

Updated December 6, 2021

## **Summary of Select Information about the Boy Scouts of America Bankruptcy Case**

Your congregation may have received information from the Boy Scouts of America (the “BSA”) including a “Plan Solicitation” package concerning voting on its proposed chapter 11 plan of reorganization (the “Plan”) and/or whether your congregation wishes to opt out of the treatment provided in the Plan for “Chartered Organizations.” We have prepared this information overview to help member congregations. It is not legal advice and should not be considered as such. Please retain and consult with an attorney if your congregation needs or wants legal advice concerning the BSA and its Plan.

### **Background**

The BSA filed for bankruptcy protection on February 18, 2020 (often referred to as the “Petition Date”), seeking to resolve the many abuse claims pending against it and its Local Councils. It has proposed the Plan, which, *if confirmed by a final order of the Bankruptcy Court*, will allow it to exit bankruptcy and will bind parties, including Chartered Organizations, such as congregations, as provided in the Plan.

If you currently charter a troop, chartered a troop at one time, or a church that merged with your church once chartered a troop, you are likely a Chartered Organization, a term that the Plan defines as follows:

“Chartered Organizations” means each and every civic, faith-based, educational or business organization, governmental entity or organization, other entity or organization, or group of individual citizens, in each case presently or formerly authorized by the BSA to operate, sponsor or otherwise support one or more Scouting units.

The Court has scheduled a hearing for January 24, 2022, to consider whether to confirm the Plan. Objections to confirmation of the Plan must be filed with the Bankruptcy Court and served on or before January 7, 2022, at 4:00 p.m. Eastern Time. Any Chartered Organization considering filing and serving an objection to confirmation of the Plan should consider that the Plan provides that any Chartered Organization that files such an objection will be deemed to have chosen Option #3 – Opt Out, which is outlined below.

### **Voting Solicitation**

The BSA is now soliciting votes to accept the Plan. To be counted, ballots must be received by the solicitation agent on or before December 28, 2021, at 4:00 p.m. Eastern Time. See below for additional information concerning voting.

In the packet, your congregation is being asked to consider at least three things:

1. Does your congregation vote to ACCEPT or REJECT the Plan (Item #2 on the Ballot)?

2. Does your congregation opt-out of the third party release in Article X.J.4 of the Plan (Item #3 on the Ballot)?
3. Which option for treatment will your congregation choose in the event the Plan is confirmed by the bankruptcy court (not on the Ballot)?

## **Plan Summary**

The BSA has prepared a document entitled “Summary Regarding Chartered Organizations’ Options under the BSA’s Chapter 11 Plan” (hereafter, the “BSA Plan Summary”). A link to the BSA Plan Summary is provided below. It is more extensive than our summary; we recommend that you review it.

### **1. The Plan, the Settlement Trust, and Liability for Direct Abuse Claims.**

Under the proposed Plan, a Settlement Trust would be established to collect settlement proceeds from various parties, including the BSA, its Local Councils, certain insurers, and Contributing Chartered Organizations (see below). The BSA anticipates that settlement proceeds contributed to the Settlement Trust will exceed \$1.8 billion. Abuse claims that arose before the Petition Date would be channeled to the Settlement Trust, which will handle such claims in accordance with established trust distribution procedures.

- The BSA, its Local Councils and Contributing Chartered Organizations (see below) would have no further liability for pre-Petition Date direct abuse claims.
- Participating Chartered Organizations (see below) would have no further liability for direct abuse claims that arose on or after January 1, 1976, but before the Petition Date of February 18, 2020. Participating Chartered Organizations would still be potentially liable for claims that arose before January 1, 1976.

### **2. Options Available to Chartered Organizations.**

The Plan provides three options for the treatment of Chartered Organizations. Each Chartered Organization may choose which option would apply to it if the Plan were to be confirmed by the bankruptcy court. This choice is independent of voting on the Plan. If a Chartered Organization does not choose an option, it will be treated as a Participating Chartered Organization (Option #1).

