

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

THE HONORABLE BARBARA J.  
HOUSER (RET.), IN HER CAPACITY AS  
TRUSTEE OF THE BSA SETTLEMENT  
TRUST,

*Plaintiff,*

v.

Case No. 3:23-cv-01592-S

ALLIANZ GLOBAL RISKS US  
INSURANCE COMPANY; *et al.*,

*Defendants.*

**PLAINTIFF'S SUPPLEMENTAL BRIEF ADDRESSING THE THIRD CIRCUIT'S  
OPINION IN *IN RE BOY SCOUTS OF AMERICA***

June 2, 2025

Respectfully submitted,

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Pursuant to the Court's May 19, 2025 Order (the "Order"), Plaintiff, the Honorable Barbara J. Houser (Ret.), in her capacity as Trustee (the "Trustee" or "Settlement Trustee") of the BSA Settlement Trust (the "Trust" or "Settlement Trust"), by and through her undersigned counsel, submits this Supplemental Brief and would show the Court as follows:

### **SUMMARY OF SUPPLEMENTAL RESPONSE**

This Supplemental Briefing addresses the impact of the United States Court of Appeals for the Third Circuit's opinion in *In re Boy Scouts of America* (the "*BSA Appeal*") and provides the Court with information regarding the Trustee's actions during the interim. First, the *BSA Appeal* ruling determined that the several appeals challenging the legality of the Boy Scouts of America's ("BSA") plan of reorganization, confirmed in BSA's bankruptcy case in 2022 and that became effective on April 19, 2023 (the "BSA Plan"), failed as a matter of law, other than with respect to a specific modification of the BSA Plan's judgment reduction provision which does not prevent this litigation from proceeding. Second, the BSA Plan remains in effect, has been substantially consummated, and confirmation has now been resolved by the Third Circuit either through dismissals of appeals or on the merits. As part of that process and as further explained below, the Trustee has been adjudicating and processing claims based on sexual abuse in BSA's scouting programs ("Abuse Claims"). And, as she has been since April 19, 2023, the Trustee continues to be vested with the rights to pursue the collection of several billion dollars of insurance proceeds against the insurer Defendants in this case. This litigation is necessary to collect on those insurance policies in order to pay valid Abuse Claims.

As the Trustee explained in her 2023 briefing in this case, the Trustee's claims for declaratory relief, breach of contract, and bad faith were, at that time, ripe for adjudication, adequately pled, and stated claims upon which relief could be granted by this Court. Certain insurer Defendants nevertheless asserted in their respective motions to dismiss that the Trustee's

claims for insurance coverage were not viable based on their contention that, at the time, the Trust had not processed and valued the “Abuse Claims”. The insurer Defendants’ contentions in this regard were incorrect when they were asserted then, and now, based on subsequent actions by the Trustee are entirely outdated. The Trustee’s claims for insurance coverage are unquestionably ripe and properly pled, and this litigation should proceed without further delay.

## **FACTUAL BACKGROUND<sup>1</sup>**

### **I. The BSA Bankruptcy and the Formation of the Settlement Trust.**

In February 2020, BSA filed its chapter 11 bankruptcy case in order to resolve its mounting defense costs and liabilities for Abuse Claims. *See In re Boy Scouts of Am.*, 642 B.R. 504 (Bankr. D. Del. 2022). On September 8, 2022, the U.S. Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order confirming the BSA Plan.<sup>2</sup> *See In re Boy Scouts of Am.*, No. 20-10343 (LSS), 2022 WL 20541782 (Bankr. D. Del. Sept. 8, 2022) (the “Confirmation Order”). On March 28, 2023, the U.S. District Court for the District of Delaware affirmed the Confirmation Order. *See In re Boy Scouts of Am.*, 650 B.R. 87 (D. Del. 2023). The BSA Plan

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<sup>1</sup> This Supplemental Brief provides facts regarding the bankruptcy plan, the actions of the Third Circuit and other courts in affirming it, the distribution procedures for adjudicating and paying Abuse Claims, and the actions of the Trustee in administering the Trust and the distribution plan during the period this case has been stayed. These facts are undisputed and are drawn from the various plan documents, pleadings on file, and the Declaration of Hon. Barbara J. Houser (Ret.). *See, e.g., infra* n.5 (BSA Plan); n.8 (BSA distribution procedures and **Exhibit B** (Houser Declaration)). Because these facts are generally known and/or can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” this Court may take judicial notice of such facts under Fed. R. Civ. P. 201(b)(1) and (2). For example, this Brief describes the “IRO Process” (*see infra* at 4), in which certain insurers participated.

