



UPDATE ON BOY SCOUTS OF AMERICA BANKRUPTCY

We thought you would be interested in the following message sent by Kent Anker, Chief Legal Officer of The Episcopal Church, to the Episcopal Chancellors' Network:

I wanted to give a short update on the BSA bankruptcy. May 6 was the deadline for objections to the Disclosure Statement (based in large part on the adequacy of the information contained therein) and May 19 is the hearing date on that Disclosure Statement. At that hearing the Court will decide whether the Plan solicitation process can begin and anyone who filed a proof of claim, or whose claim is scheduled as valid, will have the opportunity to vote.

Many entities have filed objections to the Disclosure Statement including the tort plaintiffs and their counsel and the Church of Jesus Christ of Latter Day Saints ("LDS") with regard to itself and other Chartered Organizations (we think there have been over 100 objections filed). The LDS objection particularly relates to the proposed Plan's impact on Chartered Organizations, including, among other things, its potential to eliminate the rights of any Chartered Organization to the BSA's insurance policies, to undervalue the Indirect Abuse Claims, and the Plan's failure to show that it would be preferable to a Chapter 7 liquidation for Chartered Organizations. In addition, LDS argues that the Disclosure Statement fails to provide adequate information regarding available insurance policies and Chartered Organization's rights to them.

The current proposed Plan has two options. The first option is a Global Resolution Plan under which a Settlement Trust will be established for payment to abuse victims. The Settlement Trust will be funded with, among other things, certain of the BSA's assets, the BSA's rights under insurance policies, and a contribution from the Local Councils in a projected amount not less than \$425 million. The Global Resolution Plan also will include a mechanism by which Chartered Organizations can make "substantial contributions" to the Settlement Trust, thereby becoming "Contributing Chartered Organizations." In exchange, the Contributing Chartered Organizations would receive the benefit of a Channeling Injunction such that all claims against them would be routed through, and would be restricted to, the Settlement Trust.

The second option is the BSA Toggle Plan. Unlike the Global Resolution Plan, the BSA Toggle Plan does not provide for a Channeling Injunction. Instead, the BSA Toggle Plan provides a process by which abuse victims may obtain compensation from the BSA only. Under the BSA Toggle Plan, the abuse claims would be litigated in the tort system and cases would be subject to statutes of limitations and any other liability defense available.

There has been substantial motion practice in the bankruptcy case. Most pertinent to the plan confirmation process, a number of the tort committees filed a "Motion for Estimation" to estimate victim claims against the BSA as well as non-debtor third parties. There are significant questions as to whether that process could be used under the Bankruptcy Code and strong objections have been filed by the LDS and other groups who are effectively representing the opposition. As argued by the LDS and the other objecting parties, the estimation process has never been used to determine liability for non-debtors and is otherwise improper on other grounds.



The
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My understanding is that the LDS group and others are also involved in a mediation addressing potential claims as part of the larger bankruptcy. By participating, those parties are able to have some idea of the scope of cases against them. However, in order to participate, a party will need to know how much insurance coverage it could bring to bear and, of course, would become a more prominent party in the bankruptcy.

Once a Plan is confirmed, a party cannot be forced into putting funds into any Settlement Trust. The advantage of doing so would be to gain the benefits of the Channeling Injunction and to cap any potential use of insurance proceeds. The Global Resolution provides for a procedure by which Chartered Organizations, as well as perhaps for other third parties, can contribute to the Settlement Trust.

At this stage, there has been no substantive change in the case. **However, it would be good practice to notice any of your insurers of your filing of the proof of claim and to gather whatever insurance resources you might have.** The extent of any individual diocese's, parish's, or other parties' liability at this stage remains unclear since the claims mostly remain potential indirect claims for indemnification and the current Disclosure Statement and Plan do not provide for them.

The analysis may be different if you know of active claims against you.

As before, we are monitoring the matter with outside counsel and please do not hesitate to reach out with any questions or concerns.

With best regards,
Kent"