Regardless of the option chosen, if a holder of a direct abuse claim (*i.e.*, a person who claims to have been abused) elects to receive a one-time payment of \$3,500 from the Settlement Trust without going through the more extensive claim vetting process generally applicable to direct abuse claims, such holder will automatically release all Chartered Organizations with respect to that person’s direct abuse claim.

Option #1 – Participating Chartered Organizations. Chartered Organizations that do not become Contributing Chartered Organizations (see Option #2) are referred to as Participating Chartered Organizations unless they opt out (more on that below). Being a Participating Chartered

Organization is the default option and requires no action by you. If the Plan were to be confirmed:

- Participating Chartered Organizations would have no further liability for direct abuse claims that arose on or after January 1, 1976, but before the Petition Date of February 18, 2020.
- The liability, if any, of Participating Chartered Organizations for direct abuse claims that arose prior to January 1, 1976, would remain, and would not be affected or released in any way.
- Participating Chartered Organizations would not have any rights in any 1976-forward BSA or Local Council insurance policies but will retain their rights, if any, in pre-1976 BSA and Local Council insurance policies. The BSA or the Settlement Trust may, however, enter into settlements with insurers that may adversely affect such rights.
- All claims that Participating Chartered Organizations have against the BSA or the Local Councils would be waived, regardless of the date that the claim arose.

Option #2 – Contributing Chartered Organizations. Chartered Organizations are offered an opportunity to negotiate an agreed contribution to the Settlement Trust. We do not know how much is being sought from Chartered Organizations. The BSA Plan Summary contains information on contacting the BSA and/or the Settlement Trust to negotiate a contribution to the Settlement Trust. Chartered Organizations that make agreed contributions to the Settlement Trust are referred to as Contributing Chartered Organizations. If the Plan were to be confirmed:

- Contributing Chartered Organizations would have no further liability for direct abuse claims that arose before the Petition Date of February 18, 2020.
- Contributing Chartered Organizations would have no rights in any BSA or Local Council insurance policies and all claims they may have against the BSA or the Local Councils will be waived.

Option #3 – Opt Out Chartered Organizations. Chartered Organizations can opt out of being treated as Participating Chartered Organizations by completing and submitting, by January 7, 2022, the Participating Chartered Organization Opt-Out Election Form, which is attached to the BSA Plan Summary. Additionally, Chartered Organizations that file objections to confirmation of the Plan will be deemed to have opted out.

- The liability, if any, of Opt Out Chartered Organizations for abuse claims would not be affected by the Plan; that is, they remain liable for all abuse claims, regardless of when such claims arise.
- Although Opt Out Chartered Organizations would retain claims they may have against the BSA and Local Councils, such claims would be channeled to and recoverable only from the Settlement Trust.

- Although Opt Out Chartered Organizations would retain any rights they may have in BSA and Local Council insurance policies, those rights would be subject to any sales of such policies that the BSA may make back to the insurers, and so may have no or limited value.

## Guidance

Under the polity and structure of the ELCA, each Chartered Organization (such as your congregation) must make its own independent decision, and the ELCA cannot give you legal advice or dictate what you should do. That said, the ELCA has the following observations:

ACCEPT OR REJECT THE PLAN (Item #2 on the Ballot): There are advantages and disadvantages to the proposed Plan. The proposed Plan would eliminate liability for Chartered Organizations for scouting abuse claims arising between January 1, 1976, and February 18, 2020, but it would not eliminate liability for pre-1976 claims. Although we do not have access to the claims database, we understand that a majority of the claims submitted arose prior to 1976. In deciding whether the post-1976 release would be in the best interests of your congregation, you need to consider a number of factors, including:

- a. when and for how long the congregation was a Chartered Organization;
- b. what insurance coverage the congregation can locate for the time periods in which it was a Chartered Organization and whether those insurance companies still exist;
- c. what the applicable statute of limitations is in your state; and
- d. the likelihood that your state's legislature will relax or repeal the statute of limitations.