To the extent judicial notice is not appropriate, then Plaintiff requests that the Court either consider this filing as a Supplemental Pleading pursuant to Fed. R. Civ. P. 15(d) or grant leave to the Trustee to file a Supplemental Pleading setting forth these facts under that same Rule. *See* Fed. R. Civ. P. 15(d) (providing that the Court can grant leave for a party to supplement facts that “happened after the date of the pleading”).

<sup>2</sup> Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC, *In re Boy Scouts of America*, No. 20-10343 (LSS) (Bankr. D. Del. Sept. 6, 2022), ECF No. 10296, *available at* [https://casedocs.omniagentsolutions.com/cmsvol2/pub\\_47373/aeeb7dbb-0270-4442-8db6-f657d052676f\\_10296.pdf](https://casedocs.omniagentsolutions.com/cmsvol2/pub_47373/aeeb7dbb-0270-4442-8db6-f657d052676f_10296.pdf). Descriptions of the BSA Plan herein are subject in all respects to the actual terms of the BSA Plan. Capitalized terms not defined herein have the meanings ascribed to them in the BSA Plan.

became effective on April 19, 2023 (the “Effective Date”). *See* Proof of Publication, *In re Boy Scouts of Am.*, No. 20-10343 (LSS), ECF No. 11218 (publishing BSA Plan Effective Date).

To resolve the 82,209 Abuse Claims filed against BSA during its bankruptcy case, the BSA Plan created the Settlement Trust, to which all Abuse Claims were channeled and which assumed liability for Abuse Claims asserted against BSA and its Local Councils.<sup>3</sup> *See* BSA Plan at Art. IV.C.1 (“[T]he Settlement Trust shall assume the liabilities, obligations, and responsibilities, financial or otherwise, of (a) the Protected Parties<sup>4</sup> for all Abuse Claims . . .”).

To be able to pay these tens of thousands of Abuse Claims, the Settlement Trust received the “Settlement Trust Assets” on the Effective Date which included, among other assets from BSA and its Local Councils, the rights under BSA’s and Local Councils’ insurance policies. BSA Plan at Art. IV.D.1. The BSA Plan transferred to the Settlement Trust any claims, causes of action, or rights of BSA and Local Councils against insurers arising from or related to the Insurance Policies; the right to receive any proceeds or benefits from these claims, causes of action, or rights; and all other rights, claims, benefits, or causes of action of BSA and Local Councils under or with respect to the Insurance Policies.<sup>5</sup>

Despite a litany of motions to stay the effectiveness and implementation of the confirmed BSA Plan by certain of the insurer Defendants, among others, no court that considered the issue,

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<sup>3</sup> BSA carries out its scouting programs through charters granted to Local Councils that are assigned to specific geographic areas across the United States. Complaint ¶ 103, ECF No. 1 (the “Complaint”). These Local Councils recruit and oversee the local organizations that administer BSA’s scouting programs. *Id.*

<sup>4</sup> “‘Protected Parties’ means the following Persons: (a) the Debtors; . . . (d) the Local Councils. . .” BSA Plan at Art. I.A.236.

<sup>5</sup> *See* BSA Plan at Art. I.A.157 (setting forth the “Insurance Assignment,” which includes, but is not limited to, “the assignment and transfer to the Settlement Trust of (a) the Insurance Actions, (b) the Insurance Action Recoveries, . . . and (d) all other rights, claims, benefits, or Causes of Action of [BSA], [or] Local Councils . . . under or with respect to the Abuse Insurance Policies (but not the policies themselves”); *see also id.* Art. IX.A.3.j (declaring that the “Plan’s transfer of rights under BSA Insurance Policies . . . is authorized and permissible notwithstanding the terms of any policies or provisions of applicable law that are argued to prohibit the assignment or transfer of such rights”).

including the United States Supreme Court, has stayed the implementation of the BSA Plan.<sup>6</sup> Accordingly, as directed by the BSA Plan, the Trustee has determined tens of thousands of Abuse Claims; paid small portions of thousands of individual Abuse Claims through an initial distribution; and issued bills to insurer Defendants demanding insurance coverage and payments for allowed Abuse Claims. As set out below, much of this work by the Trustee occurred since this case was filed.

