about their sexuality within the organization. In this same year, the BSA opened their fourth and final High Adventure Base, the Summit Bechtel Reserve located in West Virginia. This camp was designed to not only be a premier summer camp for Scouts, but also to be the permanent host for all National and World Jamborees hosted by BSA.²¹ The changes kept coming at a quick pace as the board voted to accept homosexual adults in 2015 and trans males in 2017.²² While many thought this might be a stopping point for the Boy Scouts, the organization continued with the changes and modernization, causing celebration and outrage alike from both its members and the general public.

The trend of continued membership expansion furthered in 2018 when female youth were allowed to join Cub Scout packs across the nation, and, in 2019, female youth were allowed to join troops and earn the Eagle Scout Rank. When this change occurred the iconic Boy Scouts program was changed to Scouts BSA with the organization retaining the “Boy Scouts of America” name.²³ Cub Scout dens, subsets of packs, remain single gender while the packs themselves may be either single gender or “family,” meaning co-ed. This program is designed for children aged five to ten years old. Scouts BSA troops, on the other hand, may only be single gendered with youth participants needing to choose either a “girl” troop or a “boy” troop.²⁴ This program is designed to be for youth aged 10 through their 18th birthday. The older youth programs – Venturing, Sea Scouting, and Exploring – remain co-ed with only internal changes to

²¹ [Disclosure Statement 1](#) at 16. For more information about the Summit, please see this citation or [Summit Info](#)

²² Personal Interview: April McMillan: Former Director of Programs and Pilot, BSA. Feb 17.

²³ [Disclosure Statement 1](#) at 12

²⁴ Personal interview: April McMillan: Former Director of Programs and Pilot, BSA. Feb 17.

their respective programs and structures.²⁵ These programs are designed for youth aged 13 and graduated 8th grade, or 14, up to their 21st birthday.

During this time Scouting was also branching out into the world of Science, Technology, Engineering, and Mathematics (“STEM”) with the beta launch of STEM Scouts in 2014 which then was voted in as a full program shortly after. This program covers the greatest age range in Scouting beginning in third grade and going through the youth’s senior year of high school.²⁶ STEM Scouts was designed to help broaden the coverage of the organization and show that Scouting could be more than just hiking and camping. Over the years since its founding, STEM Scouts has grown to be an accepted part of the national program in all councils in the United States.

In 2019 the Boy Scouts made the devastating official disclosure that hundreds of Scouts from the 1950’s through today were alleging having been sexually assaulted, harassed, or molested by their Scoutmasters or other adults in the program and were suing the organization. Soon it was discovered that the “hundreds” were actually thousands, with over 80,000 current and former Scouts coming forward with allegations related to their time as youth in the program. This tidal wave of litigants took the BSA from what would have been a painful, but relatively easy case, into a forced Chapter 11 bankruptcy due to the sheer volume of cases and associated damages.

On February 18, 2020, the BSA filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. Over the last two years the organization has focused on reorganization and survival throughout the expensive process of funding the bankruptcy and the defense of the underlying suits that caused the filing. Throughout its 100+ year history, the BSA has had a rollercoaster of tremendous ups and downs, but it has never been at a more critical juncture in its history.

²⁵ Personal interview: April McMillan: Former Director of Programs and Pilot, BSA. Feb 17.

²⁶ *Id.*

Structure of the Organization

The Boy Scouts has a unique corporate structure which has been redrawn over the course of the bankruptcy. Due to the BSA being a volunteer-led organization, the structure has been constructed with an eye toward what works best for working with volunteers and non-professionals.

Old Structure

The first image below shows the old structure that the BSA maintained until 2021. In this structure the professional and volunteer sides of the organization mirror each other at the national, regional, area, and council levels with many of the professionals who are employed by the organization having volunteer counterparts. While this is not necessarily true for the “background” employees who complete most of the administrative work for the organization, most program and policy professionals have at least one volunteer, if not an entire committee, helping them. Below the council level is where the organization is nearly entirely volunteer level with units being entirely volunteer based.

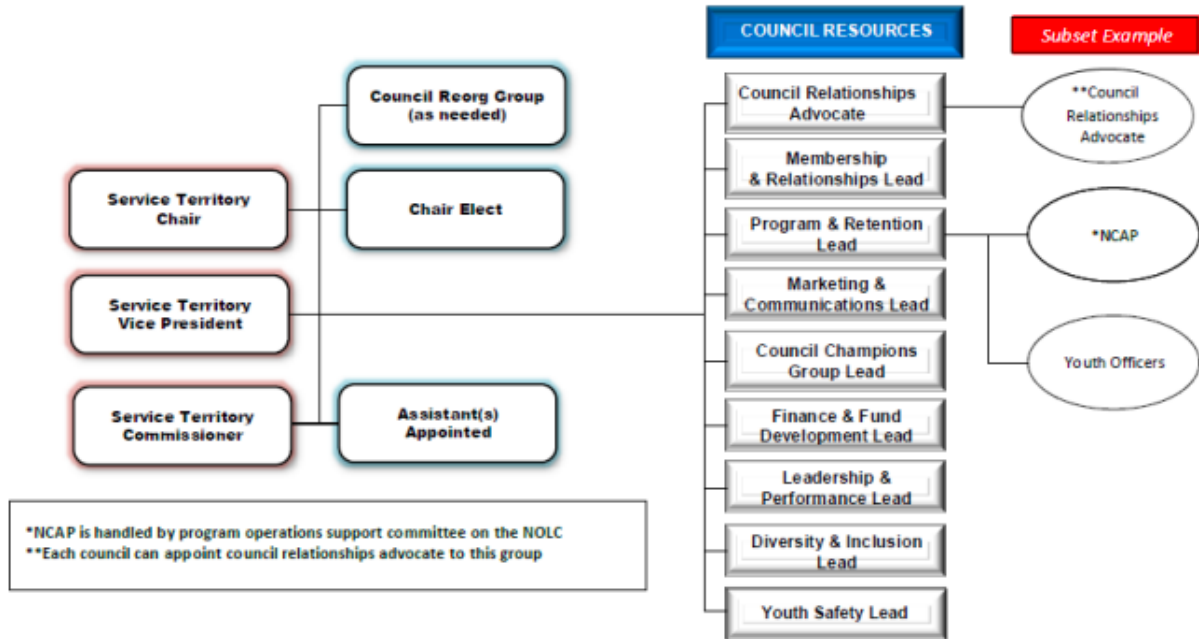


Updated Structure

In May of 2021 the Boy Scouts adopted a new organizational structure. This new structure removed both the areas and regions and replaced them with one level of 16 territories. In doing this the BSA hoped to ease the flow of communication (shown below in the communication flow chart) between National and the councils. This was achieved by removing a level of bureaucracy and breaking the nation down into more manageable sections. The BSA is still maintaining a mirrored professional-volunteer structure at the national, territory, and council levels.