Please note that the confirmation of the Plan is up to the bankruptcy court. If the bankruptcy court confirms the Plan, it will bind all Chartered Organizations regardless of how they vote. If the bankruptcy court denies confirmation, the Plan will bind no one.

OPTIONAL RELEASE ELECTION (Item #3 on the Ballot): Although each Chartered Organization should make its own independent decision, ***we strongly urge Chartered Organizations to check the box on Item #3***, that is, affirmatively indicate on their ballots that they opt out of the broad releases and waivers in favor of insurance companies and others. We see no reason not to check the box. (Parties who do not submit ballots are automatically deemed to opt out of these releases and waivers.)

SELECTION OF CHARTERED ORGANIZATION OPTIONS (Not on Ballot): We see no reason why a Chartered Organization should choose Option #3 – Opt Out. Accordingly, we do NOT recommend submitting the Participating Chartered Organization Opt-Out Election Form and suggest you discard it. Whether a Chartered Organization should default to Option #1 (Participating Chartered Organization) or seek to become a Contributing Chartered Organization by negotiating with the BSA and/or the trustee of the Settlement Trust to make an agreed contribution to the Settlement Trust and

obtain the Plan's protection against abuse claims that arose prior to January 1, 1976, depends on facts specific to that Chartered Organization, including its possible liability for pre-1976 claims against it, the applicable statute(s) of limitations, and the insurance coverage that it may have against such claims. Such considerations are beyond the scope of this informational briefing.

## Views of Others

- The United Methodist Church is recommending a vote to REJECT the Plan (Item #2 on the Ballot) and to opt out of the third-party release (to check the box in Item #3 on the Ballot). The United Methodist Church's guidance can be found here: <https://nccumc.org/news/2021/11/recommended-voting-action-for-the-bsa-plan/bsa-0-guidance-exhibits.pdf> (nccumc.org)
- The Official Tort Claimants Committee, appointed by the U.S. Trustee to represent holders of abuse claims against the BSA, recommends that parties vote to REJECT the Plan (Item #2 on the Ballot).
- The Official Committee of Unsecured Creditors, appointed by the U.S. Trustee to represent unsecured creditors other than holders of abuse claims, recommends that parties vote to ACCEPT the Plan (Item #2 on the Ballot).
- The Future Claims Representative, appointed by the U.S. Trustee to represent the interests of future holders of claims, recommends that parties vote to ACCEPT the Plan (Item #2 on the Ballot).
- The Coalition of Abused Scouts for Justice, an ad hoc committee that represents certain holders of abuse claims, recommend that parties vote to ACCEPT the Plan (Item #2 on the Ballot).

## Voting Mechanics

Chartered Organizations that timely (by November 20, 2020) filed proofs of claim in the BSA bankruptcy case are eligible to vote on accepting or rejecting the Plan and should have received Class 9 Ballots (for indirect abuse claims). All votes to accept or reject the Plan must be actually received by the Solicitation Agent, Omni Agent Solutions, by December 28, 2021, at 4:00 p.m. Eastern Time.

If you have not received a Ballot and are entitled to vote, you may request a Ballot and voting instructions from the Solicitation Agent by (a) calling the BSA's toll-free restructuring hotline at 866-907-2721, (b) emailing [BSAballots@omniagnt.com](mailto:BSAballots@omniagnt.com), (c) writing to Boy Scouts of America Ballot Processing, c/o Omni Agent Solutions, 5955 De Soto Avenue, Suite 100, Woodland Hills, CA 91367, or (d) submitting an inquiry on the BSA's restructuring website at <https://omniagentsolutions.com/bsa>.