## II. The Trustee Has Processed and Evaluated Abuse Claims.

The BSA Plan provides multiple processes for the Trustee to review, evaluate, determine, and value Abuse Claims. These processes include, among others, the Independent Review Option (“IRO”) and the Matrix Claims (“Matrix”) Process.<sup>7</sup>

### A. The Independent Review Option.

The IRO provides Abuse Claimants with the opportunity to have an independent, neutral third party (the “Neutral”), selected from a panel of retired judges with tort experience maintained by the Settlement Trust, make a settlement recommendation to the Settlement Trustee based on the evidence and law applicable to such claim (the “Settlement Recommendation”). *See* Attorney’s Guide to the Independent Review Option (“IRO”) Version 7, Effective Date: August 30, 2024, attached hereto as **Exhibit A** (the “IRO Guide”). The Settlement

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<sup>6</sup> All of the insurers’ motions to stay implementation of the BSA Plan have been denied. *See, e.g., In re Boy Scouts of Am.*, No. 20-10343-LSS, 2023 WL 2891519, at \*2 (D. Del. Apr. 11, 2023) (denying first motion to stay); Order, *In re Boy Scouts of Am.*, No. 23-1664 (3d Cir. Apr. 19, 2023), ECF No. 27 (denying second motion to stay); Order, *In re Boy Scouts of Am.*, Civ. No. 22-1237-RGA (D. Del. Oct. 3, 2023), ECF No. 255 (denying third motion to stay); Order, *In re Boy Scouts of Am.*, No. 23-1664 (3d Cir. Nov. 2, 2023), ECF No. 141 (denying fourth motion to stay). And, significantly, on February 22, 2024, the Supreme Court refused to stay further implementation of the BSA Plan while the *Purdue* appeal was pending before it. *Lujan Claimants v. Boy Scouts of Am.*, 144 S. Ct. 883 (2024).

<sup>7</sup> Under the BSA Plan, Abuse Claimants were also permitted to elect for an “Expedited Distribution,” whereby they became eligible to receive \$3,500 if they provided basic required information and signed basic required forms in support of their claims. Under the terms of the BSA Plan, Expedited Distribution claims are not payable under insurance policies issued to BSA or Local Councils. Accordingly, payments made by the Settlement Trust to Expedited Distribution Claimants are not at issue in this litigation.

Recommendation is intended to replicate, to the extent possible, the amount a reasonable jury might award for the particular Abuse Claim, taking into account the relative shares of fault that may be attributed to any parties potentially responsible for the Abuse Claim under applicable law and applying the same standard of proof that would apply under applicable law. *Id.* at Art. I.a.

Claimants electing the IRO must pay an initial \$10,000 administrative fee to the Settlement Trust or request a fee waiver. *Id.* at Art. III. Within seven (7) days of paying this fee or receiving a waiver, the Claimant must file a complaint (the “IRO Complaint”). *Id.* at Art. IV.a. Within twenty-eight (28) days of the filing of the IRO Complaint, the Settlement Trust, acting through its Claims Administrator, provides written notice to the applicable “Responsible Insurers” that issued policies to the Debtors or Local Councils during the applicable coverage period based upon the allegations set forth in the IRO Complaint. *Id.* at Art. V.a. The Claims Administrator for the IRO (the Honorable Michael J. Reagan (Ret.)) then selects a Neutral to preside over the IRO process. *See id.* at Art. VII. Responsible Insurers are provided notice of the Neutral’s name and, along with other participating parties, afforded an opportunity to challenge the appointment of the Neutral. *See id.*

Responsible Insurers may elect to participate in the IRO process by filing notice of an intent to participate, an answer to the IRO Complaint, or some other responsive pleading to the IRO Complaint. *Id.* at Art. VIII.a. Responsible Insurers have thus far participated in all of the IRO proceedings. Declaration of the Hon. Barbara J. Houser (Ret.) ¶ 25, June 2, 2025, attached as **Exhibit B** (“Houser Decl.”).