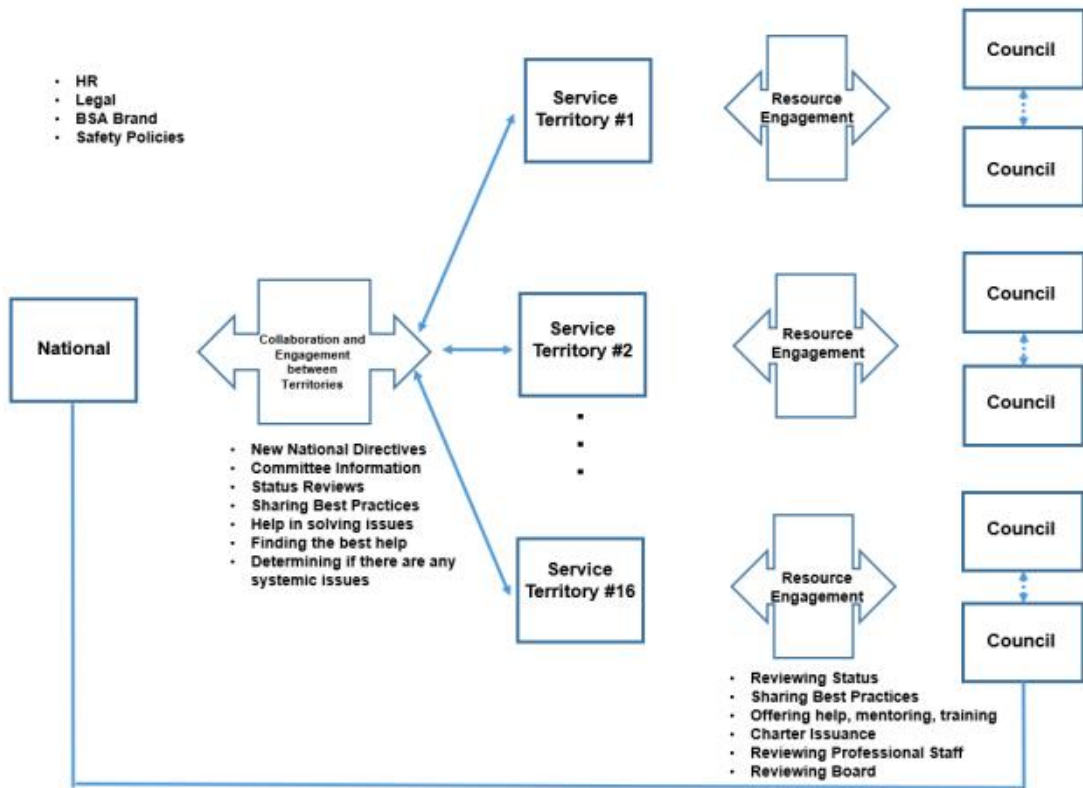


Recommended Strategy National Service Territories (16)



21

COMMUNICATION FLOW



What Led to Chapter 11

Child Sexual Abuse Claims²⁷

Throughout the BSA's existence, especially prior to the past thirty years, there has been an existence of predators that sought to take advantage of children through the organization. These predators victimized an unknown number of children and gave rise to a large number of sexual abuse claims. These actions, along with recent changes to a variety of laws governing sexual abuse claims, has led the BSA and Local Councils to be defendants in a multitude of cases. As of the petition date in the BSA bankruptcy case, the BSA has stated they are aware of approximately 275 pending civil actions, along with an additional 1,400 claims of abuse.²⁸ The number of claims continued to rise after the filing to a staggering 82,000 by the time of the deadline to receive claims in this case.²⁹

This number of historical cases quickly became too expensive for the BSA to be able to handle on a case-to-case basis in separate court actions as a non-profit organization. Chapter 11 bankruptcy was seen as the only solution to allow both for victims to be compensated while still allowing the BSA to maintain the capacity to continue on its mission.³⁰ In short, the BSA sought to use the Chapter 11 process as a collective means of resolving all the victim's claims through the creation of a victim's trust fund and then emerging from Chapter 11 as a viable entity that continues to administer and expand upon its core mission: to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath³¹ and Law.³²

²⁷ [Disclosure Statement 1](#) at 23

²⁸ *Id.* at 24.

²⁹ *See, Generally,* [New York Times Article](#)

³⁰ [Disclosure Statement 1](#) at 24

³¹ [Oath and Law](#)

³² *Id.*

Attempt at Global Resolution Prior to Filing

In 2018, recognizing the rising number of sexual abuse claims, the BSA gathered financial and legal advisors in an early attempt to establish its restructuring plan.³³ Through this meeting, the BSA determined that they would attempt to reach a potential agreement with a critical mass of abuse victims along with other potentially relevant stakeholders. The goal of this agreement was to reach a pre-negotiated Chapter 11 bankruptcy plan in order to foster an expedited and less expensive proceeding than would otherwise be the case.³⁴ This attempt was ineffective as the attorneys representing the abuse victims and the BSA did not find an acceptable middle ground. From this, the organization realized there was no meaningful prospects for a global resolution without moving forward with the bankruptcy filing without any sort of pre-negotiated or pre-packaged plan.³⁵

Breaking News

Due to the large number of cases that began to come forward, CNN quickly picked up the story and covered the BSA's descent into Chapter 11.³⁶ This, along with additional news coverage, led to a wider recognition of the issues and problems within the organization. These stories resulted in hesitation in public support for the BSA, a huge detriment to a donation based non-profit organization. Furthermore, this publicity itself resulted in increased perceptions, normalization, and acceptance of victims that came forward with claims, resulting in a further increase in the number of claims asserted. This surge in claim numbers served to further the decision that bankruptcy was the best option for the BSA to attempt to survive.

³³ [Disclosure Statement 1](#) at 24

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See, generally,* [CNN article](#)

First Day Motions

Filing of Chapter 11 Petition

On the Petition Date each of the Debtors³⁷ filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the District of Delaware. The case was assigned to Bankruptcy Judge Laurie Selber Silverstein. No trustee or examiner was appointed in these cases and the Debtors continued to operate and maintain their non-profit organization and managed their properties as Debtors in Possession pursuant to sections 1107(a)³⁸ and 1108³⁹ of the Bankruptcy Code.⁴⁰ On the same day, the Debtors filed several First Day Motions which can be grouped into four distinct categories: (1) Introductory Materials; (2) Day-to-Day Operations; (3) Vendor and Internal Agreements; and (4) Organization of Materials. This section will review each of the motions and briefly explain their importance in conjunction with the overall bankruptcy suit.

Introductory Materials

The BSA requested joint administration of the cases, for procedural purposes only, in accordance with Bankruptcy Rule 1015(b) and Local Rule 1015-1. The Debtors then requested that the court should maintain one file and one docket under a single caption for the remainder of the case. The rationale for these requests, the BSA argued, was that Bankruptcy Rule 1015(b) provided that if “two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates.”⁴¹ Additionally, Local Rule 1015-1 also provided for consolidation of related Chapter 11 cases. The Boy Scouts argued that joint administration of the cases would promote efficiency in the courts and ease their administrative burden. Further, joint administration was ideal since less paperwork would have to be filed and would make tasks “less costly and [would] minimize the number of unnecessary

³⁷ Debtors who filed are BSA; Delaware BSA, LLC; and Arrow WV, LLC.

³⁸ [Bankruptcy Code 1107](#)

³⁹ [Bankruptcy Code 1108](#)

⁴⁰ [Joint Admin Motion](#) at 4

⁴¹ *Id.* at 5

delays.”⁴² The Scouts further asserted that joint administration would not prejudice or adversely affect the Creditors since this maneuver was purely procedural and would not affect their substantive rights in this or another court.⁴³ The court granted the relief requested.⁴⁴

The BSA additionally filed what amounted to an informational brief. This brief served to describe the Debtor and its history, what led to this reorganization being attempted, how the organization has improved its safety measures within the programs, as well as the immediate steps taken by the BSA regarding this case. Lastly, this brief contains a wide range of exhibits detailing background information and documentation up to the filing date.

Day-to-Day Operations

Motion to Use Cash Collateral

The BSA requested the court enter both an interim and final order authorizing the BSA to (1) continue to use cash collateral as well as any other prepetition collateral in which any of the prepetition secured parties had an interest; (2) provide adequate protection to these same parties regarding any loss of value of their interest of the prepetition collateral;⁴⁵ (3) and maintain current letters of credit, or continue to acquire new letters of credit as necessary to replace or backstop existing credit.⁴⁶ The Debtors asserted that without this continued use of cash collateral, the organization would fail to be able to fund its operations. In order to avoid this, the BSA cited section 363 of the Bankruptcy Code to show that a debtor may use cash collateral as long as they have consent of the secured party, or the court orders that they may do so, based on finding that the secured creditor is adequately protected.⁴⁷ Additionally, the BSA argued that the preservation of the Debtors’ business itself would provide adequate protection under the Bankruptcy Code.⁴⁸

⁴² [Joint Admin Motion](#) at 5

⁴³ *Id.* at 6

⁴⁴ [Joint Admin Order](#)

⁴⁵ See [Cash Collateral Motion](#) regarding a full listing of prepetition secured parties as well as their interest of prepetition collateral.