Ballots may not be submitted by e-mail or fax. Ballots may be submitted in person, by courier service or hand delivery, or mailed to:

Boy Scouts of America Ballot Processing  
 c/o Omni Agent Solutions  
 5955 De Soto Ave., Suite 100  
 Woodland Hills, CA 91367

Ballots may also be submitted electronically on Omni Agent Solutions’ website at [Boys Scouts of America Restructuring Website](#). However, submitting a ballot electronically may require use of a unique e-ballot identification number found on ballots furnished by the Solicitation Agent.

The mechanics of completing the Ballot, either by paper or electronically, are thoroughly described in the guidance from the United Methodist Church, which can be found here: <https://nccumc.org/files/bsa-0-guidance-exhibits.pdf>

**Additional Information**

The following documents, which can be obtained from the provided links, contain pertinent information:

Modified Fifth Amended Chapter 11 Plan of Reorganization (the “Plan”)	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/23973daa-dbb2-40ff-b031-05f390ea1f6c_6443.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/23973daa-dbb2-40ff-b031-05f390ea1f6c_6443.pdf</a>
Amended Disclosure Statement for the Modified Fifth Amended Chapter 11 Plan of Reorganization (the “Disclosure Statement”)	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/da60d7ce-df85-45e9-9737-4dd1a5d50014_6445.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/da60d7ce-df85-45e9-9737-4dd1a5d50014_6445.pdf</a>
Summary Regarding Chartered Organizations’ Options under the BSA’s Chapter 11 Plan (the “BSA Plan Summary”)	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/9156e828-9e46-448c-bdd0-ae41eab0683b_Chartered_Organization_Notice.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/9156e828-9e46-448c-bdd0-ae41eab0683b_Chartered_Organization_Notice.pdf</a>
Participating Chartered Organization Opt-Out Election Form (the “Opt-Out Election Form”)	This is attached to the BSA Plan Summary (above).
Notice of Hearing to Consider Confirmation of Modified Fifth Amended Chapter 11 Plan of Reorganization	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/02b1dfb0-75f9-41d9-b623-40f3cf10b9b5_6639.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/02b1dfb0-75f9-41d9-b623-40f3cf10b9b5_6639.pdf</a>
Notice of Current and Potential Protected Parties and Limited Protected Parties	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/49db76e4-51d0-4151-8aae-2d4661cebee5_BSA_Current_and_Potential_Protected_Parties_and_Limited_Protected_Parties_110121.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/49db76e4-51d0-4151-8aae-2d4661cebee5_BSA_Current_and_Potential_Protected_Parties_and_Limited_Protected_Parties_110121.pdf</a>

BSA Letter regarding Plan	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/05cb1a01-f75a-49ea-bc01-4ab838b7dc10_BSA_Cover_Letter.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/05cb1a01-f75a-49ea-bc01-4ab838b7dc10_BSA_Cover_Letter.pdf</a>
UMC Recommended Voting Action for the BSA Plan	<a href="https://nccumc.org/news/2021/11/recommended-voting-action-for-the-bsa-plan/">https://nccumc.org/news/2021/11/recommended-voting-action-for-the-bsa-plan/</a>
UMC Guidance and Instructions for Local Churches	<a href="#">bsa-0-guidance-exhibits.pdf (nccumc.org)</a>
Official Committee of Unsecured Creditors Letter regarding Plan	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/06ac8461-9b55-4911-96f5-f81745f0dd0e_UCC_Letter.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/06ac8461-9b55-4911-96f5-f81745f0dd0e_UCC_Letter.pdf</a>
Future Claims Representative and Coalition of Abused Scouts for Justice Letter regarding Plan	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/13075c0b-08dc-487e-98b6-bc2a113cd465_FCR_Coalition_Letter.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/13075c0b-08dc-487e-98b6-bc2a113cd465_FCR_Coalition_Letter.pdf</a>
Official Tort Claimants Committee Letter regarding Plan	<a href="https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/fc0482d0-a582-4536-b869-3db555f89bf6_TCC_Cover_Letter.pdf">https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/fc0482d0-a582-4536-b869-3db555f89bf6_TCC_Cover_Letter.pdf</a>