Responsible Insurers and other parties are afforded the opportunity to participate in discovery in connection with an IRO claim and have the right to request a sworn interview of the



Claimant (up to six hours), a mental health examination, or supplemental signed and dated interrogatory responses from the Claimant. IRO Guide at Art. XII.

At the close of discovery, an IRO Claimant has the option of proceeding with a hearing or may submit his claim for consideration by the Neutral based solely on the written record. *Id.* at Art. XII.e. The Claimant may, alternatively, elect to switch to the Matrix claims determination process. *Id.* at Art. XII.f. If the IRO Claimant elects to proceed to have his claim determined in the IRO process, he then pays a second \$10,000 Administrative Fee or may request a fee waiver. *Id.* at Art. XIII.

Whether a Claimant proceeds with an IRO Hearing or submits his Claim to the Neutral for consideration based on the written record, the Responsible Insurers may file a brief responding to issues raised in a brief submitted by the Claimant. *Id.* at Art. XIV.b. Defenses asserted by Responsible Insurers are considered in the Neutral's Settlement Recommendation. *Id.* at Art. XIV.e. The Claimant bears the burden of proof to establish his claims. *Id.* at Art. XVII.a.i. Responsible Insurers bear the burden of proof to establish their defenses. *Id.*

For claims that proceed to an IRO hearing, Responsible Insurers may call witnesses, designate deposition transcript excerpts, introduce exhibits, make evidentiary objections, cross-examine witnesses, and make arguments. *See generally id.* at Arts. XV–XVIII. For claims that proceed based on the written record, Responsible Insurers are afforded the opportunity to make evidentiary objections and submit written arguments. *Id.* at Art. XIX.

At the conclusion of the IRO Process, whether through an IRO Hearing or for a claim submitted on the written record, the Neutral makes a Settlement Recommendation to the Settlement Trustee. *Id.* at Art. XX.b. Notice of a Settlement Recommendation is provided to the Responsible Insurers who are afforded an opportunity to consent to the Settlement

Recommendation. *Id.* To date, the Responsible Insurers have objected to all Settlement Recommendations submitted—with the exception of a single claim where the recommendation was to award the Claimant nothing. Houser Decl. ¶ 31.

The Trustee reviews all Settlement Recommendations and can either accept or reject such recommendations. IRO Guide at Art. XX.b.iv. If the Settlement Trustee accepts the Settlement Recommendation, it becomes the allowed amount of the Claimant’s claim against the Debtors, other Protected Parties, and Chartered Organizations. *Id.* at Art. XX.b.v. If the Settlement Trustee rejects the Settlement Recommendation, the Claimant may commence a lawsuit in any court of competent jurisdiction against the Settlement Trust within forty-five (45) days. *Id.* at Art. XX.b.vi.

#### **B. The Matrix Claims Process.**

Abuse Claimants may alternatively pursue determinations of their claims through the Matrix Claims Process. The Matrix Claims Process is overseen by the Settlement Trustee and the Claims Administrator for that process. *See* The Claimant’s Guide to the Trust (“Matrix”) Claims Process Version 4.0 as of May 31, 2024, attached hereto as **Exhibit C** (the “Matrix Guide”). In the Matrix Process, claims are analyzed based on the Claimant’s responses to questions asked in the Claims Questionnaire. *See id.* at Art. B. Claims are determined through a two-step process. *Id.* at Art. B.1. First, the Trust determines whether a claim is “allowable.” *Id.* at Art. B.1.a. Second, for allowable Matrix Claims, the Trust determines the value of the claim. *Id.* at Art. B.1.b. The value is based upon a matrix found in the BSA Plan’s Trust Distribution Procedures (“TDP”).<sup>8</sup> *Id.*

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<sup>8</sup> A copy of the BSA Plan’s Trust Distribution Procedures is available at [https://scoutingsettlementtrust.my.salesforce.com/sfc/p/#Dp0000016pkB/a/Dp000000sbbg/vS2dKul.uR5w5qUYwJCKVyoASd2H91pUQUVyVD\\_xNhs](https://scoutingsettlementtrust.my.salesforce.com/sfc/p/#Dp0000016pkB/a/Dp000000sbbg/vS2dKul.uR5w5qUYwJCKVyoASd2H91pUQUVyVD_xNhs).