⁴⁶ *Id.* at 4-6

⁴⁷ *Id.* at 27

⁴⁸ *Id.* at 28

Overall, the BSA asserted that without this funding and relief, the organization would likely be forced to halt operations, which would only serve to damage the Debtors' estate and harm this reorganization attempt. The court granted the requested relief.⁴⁹

Motion to Pay Prepetition Taxes

The BSA requested entry of orders to authorize the payment of certain taxes and related relief. These taxes included certain sales and use taxes, income taxes, property taxes, excise taxes, and various other taxes and fees.⁵⁰ The BSA, as of the time of the petition date, estimated approximately \$1,660,000 worth of taxes had accrued and would become due within the time period of the Chapter 11 proceedings. Furthermore, approximately \$1,320,000 of these taxes were expected to become due within the period between the petition date and the final hearing date. This motion proposed an interim order allowing for the payment of the initial \$1,320,000 worth of taxes as well as a final order allowing for the payment of the full \$1,660,000.⁵¹

The BSA first argued that this payment was necessary due to the potential disruption of operations that could come from a failure to pay the taxes.⁵² If there were liens or actions brought against the organization due to unpaid taxes, it would only serve to further complicate this action, as well as to distract key individuals from this case. Furthermore, the BSA claimed that based on 26 U.S.C. §7501 as well as 11 U.S.C §541 certain of these taxes were being paid from “trust funds” and not from property of the Debtors' estates and therefore should be paid regardless of this bankruptcy.⁵³ Next, the Debtors argued that section 363 of the Bankruptcy Code authorized the Debtors here to pay these taxes due to a sound business purpose justifying the action.⁵⁴ Finally, the Debtors emphasized that specific taxes held priority over general

⁴⁹ [Cash Collateral Motion](#)

⁵⁰ [Tax Motion](#) at 5

⁵¹ *Id.*

⁵² *Id.* at 11

⁵³ *Id.*

⁵⁴ *Id.* at 13

unsecured claims.⁵⁵ This meant that any additional interest or penalties would also hold a higher right and priority to payment ahead of other stakeholders within the case, who would necessarily be harmed by the accumulation of additional interest or penalties. The court agreed and entered both orders granting the requested relief.⁵⁶

Utilities Motion

The Boy Scouts of America brought forward a motion to (1) allow the continued payment of utility expenses; (2) prohibit utility companies from altering, discontinuing, or refusing services; and (3) approve procedures for assuring future payment to utility providers.⁵⁷ In the normal course of business operations, the Debtors used electricity, natural gas, water, sewage, and additional utility services. These services totaled approximately \$626,000 per month in fees.⁵⁸ The BSA requested to be authorized to, within 20 days of the petition date, deposit \$301,900 into a specific and separate account in order to assure utility providers of payment.⁵⁹

As basis for relief the Debtor cited section 366 of the Bankruptcy Code under which the court may determine the adequacy of the Debtors' proposed assurances to its utility providers. The Debtors argued that the deposit was largely an extra measure as the majority of their utility providers already have adequate assurances as the Debtor expects to continue to be able to fund related utility payments through reorganization.⁶⁰ Lastly, the Scouts claimed that these utility payments, as well as the assurances related to them, were necessary in order for the organization to keep on with standard operations.⁶¹ No objections were filed and the court granted both motions.⁶²

⁵⁵ [Tax Motion](#) at 14

⁵⁶ [Tax Motion Final Order](#)

⁵⁷ [Utilities Motion](#) at 4

⁵⁸ *Id.* at 6

⁵⁹ *Id.*

⁶⁰ *Id.* at 12

⁶¹ *Id.*

⁶² [Utilities Motion Final Order](#)

Motion to Maintain Bank Accounts

The Boy Scouts requested entry of an interim and final order first granting relief to authorize the Debtors to continue using their existing cash management system and bank accounts including being allowed to make any alterations or changes as deemed necessary.⁶³ Second, the BSA requested that the banks be authorized to continue providing service to all bank accounts of the Debtor, as debtor in possession, without interruption and in the ordinary course of the BSA's normal operations.⁶⁴ Additionally, the Scouts sought to be authorized to continue use of their existing documentation without reference to the Debtors' status as debtors in possession.⁶⁵

In support of their request for relief, BSA cited section 363(c)(1) of the Bankruptcy Code which authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing."⁶⁶ Furthermore, they argued that having to alter their cash management systems and additional accounts would be such an extensive process as to disrupt the Debtors' operations and hinder the reorganization efforts.⁶⁷ This same argument was again brought forward when considering the request to use existing documents and forms. The BSA claimed that the expense and time related to the alteration of these documents would be harmful to the case, without leading to any benefit to the estate or parties in interest.⁶⁸ There were no objections and the court agreed and granted both motions.⁶⁹

Employee Wages Motion

The Debtors moved the court to authorize, but not direct, the BSA to (1) pay any prepetition employee obligations; (2) continue paying the compensation and benefit programs;

⁶³ [Motion to Maintain Bank Accounts](#) at 13

⁶⁴ *Id.* at 13

⁶⁵ *Id.*

⁶⁶ *Id.* at 20

⁶⁷ *Id.* at 19

⁶⁸ *Id.* at 23

⁶⁹ [Motion to Maintain Bank Accounts Order](#)

and (3) to modify the automatic stay if it was found necessary in order to allow the Debtors' employees to proceed with any claims related to the workers compensation program.⁷⁰ As of the prepetition date the BSA paid approximately 1,650 employees and independent contractors.⁷¹ Furthermore, the vast majority of these employees were paid through the compensation and benefit programs operated by the Debtors. Related to these employed individuals, the BSA estimated that, as of the petition date, approximately \$5,090,000 was owed in prepetition employee obligations.⁷² The BSA requested authority to pay up to \$4,800,000 worth of these prepetition obligations as they expected this was approximately what may become due prior to the final hearing.⁷³

The BSA asserted that through section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, certain of the compensation and benefits programs were entitled to priority treatment and thus must be paid in full to confirm a chapter 11 plan.⁷⁴ Additionally, the BSA argued that in order for the organization to continue to operate and thus allow for reorganization the wages were necessary.⁷⁵ Similarly, the Debtors claimed that being authorized to continue paying the wages of their employees would be in the benefit of the Debtors' estates and thus should be allowed by the court.⁷⁶ The court entered both an interim and final order granting the requested relief.⁷⁷

⁷⁰ [Employee Wages Motion](#) at 5

⁷¹ *Id.* at 6

⁷² *Id.* at 10

⁷³ *Id.*

⁷⁴ *Id.* at 33

⁷⁵ *Id.* at 36

⁷⁶ *Id.*

⁷⁷ [Employee Wages Motion Final Order](#)

Vendor and Internal Agreements

Essential Vendors Motion

The BSA petitioned the court to be able to (1) continue making payments to Essential Vendors, Foreign Vendors, Lien Claimants. And 503(b)(9) Vendors; (2) authorizing payment of prepetition amounts; and (3) authorizing banks to honor and accept checks issued by the BSA.⁷⁸ Essential Vendors were those who provided supplies necessary to Scouting’s mission and would not be paid more than \$1.5 million on an interim basis and \$3 million on a final basis. Foreign Vendors were those located outside of the U.S. and would not be paid more than \$500,000 on either an interim or final basis. Lien Claimants are Shippers, Warehousemen, and other Lien Claimants who, collectively, would not be paid more than \$4.5 million on an interim basis and \$4.75 million on a final basis. Finally, 503(b)(9) Vendors are those vendors entitled to administrative expense status under the Bankruptcy Code and who would not be paid more than \$2 million on an interim basis and \$3.75 million on a final basis.⁷⁹

