

BANKRUPTCY & RESTRUCTURING 2020 EXPERT GUIDE

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Boy Scouts of America Bankruptcy Presents Unique Restructuring Issues and Challenges

By Frank W. DiCatri & Sara McNamara

On 15 June 1916, President Woodrow Wilson signed into law under Title 36 of the United States Code a rare congressional charter for the Boy Scouts of America (“BSA”), an honour reserved for organisations deemed sufficiently national in scope and important to the public interest as to warrant a federal stamp of legitimacy. Last month, BSA utilised Title 11 of the United States Code when it filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the District of Delaware. The reorganisation case is remarkable not only for the singularly patriotic American organisation it affects (BSA reports that this is the first bankruptcy filing by a congressionally chartered, non-profit corporation with a nationwide mission), but also for the unique problems that led to bankruptcy, and BSA’s creative proposals to address them.

The Boy Scouts

The Boy Scouts’ programmes are administered by more than 250 separately incorporated local councils in various jurisdictions throughout the United States, each of which receives an annual charter from the national organisation. Local councils are in turn aided by thousands of civic, faith-based and educational organisations that are authorised by BSA to operate more than 80,000 scouting units. Their stated purpose is to “promote, through or-

ganisation, and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in Scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by Boy Scouts.”¹

None of the local councils or other chartered organisations is a debtor in bankruptcy, even though many of them are defendants in civil suits around the country. So, on the date of its bankruptcy filing, BSA filed a lawsuit seeking to extend the “automatic stay” of litigation to the local councils and other chartered organisations for a period of 180 days while BSA attempts to reorganise its affairs. The outcome of this lawsuit will dictate whether abuse litigation can proceed against the non-debtor local councils and affiliated organisations, notwithstanding the Boy Scouts bankruptcy filing.

The Abuse Claims

BSA’s bankruptcy comes on the heels of some 275 sexual abuse lawsuits and approximately 1,400 more allegations of abuse, 90% of which, according to BSA, relate to abuse that occurred more than 30 years ago, mostly by volunteers associated with the Boy

¹ BSA Charter, § 3.



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Scouts. The problems presented by the abuse litigation have been exacerbated in recent years by new legislation in more than 17 states that allows abuse victims to assert claims that previously would have been barred by application statutes of limitation. Wisconsin’s statute of limitations, for example, currently provides that claims for sexual abuse must be brought by the time the abuse victim achieves his or her 35th birthday, but the Wisconsin legislature is currently considering legislation that would open the door to new sex abuse lawsuits, no matter when the abuse allegedly occurred. In all, BSA reports that it has spent more than \$150 million on settlements and legal professional costs related to sex abuse claims in the last three years alone.

The Proposal to Resolve the Abuse Claims

In a statement on its website, BSA declares that it filed for Chapter 11 bankruptcy “to ensure that victims of past abuse in scouting are equitably compensated.” The proposal, submitted by BSA in the form of a plan of reorganisation, is this: BSA will channel all abuse claims and transfer all of BSA’s related insurance rights to a Victims Compensation Trust that will administer and resolve abuse claims in the years to come; the trust will be funded by BSA, and potentially certain local councils and other chartered organisations; in the interim, BSA will emerge from bankruptcy while obtaining releases for itself, the local councils and other chartered organisations affiliated with BSA.

These “third-party releases” could be the subject of some debate in the Delaware bankruptcy court. But the most important questions left unanswered by BSA’s proposal are who will contribute to the trust, and how much? These questions will be answered through litigation and mediation, not least because much of BSA’s assets (and those of the local councils and other chartered organisations) constitute donor-restricted property and cash. BSA, for example, reports that it owns \$667 million of restricted

assets that are not subject to the claims of creditors, and another \$347 million of assets that theoretically could be used to fund the Victims Compensation Trust. Local Councils and related organisations will undoubtedly have hundreds of millions more in trusts and other sheltered structures and investments.

The Victims Compensation Trust

The Victims Compensation Trust will be administered by a yet-to-be-named Victims Compensation Trustee. Contrary to many bankruptcy cases, it appears unlikely that BSA will object to any claims made by abuse victims, even claims that may be barred by a statute of limitations. Instead, the Victims Compensation Trustee will, using BSA’s transferred insurance rights, submit claims to BSA’s insurers, object to abuse claims as appropriate, and challenge adverse rulings where necessary. By channeling all abuse claims into the Victims Compensation Trust, BSA hopes to emerge from bankruptcy quickly and to avoid the time, expense and political sensitivities associated with abuse litigation.

Conclusion

Like the many Roman Catholic archdiocese bankruptcies that preceded it, the Boy Scouts bankruptcy may well be marred by extensive litigation with the representatives of abuse claimants who may seek to recover assets for the Victims Compensation Trust wherever they can find them. Case in point, BSA’s bankruptcy pleadings mention the “original Rockwell paintings” owned by BSA. These are the original works of art by Normal Rockwell that could be worth millions to creditors and the source of an interesting legal fight. But if BSA has its way, it will emerge from bankruptcy well before the abuse victims’ claims are fully administered and resolved. One way or the other, the effects of BSA’s bankruptcy will likely be felt for years to come.