To determine whether a claim is “allowable,” the Trust evaluates the information provided by the Abuse Claimant in a Claim Questionnaire, along with supporting documentation, against the requirements of the TDP, which focus on, among other things: (1) the timely submission of the Abuse Claim; (2) the absence of any prior resolution of the claim through litigation or settlement; (3) the acts of abuse suffered by the Claimant; (4) the identity of the abuser; (5) the Claimant’s and the abuser’s connection to Scouting; (6) the date of the abuse and/or the age of the Claimant at the time of the abuse; and (7) the location of the abuse. *Id.* at Art. B.1.a. Claimants sign Claim Questionnaires under penalty of perjury; provide all supporting documents and records regarding their claims; agree to submit to interviews and examinations by the Settlement Trust if requested to do so; agree to execute releases prior to receiving any payments; and agree that their information may be shared with insurers of BSA and Local Councils. *Id.* at Art. C.1.

Once an Abuse Claim is determined to be allowable, the Settlement Trust values the claim under the criteria set forth in and terms of the TDP. *Id.* at Art. B.1.b. First, based on the information provided to the Settlement Trust by the Abuse Claimant, the claim is categorized in the matrix set forth in the TDP which specifies six different tiers of abuse. *Id.* The “tier” determined for the claim establishes a “base matrix value” and a “maximum value.” *Id.* Second, once a claim has been assigned to a tier of abuse based on the information provided by the Claimant, the TDP requires the Settlement Trust to apply “aggravating” and “mitigating” factors to the claim. *Id.* The “aggravating factors” that can increase the value of a claim include: (1) the nature of the abuse and circumstances; (2) the abuser’s profile (*i.e.*, how many other Claimants the abuser abused); and (3) the impact of the abuse on the Claimant. *Id.* “Mitigating Factors” that can reduce the allowed amount of the claim, including to zero or near zero, include: (1) a family relationship between the Claimant and the abuser; (2) a non-Scouting relationship between the

Claimant and the abuser; (3) the responsibility for the abuse of another party not protected by the BSA Plan; (4) the Claimant's receipt of other settlements or awards; (5) an applicable statute of limitations; and (6) the absence of a putative defendant. *Id.*

After a claim is (1) submitted to and reviewed by the Settlement Trust, and (2) provided to any potentially Responsible Insurers for review, feedback, and consent, a decision is issued to the Claimant that says whether the claim is "allowable" and, if so, how it was "valued" by the Settlement Trust. *Id.* at Art. D.2. A claim may be "disallowed" if it does not meet the criteria set forth in the TDP. *Id.* Claimants are allowed to request that the Trustee reconsider the Trust's determination notice, provided such request is timely made and accompanied by a \$1,000 administrative fee. *Id.* at Art. D.3.

If a claim determination is accepted by the Claimant, the Claimant then must execute release forms; submit a payment instructions form; return a Healthcare Lien Questionnaire; and submit a Matrix Distribution Release and Attestation. *Id.* at Art. D.4. Matrix claims which are allowed and satisfy these requirements are then paid a percentage of their allowed amount determined by the Trustee based upon the assets available to the Trust and the estimated aggregate amount of all allowed claims. *Id.* at Art. D.5.

**C. The Trustee Has Made Substantial Progress in Processing IRO and Matrix Claims.**

Since the BSA Plan's Effective Date, the Trustee has:

- Established procedures to administer, evaluate, and process Abuse Claims.  
Houser Decl. ¶ 7.
- Processed and determined Abuse Claims under the "Matrix" claims process set forth in the BSA Plan. Specifically, as of May 30, 2025, 58,133 Claimants have submitted their Claims Questionnaires to the Settlement Trust for determination

under the settlement matrix set forth in the BSA Plan. *Id.* ¶ 14. As of May 30, 2025, the Settlement Trust has determined the allowed claim amounts for 30,751 Matrix Claimants—more than 53% of all Matrix claims submitted. *Id.* ¶ 15.