BSA cited sections 105(a) and 363(b) of the Bankruptcy Code which permits the Debtor to pay obligations to Vendors. Additionally, it is the responsibility of the debtor in possession to maintain the estate, including any ongoing operating businesses.⁸⁰ Under section 363 of the Code, a court may authorize a debtor to pay certain prepetition claims if a sound business reason for doing so exists. Courts have generally refused to interfere with what a debtor may claim as a business decision so long as good faith and informed decision making was demonstrated.⁸¹ In the event that the court was not persuaded by BSA’s §363 claims, the Debtor also discussed the “doctrine of necessity” which allows courts to exercise their equitable power to permit Debtors to pay critical prepetition claims.⁸² This, however, was unnecessary as the court granted the BSA’s motion.⁸³

⁷⁸ [Essential Vendor Motion](#) at 1-2

⁷⁹ *Id.* at 5

⁸⁰ *Id.* at 16

⁸¹ *Id.* at 17-18

⁸² *Id.* at 20

⁸³ [Essential Vendor Motion Final Order](#)

Customer Programs Motion

The Boy Scouts then motioned to be granted the following relief: (1) maintain and administer their prepetition customer, Scout, and donor programs; (2) authorize them to pay and honor pre and post-petition obligations to customers, and donors in the ordinary course; (3) authorize the Debtors to honor/pay credit card chargebacks, returns, and/or processing fees; and (4) authorize BSA to pay or honor the fees of third-party administrators.⁸⁴ The BSA claimed these expenses to be vital to the continued existence of the organization due to its non-profit status. Since most of BSA's funding comes from donations, memberships, merchandise, and licensing, the Debtors claimed that in order to maintain operations they needed to preserve positive relationships with customers, Scouts, and donors alike.⁸⁵

This motion covers not only the events held by the BSA to maintain relationships such as meetings, dinners, Jamborees, or Camporees, but also the scholarships given to Scouts on an annual basis and the Counseling Reimbursement Program where the BSA reimburses the cost of counseling visits with a therapist of the victim's choice.⁸⁶ Additionally, this motion covers how the Boy Scouts serves as a pass-through for international donations to the World Organization of the Scout Movement (WOSM) or other National Scouting Organizations across the world. With these funds the BSA acts essentially as a trustee for the funds and never actually has legal claim to them.⁸⁷ BSA also maintained "Gift Annuity Agreements" where an Annuitant(s) transfers property to the BSA in exchange for a fixed income for life.⁸⁸ In these situations BSA made fixed income payments worth 70% of the value of the gift and retained 30% as a charitable gift and has maintained this program for 27 years.⁸⁹ For the basis of relief the BSA once again cited §363 which says that the debtor may use, sell, or lease, other than in the ordinary course of

⁸⁴ [Customer Programs Motion](#) at 4-5

⁸⁵ *Id.* at 5

⁸⁶ *Id.* at 11-12

⁸⁷ *Id.* at 13

⁸⁸ *Id.* at 15

⁸⁹ *Id.*

business, property of the estate.⁹⁰ The court granted the motion to maintain relationships in the way BSA had become accustomed.⁹¹

Prepetition Payments Motion

Scouting filed a motion which asked permission to (1) pay certain prepetition under certain shared organizational services arrangements and services agreements to the Councils and Related Non-Debtor Entities; (2) authorize Debtors to continue performing under the Shared Services Agreements in the ordinary course; and (3) authorize banks to honor checks and transfers.⁹²

Here, the BSA made the claim that the National Council and the Local Councils have a relationship analogous to franchisors and franchisees since the Councils are largely legally independent but may get some assistance from the National Office such as the Benefits Program and Shared Services Arrangements.⁹³ BSA argued that these programs are beneficial for both the National Office and the Local Councils since National would be unable to run the program as effectively or efficiently as the Councils, nor would the Councils be able to fund themselves or offer cohesive materials without National's uniform system. They state that the continued performance of these Arrangements will allow National to "stabilize their operations following the commencement of these Chapter 11 cases and avoid a need to shift focus at this critical stage of their restructuring."⁹⁴ The BSA then goes on to list the programs included in the Arrangements such as training support, IT, HR, supply chain services, etc. Next a list of fees collected from the Councils are listed, such as the National Service Fee, and other related materials.⁹⁵ The motion then went on to discuss the Related Non-Debtor Entities such as BSAAM, Arrow, and the BSA Foundation (among others). These entities, unlike the Local

⁹⁰ [Customer Programs Motion](#) at 17

⁹¹ [Customer Programs Motion Final Order](#)

⁹² [Pre-petition Payment Motion](#) at 1-2

⁹³ *Id.* at 7-8

⁹⁴ *Id.*

⁹⁵ *Id.* at 9-11

Councils, are wholly owned or subject to BSA National and are parties to the Shared Services Arrangements to the extent that the BSA provides central management, cash management, tax administration, etc.⁹⁶ The motion then went over a detailed account of the agreements between the National Organization and each of the Related Non-Debtor Entities.

In order to maintain these operations the BSA relied on §363(c)(1) of the Code which states that a debtor in possession may “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.”⁹⁷ Here, the Debtors wished to maintain operations of the agreements with the Councils and Related-Non-Debtor Entities as per usual to increase their likelihood of emerging from the conclusion of this Chapter 11 case with minimal damages to these relationships and operating procedures. The court granted the proposed motion.⁹⁸

Organization of Materials

Consolidation Motion

The Scouts filed a motion (1) to authorize them to consolidate the list of the twenty-five law firms representing the largest numbers of abuse claims against the Debtors and a list of the thirty largest unsecured creditors holding claims other than those related to the abuse claims; (2) to authorize and approve confidentiality procedures to protect identities of claimants, employees, volunteers, etc.; and (3) to authorize the BSA to send out certain mail announcing the commencement of the Chapter 11 cases and the meeting of creditors.⁹⁹ The Debtor’s explained how Bankruptcy Rule 1007(d) would normally require them to file a “Top 20 List” of unsecured creditors, but asked for relief from this requirement and instead to provide a list of the top 25 law firms representing victims.¹⁰⁰ The BSA argued that this was necessary in order to protect the

⁹⁶ [Pre-petition Payment Motion](#) at 20

⁹⁷ *Id.* at 28 (11 U.S.C. § 363(c)(1))

⁹⁸ [Pre-petition Payment Motion Final Order](#)

⁹⁹ [Consolidation Motion](#) at 1-2

¹⁰⁰ *Id.* at 5-6

abuse victims and to provide a consolidated list of creditors without releasing the names of any of those finding suit against the BSA for the wrongs done to them by previous volunteers. The motion then went on to discuss the top 30 unsecured creditors list and how the confidentiality of all parties, those with abuse claims, and those unsecured creditors, would be held throughout the bankruptcy.¹⁰¹ Further, they discussed the creditor matrix and what publications and announcements about the commencement of the bankruptcy would be pushed out and to whom they would be sent. The court granted the motion.¹⁰²

Extension Motion

The BSA filed a motion to extend their deadline to file both the schedules of assets and liabilities as well as Rule 2015.3 reports.¹⁰³ The BSA based this motion on section 521 of the Bankruptcy Code along with Bankruptcy Rule 1007(c) which establish that typically a debtor must file schedules and statements within 14 days of the petition date. These rules additionally establish that the courts may grant an extension if a “motion for cause” is shown.¹⁰⁴ Furthermore, after applying local rules stated and explained within the motion, without any extension the Debtor would have 28 days to file after the petition date.¹⁰⁵

This time period was claimed to be too short by the BSA. The Debtor argued that due to the size and complexity of the organization, along with the intricacy of this specific case, good and specific cause existed to extend the scheduled period. Additionally, they claimed that they were facing a challenge in that only a limited number of their staff held the expertise to complete these forms and thus needed more time.¹⁰⁶ The court granted the motion.¹⁰⁷

¹⁰¹ [Consolidation Motion](#) at 10-11

¹⁰² [Consolidation Motion Final Order](#)

¹⁰³ [Extension Motion](#) at 4

¹⁰⁴ *Id.* at 4

¹⁰⁵ *Id.* at 5

¹⁰⁶ *Id.*

¹⁰⁷ [Extension Motion Final Order](#)

Property of the Estate

It is essential to remember when reviewing these documents that the Boy Scout's national organization (National Council) does not own the properties located within the Councils nor the Councils themselves. The Councils maintain status as separate legal entities that are merely chartered through the national organization to gain access to licenses, insurance, and intellectual property.¹⁰⁸ Additionally, the endowment trust and High Adventure Bases are unavailable to be reached by the suit due to bankruptcy rules and protections put in place by the BSA. This leaves only National BSA's liquid assets and office properties to be subject to the suit and the creditors.

¹⁰⁸ See [Joint Admin Motion](#)

Chapter 11 Bankruptcy Plan

Initial Plan¹⁰⁹

Overview

The initial plan of reorganization, as described in the initial disclosure statement,¹¹⁰ was put in place to provide for the reorganization of the Debtors in order to allow for the reestablishment of the BSA's vision. In order to fulfill this purpose, the plan called for the creation of a Victim's Compensation Trust to be funded with a still unknown monetary amount contributed by the Debtors and the entry of a court order funneling all victims' claims against that trust and enjoining all claimants from seeking from any other defendant. The plan, then, focused on the following four specific primary goals:

- (i) the establishment of a Victims Compensation Trust for the benefit of holders of Abuse Claims that shall assume liability for all Abuse Claims and hold, administer, and distribute Trust Assets for the benefit of holders of Abuse Claims, and the channeling of all Abuse Claims to such trust, (ii) making distributions to holders of General Unsecured Claims, (iii) restructuring certain of the Debtors' prepetition Secured Claims, and (iv) entering into the Exit Facility.¹¹¹

By accomplishing these tasks, this plan intended to lead the Debtors and all Creditors through a successful Chapter 11 bankruptcy. However, the initial plan was rejected and amended through multiple iterations, the final version of which has yet to be developed, accepted by the requisite creditors, and confirmed by the bankruptcy court.

¹⁰⁹ [Initial Plan](#)

¹¹⁰ [Disclosure Statement 1](#) at 2

¹¹¹ *Id.*

Creditor Classifications and Expected Recoveries

Within the initial plan, the creditors were divided into the following classes with the state planned recoveries:¹¹²

Class	Claim or Interest	Entitled to Vote	Treatment	Plan Recovery
1	Other Priority Claims	No-Presumed to Accept	Paid in full/ Reinstated/ Unimpaired	100%
2	Other Secured Claims	No-Presumed to Accept	Paid in full/ Collateral/ Returned/ Unimpaired	100%
3A	2010 Credit Facility Claims	Yes	Reinstated with modifications/ Impaired	100%
3B	2019 RCF Claims	Yes	Reinstated with modifications/ Impaired	100%
4A	2010 Bond Claims	Yes	Reinstated with modifications/ Impaired	100%
4B	2012 Bond Claims	Yes	Reinstated with modifications/ Impaired	100%
5	General Unsecured Claims	Yes	Pro Rata Share of Plan Distribution/ Impaired	(__)
6	Abuse Claims	Yes	Channeled to Victims Compensation Trust/ Impaired	(__)
7	Interests in Delaware BSA, LLC	No-Presumed to Accept	Reinstated/ Unimpaired	100%

¹¹² [Disclosure Statement 1](#) at 7

Victims Compensation Trust

As mentioned previously, the BSA established the Victims Compensation Trust. This trust held the two primary functions of assuming all liability for Abuse Claims as well as holding and distributing payouts from all Trust Assets to holders of Abuse Claims.¹¹³ Further, this plan established a transfer of all insurance rights from the Debtors to this Trust.¹¹⁴ This would allow for the Trust to levy insurance payouts, along with potential settlement agreements, in order to further fund the payouts.¹¹⁵ The transfer of insurance rights, along with a planned contribution from the BSA were meant to fund the Victims Compensation Trust moving beyond this bankruptcy and justify the release of liability for the Debtors.

Means for Implementation of the Plan

The initial plan stated that it was being proposed as a joint plan of reorganization for the multiple debtors with administrative ease in mind. However, in practice it was to serve as a separate Chapter 11 plan of reorganization for each individual debtor.¹¹⁶ Additionally, pursuant to section 1123¹¹⁷ of the Bankruptcy Code and Bankruptcy Rule 9019,¹¹⁸ this plan was put forward to finally settle all claims and interests surrounding the Debtors.¹¹⁹

Subsection C of this portion of the plan states that all Debtors should fund any distributions made through this plan using cash on hand and the proceeds of the exit facility that is further described in subsection D. Through this section cash on hand was identified to mean cash that does not constitute identified property.¹²⁰ In other words, the BSA would only fund its distributions through property that was not specifically identified as having legal restrictions on

¹¹³ [Initial Plan](#) at 26

¹¹⁴ *Id.* at 28

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 34

¹¹⁷ [Bankruptcy Code § 1123](#)

¹¹⁸ [Bankruptcy Rule 9019](#)

¹¹⁹ [Initial Plan](#) at 34

¹²⁰ *Id.*

it. These legal restrictions largely existed through property that was donated to the debtors with a specific intention or purpose behind it.¹²¹

Additionally, the remaining subsections of this segment of the initial plan covered a wide range of material that is widely considered standard among Chapter 11 bankruptcies including, but not limited to: reorganization of documents; authorization; continued legal existence; cancellation of indebtedness; closing of the chapter 11 case; etc.¹²² The majority of these documents functioned to allow the BSA to come out of this bankruptcy in a positive position where it may succeed moving forward without being hampered down by the bankruptcy proceedings or prior issues.

Second Plan¹²³

On March 1, 2021, the Debtors filed their second plan and disclosure statement. This version of the plan changed some Defined Terms, created the Global Resolution Plan (GRP) and Toggle Plan, created the Settlement Trust, and changed some of the Class classifications.

Changes to the Defined Terms

This plan had some initial minor changes that updated some of the defined terms to better describe the Debtors, Creditors, and ongoing issues the Debtors were facing. Additionally, this plan added more information in the defined terms to give exact numbers that the Debtors were considering. An example of this was that defined term 74 was now defined term 76 and went from stating that “De Minimis Assets” means any miscellaneous assets of de minimis value” to “De Minimis Asset means any miscellaneous asset that is valued by the Debtor at \$10,000 or less...”¹²⁴ This revision, while not dramatic to the overall outcome of the case, is still an important update as it gives the court and the Creditors a better understanding of what the Debtors consider a de minimis asset than the Initial Plan. Other such changes were implemented

¹²¹ [Initial Plan](#) at 17

¹²² *Id.* at 37

¹²³ [Second Plan](#)

¹²⁴ *Id.* at 25

in this section to ensure that the BSA was properly defining and informing the court and Creditors of such terms.