- The BSA Plan requires that all Claimants sign an irrevocable release before receiving any payment from the Settlement Trust on their allowed claims. As of May 30, 2025, 17,376 Matrix Claimants have returned an irrevocable release to the Settlement Trust which authorized the Settlement Trust to make an initial distribution to those Claimants on their allowed Abuse Claims. *Id.* As of May 30, 2025, the Settlement Trust has made initial distributions totaling \$144,540,580 to 16,792 Matrix Claimants with allowed claims. *Id.*
- Announced a bar date of May 31, 2024 for the submission of Abuse Claims under the Matrix claims processing option. *Id.* ¶ 13. Shortly after May 31, 2024, the Trustee announced that late Matrix claims would be accepted for processing by the Settlement Trust through July 26, 2024 at 6 pm EDT without an excuse or explanation being required of the submitting Claimant or counsel as to why the May 31, 2024 deadline had been missed. *Id.*
- Processed claims for Claimants with severe health concerns who have sought the expedited processing of their claims by submitting an Exigent Health Declaration from their physician, stating that there is substantial doubt that the Claimant will survive beyond the next six months. *Id.* ¶ 16. Claimants who submit Exigent Health Declarations are moved to the front of the processing queue. *Id.* As of May 30, 2025, 149 Claimants have informed the Settlement

Trust that they have exigent health circumstances by submitting an executed Exigent Health Declaration. *Id.* The Settlement Trust has determined 145 Exigent Health claims to date. *Id.* Of those, 107 Claimants have executed and returned irrevocable releases and have received an initial distribution on their allowed claims. *Id.* The remaining Exigent Health claims (4) received to date are in the process of being evaluated and determined by the Settlement Trust. *Id.*

- Implemented the Advance Payment Program (the “APP”) on February 12, 2024, which provided eligible Claimants, many of whom are elderly and in poor health, with an advance on their initial distribution from the Settlement Trust. *Id.* ¶ 17. Under the APP, eligible Claimants received a \$1,000 advance on their initial distribution before their allowed claim amount was finally determined. *Id.* Eligibility to participate in the APP was determined based upon a rigorous application of criteria to the information provided to the Settlement Trust by individual Claimants in their Claims Questionnaires. As of May 30, 2025, the Settlement Trust has notified 3,378 Matrix Claimants that they are eligible to receive an advance on their initial distribution from the Settlement Trust.<sup>9</sup> Of those, 702 Claimants agreed to accept an advance on their initial distribution. Each accepting Claimant executed an irrevocable release of their Abuse Claim and has been paid the \$1,000 advance, for a total paid out under the APP of \$702,000. *Id.*

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<sup>9</sup> The Trust discontinued the APP on November 20, 2024 in order to dedicate all of its resources to the determination of Abuse Claims on the merits. Houser Decl. ¶ 17.

- Administered the “Independent Review Option” under the BSA Plan for the 209 Abuse Claimants who timely (i) elected to have their claims determined through the IRO, and (ii) paid the required administrative fee to the Settlement Trust. *Id.* ¶ 18. As of May 30, 2025, 101 IRO Claimants have had their IRO hearings held and concluded by the Neutrals engaged by the Settlement Trust and assigned to hear and determine those claims. *Id.* ¶ 19. Responsible Insurers for those Abuse Claims actively participated in those 101 IRO hearings. *Id.* ¶ 29. The Trustee has received the Neutral’s Settlement Recommendation in 79 of those cases and is awaiting the Neutral’s Settlement Recommendations in the other cases. *Id.* ¶ 19. The Trustee has accepted 54 Settlement Recommendations, after asking the Responsible Insurers if they would consent to that Settlement Recommendation. *Id.* As of May 30, 2025, IRO hearings are currently scheduled for an additional 107 IRO claims. *Id.* ¶ 20.
- Beginning in September 2024, issued bills to individual insurer Defendants in which the Trustee demanded payment from such insurer Defendants of specific amounts for specifically identified individual Abuse Claims that had been processed and valued by the Trustee in accordance with the BSA Plan. *Id.* ¶ 32.