Changes to the Administrative Expense

This section was updated to indicate that the BSA would pay for the “reasonable and documented fees and expenses” of the Creditor’s Committee from the Effective Date to the closing of the Committee. A major change was inserted into the subsection targeting direct abuse claims – class eight – and how the BSA would move forward if the plan was approved or not by that class. If the plan was approved, it would be known as the “Global Resolution Plan”¹²⁵ where the Settlement Trust would have received “the BSA Settlement Trust Contribution, the Local Council Settlement Contribution, the Contributing Chartered Organization Settlement Contribution, and the proceeds of any applicable Insurance Settlement Agreements.”¹²⁶ Other information about non-duplicative claims were also added to this subsection. If the plan was not agreed upon or the court decided the above plan was non-confirmable, then the BSA set forth the BSA Toggle Plan.¹²⁷ During this time the the Victims Compensation Trust, created in the initial plan, was renamed the Settlement Trust and had different monetary amounts depending on which plan was chosen by the creditors and the court. If the Toggle Plan¹²⁸ was confirmed then the Settlement Trust would have received only the BSA Settlement Trust Contribution¹²⁹ and none of the rest of the items listed in the Global Resolution Plan. With these two updates the BSA

¹²⁵ According to the Defined Terms, the Global Resolution Plan meant that the Bankruptcy Court concluded either (1) that the plan was accepted by a sufficient number of creditors, or (2) that it was acceptable under the Bankruptcy Rules and Bankruptcy Code. [Second Plan](#) at 19.

¹²⁶ [Second Plan](#) at 46

¹²⁷ *Id.*

¹²⁸ The Toggle Plan meant that the original resolution plan, as modified in the amended document, was not approved given either (1) lack of agreement by the creditors, or (2) that it did not meet the standards set forth in the Bankruptcy Rules or the Bankruptcy Code. Thus, the plan was offered as a “toggle” option for the creditors and court. When the BSA began using the Toggle Plan, the Victims Compensation Trust, as previously described, was renamed the Settlement Trust. *Id.* at 16.

¹²⁹ According to the Defined Terms, the Settlement Trust Contribution meant all (1) net unrestricted cash and investments; (2) BSA’s right, title, and interest in (i) Scouting University, (ii) artwork, and (iii) gas and oil investments; (3) all of BSA’s right, title, and interest in warehouses and distribution centers; (4) insurance policies; (5) the Settlement Trust causes of action; and (6) the assignment of any and all Perpetrator Indemnification Claims by the BSA. *Id.* at 8-9.

hoped to create a plan that would satisfy the Victim’s Trust Fund. Additionally, some very minor changes were made to class nine, or indirect abuse claims, simply to ensure that this section mirrored the updates made to the section above.¹³⁰

Changes to the Transfer of Claims to the Settlement Trust

There are two major changes to this section. The first is the addition of a subsection that detailed Settlement Trust causes of action. This update specifies that the transfer of the Settlement Trust Causes of Action to the Settlement Trust, as they are able to defend against or reduce the amount of abuse claims, shall be considered a transfer of a non-exclusive right of the Settlement Trust to defend itself against asserted claims.¹³¹ The other update to this section is the addition of the Cooperation Agreement¹³² section that created better wording to match the Global Resolution Plan described above.¹³³

Changes to Means for Implementation of the Plan

This section remains relatively similar except for the addition of the BSA Toggle Plan, created as a backup for if the Global Resolution Plan was not agreed upon, as described above.¹³⁴ This subsection details from where the funding for the Toggle Plan was to come. These sources are listed as being from the Core Value Cash Pool; the BSA Settlement Trust Contribution; Bond Documents and Restated Credit Facility Documents; and Unrestricted Cash and Investments.¹³⁵ Additionally, this section added a subsection entitled “Estimation of Direct Abuse Claims” which explained how the Debtor and the court would work to estimate how much would be owed to the direct abuse claimants and to determine whether or not to pass the Global Resolution Plan

¹³⁰ [Second Plan](#) at 47-48

¹³¹ *Id.* at 51

¹³² According to the Defined Terms, “cooperation agreement” meant the specific cooperation agreement signed by the national office, Local Councils, and participating chartered organizations if the Global Resolution Plan is approved.

¹³³ *Id.* at 53

¹³⁴ *Id.* at 56

¹³⁵ *Id.* Please see the Defined Terms section of this plan for a further breakdown of what is included in each of these listed terms.

under §1123(b)(3)(A) of the Bankruptcy Code.¹³⁶ Here, the BSA proposed that if the GRP is confirmed then the court would complete an estimation of its liability to the direct abuse claimants in accordance with the court’s order granting the Confirmation Scheduling Motion. Further, the BSA proposed that it and other parties would be able to submit evidence in support of this basis of liability. Additionally, with the Confirmation Order, there will be no trial or hearing on the merits or an adjudication or judgment of any insurance company under its policies.¹³⁷

Changes to Classes

Changes to Classes Eight and Ten occurred in this plan. Here, Class Eight is deemed to be impaired, but retains the right to vote, and Class Ten is now also deemed impaired and was shown as “deemed to reject; not entitled to vote.”¹³⁸ Treatment of Class Eight was also changed with the creation of the Global Resolution Plan and the Toggle Plan. If the GRP was implemented then the direct abuse claimants would receive funds from the Settlement Trust, Local Councils, and participating Chartered Organizations; but if the Toggle Plan was implemented then claimants would only receive funds from the Settlement Trust.¹³⁹

Third Plan¹⁴⁰

On May 16, 2021, the Debtors filed their third plan and disclosure statement. This version of the plan once again updated some Defined Terms, updated information on the Settlement Trust contribution by the parties, added the Hartford Settlement Agreement, and added the Global Resolution Note.

¹³⁶ [Second Plan](#) at 60

¹³⁷ *Id.*

¹³⁸ *Id.* at 41

¹³⁹ *Id.* at 48

¹⁴⁰ [Third Plan](#)

Changes to the Defined Terms

This plan had a handful of additions or changes to the Defined Terms section. The term “BSA Global Resolution Note” was added and means that an unsecured promissory note amounting \$80,000,000, in the form contained in the Plan Supplement, shall be issued by the BSA to the Settlement Trust on the Effective Date, if the Global Resolution Plan is confirmed. Essentially, the BSA is promising to pay the Creditor’s \$80 million but have not secured any property to this payment. This promise is contained within the Plan Supplement which is to be issued to the Trust on the Effective Date if the GRP is confirmed by the court. This and other numerical updates were added into the “BSA Settlement Trust Contribution” definition as well.¹⁴¹ Further, “Coalition” and “Coalition Restructuring Expenses” were added to state that the Coalition meant the ad hoc group that formed to represent the Direct Abuse Victims and the restructuring expenses meant the unreimbursed expenses taken by the Coalition.¹⁴² Lastly, the BSA added a definition of a “High Adventure Base Participant” as a registered youth who has paid the participation fees for attending one of the four High Adventure Bases. Events not included in the definition are: Jamboree participants, Order of the Arrow events, World Organization of the Scout Movement (WOSM) events, or WOSM members who are not BSA members.¹⁴³ Further, a “Youth Member” is a youth member of the BSA registered, as of Dec 31 of any year, in one of the core programs offered by the BSA.¹⁴⁴

Changes to the Settlement Trust

The main changes to this section were located in the “Settlement Trust Advisory Committee;” “Future Claimants’ Representative;” and “Indemnification of Settlement Trust” subsections. Here, Debtors explain that the advisory committee’s plans and actions will be based entirely off the confirmation, or lack thereof, of the Global Resolution Plan or the Toggle Plan.¹⁴⁵ Additionally, this section contained a provision which changed the Cooperation Document

¹⁴¹ [Third Plan](#) at 8-9

¹⁴² *Id.* at 11

¹⁴³ *Id.* at 20-21

¹⁴⁴ *Id.* at 38

¹⁴⁵ *Id.* at 55

Agreement to simply the “Document Agreement.” This change states that if the Global Resolution Plan is confirmed then Reorganized BSA, Local Councils, the Contributing Chartered Organizations, and the Settlement Trust shall agree to payment as of the Effective Date. Further, if this plan is approved Reorganized BSA will provide the Settlement Trust with a copy of the Volunteer Screening Database. If, however, the Toggle Plan is confirmed then the agreement would be between Reorganized BSA and the Settlement Trust only.¹⁴⁶

Addition of the Hartford Settlement Agreement

The Hartford Settlement Agreement was added as an extra exhibit between plans two and three.¹⁴⁷ This agreement provides that if the Global Resolution Plan is confirmed that Hartford will purchase all of the insurance and settlement policies owned by the Debtors, totaling \$650 million, and, in turn, come out free and clear of all Interests of any Person.¹⁴⁸ The terms “Interest” and “Person” are defined terms created by Hartford.

Removal of the Direct Abuse Claims Estimation

This plan removed the estimation of the cost and amount of direct abuse claims that was added in the second version of the plan.¹⁴⁹ The Debtors did not put in a replacement section nor explain their reasoning for removing this section of the Plan. Instead, the entire section was unceremoniously struck and not discussed in any other part of the Plan. This removal may be due to the addition of the Hartford Settlement Agreement and Global Resolution Note since those would be a fixed amount regardless of the estimation of the direct abuse claims.

Addition of the BSA Global Resolution Note

Here, if the Global Resolution Plan is confirmed, then Reorganized BSA is permitted to “execute, issue, and deliver” the Global Resolution Note to the Settlement Trust and deliver any other paperwork without any further corporate action.¹⁵⁰ The Note will be due ninety-one days

¹⁴⁶ [Third Plan](#) at 55

¹⁴⁷ *See Id.* for a breakdown of the reasoning for the addition of the Hartford Settlement Agreement.

¹⁴⁸ [Third Plan](#) at 64

¹⁴⁹ *Id.* at 65-66

¹⁵⁰ *Id.* at 69

post Restated Maturity Date with Principal payments being due annually on February 15 every year. This section also contained a breakdown of the principal payment amounts and how they are calculated by the court and Debtors.¹⁵¹

Fourth Plan¹⁵²

On June 18, 2021, the Debtors filed their fourth plan and disclosure statement. This version of the plan primarily focused on removing the BSA Toggle Plan and restructuring to focus on the Settlement Trust in its place.

Changes to the BSA Toggle Plan

Within this plan the largest change was the removal of the BSA Toggle Plan.¹⁵³ The removal of this portion caused the primary Chapter 11 plan to return to a singular path with no toggle options. Additionally, this change removed the terminology of the Global Resolution Plan as there was no longer a variety of plans.¹⁵⁴ Instead, the majority of sections relating to the Global Resolution Note were instead retitled for the Settlement Trust. The Settlement Trust was again placed with the purpose of assuming liability for all abuse claims, holding, preserving, maximizing, and administering the settlement trust assets, and directing the processing, liquidation and payment of all compensable abuse claims.¹⁵⁵ Additionally, the Settlement Trust was established with the BSA contributing \$80 million through the Settlement Trust Note, an additional \$140 million worth of assets, and \$500 million to be donated by Local Councils.¹⁵⁶

Creation of the Delaware Statutory Trust (DST)

This plan first attached and defined the DST Agreement within this case. Specifically, the Delaware Statutory Trust was created to issue a non-recourse promissory note in the amount of

¹⁵¹ [Third Plan](#) at 69

¹⁵² [Fourth Plan](#)

¹⁵³ *Id.* at 10

¹⁵⁴ *Id.* at 20

¹⁵⁵ *Id.* at 49

¹⁵⁶ *Id.* at 192

\$100,000,000 to the Settlement Trust. This Trust and note are funded through support of the Local Councils who signed to pay it off over time. Further, this payment is to be made on the Effective Date as explained in the DST note mechanics attached to the plan.¹⁵⁷

Changes to the Transfers of Settlement Trust Assets

Within this plan, the handling of the specified insurance policies and non-abuse related litigation claims, resulting in pay outs from said policies, were put under the control of the Settlement Trust.¹⁵⁸ This functioned to give the Reorganized BSA a path in which the Settlement Trust, built through this plan, would handle future related litigation claims. Furthermore, the management and election of the Settlement Trust Advisory Committee was altered to work without the previously mentioned Toggle Plan, as well as was given more detail as to the makeup of the committee.¹⁵⁹

Changes to Non-Monetary Commitments

The plan here was altered to list an extended process by which the BSA would create a committee with the specific interest of protecting children moving forward.¹⁶⁰ Within this committee would be multiple members of local councils, BSA members, and survivors of past abuse. These changes then went on to list how this group would function, who it would report to, and how it would be established in order to best improve accountability and transparency within the BSA moving forward.¹⁶¹

Changes to the Insurance Provisions

These changes exclusively operated to remove all insurance provisions related to the BSA Toggle Plan.¹⁶² With this plan no longer in action, all related insurance provisions were inaccurate and thus removed.

¹⁵⁷ [Fourth Plan](#) at 17

¹⁵⁸ *Id.* at 56

¹⁵⁹ *Id.* at 58

¹⁶⁰ *Id.* at 77

¹⁶¹ *Id.*

¹⁶² *Id.* at 108

Fifth Plan¹⁶³

On July 2, 2021, the Debtors filed their fifth plan and disclosure statement. This version of the plan served to add additional settlement agreements to the settlement trust, alter how different abuse claims are handled, and establish rules for future settlement agreements.

Changes to the Hartford Insurance Settlement Agreement

Within this plan, one of the primary changes was that Hartford would increase its payout in order to purchase its own policy from the BSA. This increase was from \$650 million, as previously mentioned, now to \$787 million to be paid towards the Settlement Trust.¹⁶⁴ This was left to be contingent upon the court approving of this agreement. Furthermore, there was an addition of two Hartford administrative expense claims.¹⁶⁵ These claims were related to a total \$25.61 million worth of potential expenses.¹⁶⁶ Two million dollars worth of these claims were guaranteed to be paid in cash by the BSA while the additional \$23.61 million was reserved to be paid prior to unsecured creditors if conditions within the terms and conditions of the Hartford Insurance Settlement Agreement were met.¹⁶⁷

Addition of the TCJC Settlement Agreement

Under this plan the TCJC, or The Church of Jesus Christ of Latter-day Saints, Settlement Agreement¹⁶⁸ was first introduced. This agreement consisted of a settlement contribution of \$250 million to be donated by TCJC in order to avoid future liability within litigation of the related Abuse Claims.¹⁶⁹ Additionally, this plan stated that TCJC would have consent rights with respect

¹⁶³ [Fifth Plan](#)

¹⁶⁴ *Id.* at 22

¹⁶⁵ *Id.* at 21

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 132

¹⁶⁹ *Id.* at 43

to any modifications of the plan and settlement trust documents moving forward to the extent that said changes impacted TCJC.¹⁷⁰

Changes to Direct and Indirect Abuse Claims

Within these sections it was clarified that, as of the effective date, all post 1975 abuse claims against the chartered organizations would be fully assumed by the Settlement Trust.¹⁷¹ Furthermore, any holders of such claims moving forward would be enjoined from bringing prosecution against the organizations and instead would be required to take action solely against the Settlement Trust.¹⁷²

Post Effective Date Changes

This plan added additional opportunities for settlement with insurance companies as well as delayed contributions from chartered organizations who previously were BSA approved to support at least one scout group.¹⁷³ Further rules were established by which both groups could become protected parties, and receive all benefits of protected parties even after the effective date.¹⁷⁴ For both categories, this section stated the organizations must get an approved settlement agreement with the settlement trustee in order to become protected parties.¹⁷⁵

First and Second Modifications of the Fifth Plan¹⁷⁶

Upon arriving at the above mentioned fifth attempted plan, two additional entries of alterations were made. Neither of these submitted altered plans contained any substantive changes. Rather, both additional versions served to solve mechanical errors in the writing of the plan, as well as to provide greater clarification within certain sections.

¹⁷⁰ [Fifth Plan](#) at 43

¹⁷¹ *Id.* at 55

¹⁷² *Id.*

¹⁷³ *Id.* at 63

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ [First Modification of the Fifth Plan](#) and [Second Modification of the Fifth Plan](#)

Third Modification of the Fifth Plan¹⁷⁷

On September 30, 2021, the Debtors filed their third modification of their fifth plan and disclosure statement. This version of the plan served to add more settlement agreements, altered the DST note, created a change to the classification of the Delaware BSA, and moved the Youth Protection Plan to its own exhibit within the larger document.

Addition of the Century and Chubb Companies Insurance Settlement Agreement

During this modification of the fifth plan, the Century and Chubb Companies sought to buy their insurance policies back from the debtors. In order to do this, a settlement agreement for a total of \$800 million was made towards the Settlement Trust. As with the other settlement agreements, this was done to limit future liabilities surrounding Abuse Cases.¹⁷⁸

Addition of the Clarendon Insurance Settlement Agreement

Under this modification, the Clarendon Insurance Settlement Agreement was added within the plan.¹⁷⁹ Here, Clarendon National Insurance Company agreed to contribute the settlement amount of \$16,500,000 towards the Settlement Trust in order to minimize their liability in future Abuse cases.¹⁸⁰

Alteration of the DST Note

This section was changed in that additional capital was added to the DST Note explained previously. Rather than the DST Note being limited to \$100 million, it was increased by another \$25 million within this plan to total \$125 million in value.¹⁸¹

Addition of the United Methodist Settlement Agreement

Within this plan, the United Methodist Entities presented a settlement agreement.¹⁸² This agreement listed a contribution of \$30 million by the entities to be made towards the Settlement

¹⁷⁷ [Third Modification of the Fifth Plan](#)

¹⁷⁸ *Id.* at 11

¹⁷⁹ *Id.* at 15

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 22

¹⁸² *Id.* at 216

Trust.¹⁸³ Through this agreement, the United Methodist Church was listed as no longer being liable for the abuse cases arising from BSA related groups sponsored by the church.

Addition of the Zurich Insurance Settlement Agreement

Under this plan, the Zurich Affiliated Insurers reached a Settlement Agreement.¹⁸⁴ This settlement agreement establishes that the Insurers will contribute \$52,500,000 towards the Settlement Trust in order to minimize their liability through repurchasing their own policy.¹⁸⁵

Changes to Classifications

Under this version of the plan, the tenth class of interests in Delaware BSA was altered as seen in the following¹⁸⁶:

Class	Claim	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
2	Other Secured Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
3A	2010 Credit Facility Claims	Impaired	Entitled to Vote
3B	2019 RCF Claims	Impaired	Entitled to Vote
4A	2010 Bond Claims	Impaired	Entitled to Vote
4B	2012 Bond Claims	Impaired	Entitled to Vote
5	Convenience Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7	Non-Abuse Litigation Claims	Impaired	Entitled to Vote
8	Direct Abuse Claims	Impaired	Entitled to Vote
9	Indirect Abuse Claims	Impaired	Entitled to Vote
10	Interests in Delaware BSA	Impaired Unimpaired	Deemed Presumed to Reject Accept; Not Entitled to Vote

Changes to the Dissolution of Delaware BSA

Under this plan, interests in Delaware BSA were to be reinstated rather than deemed canceled. This was to maintain the organizational structure of the Debtors, as such structure existed on the Effective Date unless implementation of the restructuring required otherwise.¹⁸⁷

¹⁸³ [Third Modification of the Fifth Plan](#) at 53

¹⁸⁴ *Id.* at 311

¹⁸⁵ *Id.* at 56

¹⁸⁶ *Id.* at 61

¹⁸⁷ *Id.* at 70

Changes to the Provisions Relating to Channeling Injunctions

Within this section of the plan, it was clarified that the BSA and other Chartered Organizations retain the right to seek indemnification and relief claims against the Settling Insurance Companies regarding claims that are not Abuse Claims.¹⁸⁸ These such claims while not barred may be disputed by all parties as to what policies apply and to what extent.¹⁸⁹

Changes to the Youth Protection Plan

Under this modification, the Youth Protection Plan was removed from the inner workings of the plan and rather was attached as an exhibit to still be held as referenced in the plan. Further, under this exhibit the protection plan was further defined and specified to be more clear and effective.¹⁹⁰

¹⁸⁸ [Third Modification of the Fifth Plan](#) at 129

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 284

To Date Professional Fee Applications

Berkeley Research Group, LLC

Thus far, Berkeley Research Group had billed \$7,520,157.50 in fees and \$18,154.45 worth of expenses. These fees and expenses had been charged for the period of 06/3/20-10/31/21.¹⁹¹

PricewaterhouseCoopers, LLP

PricewaterhouseCoopers, LLP had billed \$723,028 in fees and \$0 in expenses. These fees had been charged for the period of 02/18/20-03/21/22.¹⁹²

Haynes and Boone, LLP

Haynes and Boone, LLP had billed \$6,536,409.20 in fees and \$70,204.56 in expenses. These fees and expenses had been charged for the period of 05/15/21-03/8/22.¹⁹³

Bates White, LLC

Thus far, Bates White, LLC had billed \$7,300,381 in fees and \$9,482.15 worth of expenses. These fees and expenses had been charged for the period of 02/18/20-01/31/22.¹⁹⁴

Alvarez & Marsal North America, LLC

Alvarez & Marsal North America, LLC had billed \$13,360,210.20 in fees as well as \$113,214.96 worth of expenses. These fees and expenses had been charged for the period of 04/17/20-03/31/22.¹⁹⁵

¹⁹¹ [Berkeley Research Group](#)

¹⁹² [PricewaterhouseCoopers](#)

¹⁹³ [Haynes and Boone](#)

¹⁹⁴ [Bates White](#)

¹⁹⁵ [Alvarez & Marsal North America](#)

KCIC, LLC

KCIC, LLC had billed \$899,684 in fees and \$2,924.35 worth of expenses. These fees and expenses had been charged for the period of 11/1/21-1/31/22.¹⁹⁶

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Thus far, Ogletree, Deakins, Nash, Smoak & Stewart, P.C. had billed \$2,968,425.91 in fees and \$94,731.12 in expenses. These fees and expenses had been charged for the period of 02/18/20-02/22/22.¹⁹⁷

Omni Agent Solutions

Omni Agent Solutions had billed \$4,402,412.40 in fees and \$0 in expenses. These fees had been charged for the period of 02/18/2020-02/28/22.¹⁹⁸

White and Case, LLP

White and Case, LLP had billed \$23,753,112.20 in fees as well as \$258,518.19 in expenses. These fees and expenses had been charged for the period of 09/23/20-10/31/21.¹⁹⁹

¹⁹⁶ [KCIC](#)

¹⁹⁷ [Ogletree, Deakins, Nash, Smoak & Stewart](#)

¹⁹⁸ [Omni Agent Solutions](#)

¹⁹⁹ [White and Case](#)

Looking Forward & Conclusion

Overall, the BSA's Chapter 11 Bankruptcy has been a rollercoaster of changes, amendments, and motions. The cases have yet to be fully settled, but the BSA hopes that this last plan will be approved by the creditors and the court, allowing the suit to move forward and conclude. Current issues preventing the confirmation and closure of the suit include (1) whether the councils will have to have further participation in the payment to the Settlement Trust; (2) the insurance companies who are refusing to settle want to fight the case; and (3) the claimants have reached a two-thirds acceptance rate, the minimum required by the bankruptcy rules, however the court would prefer closer to a 75 percent acceptance rate. The BSA is hopeful that this last plan will be accepted by the creditors and the court since more than \$2.6 billion²⁰⁰ worth of assets have been put toward the Settlement Trust and the Victims' representatives are informing that class that this plan seems like the best offer that will be available. However, this is uncertain and is only an educated guess at the outcome. If this plan is not approved by the creditors or the court, the BSA will likely try again but it will not be able to carry on much longer without running out of money to fund this case. The best the BSA can hope for is that this final plan will be approved and that it will be able to exit this bankruptcy with the ability to pick up the pieces and rebuild and move forward after putting this ugly chapter behind it.

²⁰⁰ [USA Today Article](#)