As of May 30, 2025, the Trustee has not received any payment for any Abuse Claim from any insurer Defendant. *Id.* Nor has any insurer Defendant affirmed that it will pay any amount for any Abuse Claim for which it has received a demand for payment in compliance with their policies. *Id.*

On the contrary, despite some insurer defendants participating in the IRO Process, most of the insurer Defendants have issued correspondence in response to the Trustee’s demands outlining

their coverage defenses and disputing the Trustee's claims for insurance coverage. *Id.* ¶ 33. Illustrative examples of the insurer Defendants' coverage correspondence are attached hereto as **Exhibit D.**

The initial distributions to allowed Abuse Claims have been paid at 1.5% of the allowed amount of an individual claim. Houser Decl. ¶ 15. The Settlement Trust is constrained in its ability to pay more for allowed Abuse Claims due to the refusal of the insurer Defendants to pay any amount for allowed claims they have been asked to cover and pay. *See id.*

A substantial portion of the abuse Survivor population is elderly. Approximately 36% of the Matrix Claimant population is 65 years old or older, and nearly 4%—that is, over 2,300 Claimants—are 80 years old or older. *Id.* ¶ 11. More than 2,000 Claimants who have filed a Matrix Claim with the Trust are deceased. *Id.* Of those Claimants, over 1,900 have not received an initial distribution from the Trust. *Id.* Survivors have waited decades for someone to acknowledge what happened to them and to provide them some measure of justice, which is what the Trustee is attempting to do.

### **III. Procedural History of the Present Action.**

On July 17, 2023, the Trustee commenced her comprehensive insurance coverage action in this jurisdiction—the site of BSA's headquarters since 1978, and the most logical forum to determine coverage for Abuse Claims. *See generally* Compl. This action (the "Comprehensive Coverage Action") involves more than 80 years of insurance coverage for BSA and its Local Councils. Compl. ¶¶ 113–14. It seeks billions of dollars of coverage for the Abuse Claims filed in the BSA bankruptcy case that have been channeled to the Settlement Trust for resolution. This Comprehensive Coverage Action will resolve fully all coverage issues as to the entirety of BSA's and the Local Councils' liability for all Abuse Claims channeled to the Settlement Trust under all



available policies issued to BSA and the Local Councils. This case involves tens of thousands of Abuse Claims, more than 3,000 insurance policies and 91 insurers.

In response to the Complaint, certain insurers filed motions to dismiss the Comprehensive Coverage Action on several grounds, including, among others, failure to state a claim for relief under Rule 12(b), abstention, and *forum non conveniens*. The Court has not decided any of the Defendants' motions to dismiss, and these motions remain pending.

Separately, dozens of insurers moved to stay this Comprehensive Coverage Action until such time as the United States Supreme Court issued a decision in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). *See* Undersigned Defs.' Mem. in Supp. of their Mot. to Stay Pending Ruling in *Harrington v. Purdue Pharma, L.P.*, ECF No. 229 ("Stay Motion"). *Purdue* involved the issue of "[w]hether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent." *See Harrington v. Purdue Pharma, L.P.*, No. 23-124, 2023 WL 5116031, at \*1 (Aug. 10, 2023).

In moving to stay this Comprehensive Coverage Action, certain insurers argued that the Supreme Court's decision in *Purdue* could have an impact on the parties and policies at issue. *See generally* Stay Motion. Specifically, certain insurers argued that if the Supreme Court ruled that the non-debtor releases provided in the BSA Plan are impermissible, such a ruling could affect the BSA Plan's assignment to the Settlement Trust of rights under the policies issued to Local Councils. *Id.* The Court granted the Stay Motion at a December 13, 2023 status conference and administratively closed this case. *See* Order, ECF No. 339.

The Court's December 13, 2023 Order required the parties to notify the Court when *Purdue* was decided and to provide supplemental briefing on the impact of *Purdue*, if any, on the

Comprehensive Coverage Action. *See id.* The parties did so, and the Court entered an Order on July 3, 2024 re-opening the case and directing the parties to submit any supplemental briefing related to the pending motions impacted by the *Purdue* decision. *See* Order, ECF No. 384.

On June 27, 2024, the Supreme Court issued its decision in *Purdue*. The Supreme Court held that the “bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a nondebtor without the consent of affected claimants.” *Purdue*, 603 U.S. at 204. However, describing its decision as a “narrow one,” the Supreme Court noted that *Purdue* “involves only a stayed reorganization plan,” and expressly held that its decision did “not address whether our reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated.” *Id.* at 206, 226.

#### **IV. The *BSA Appeal* Decision.**

An appeal of the BSA Plan to the Third Circuit was already pending at the time of the Supreme Court’s decision in *Purdue*. The parties to that appeal who were challenging the BSA Plan’s incorporation of non-consensual third-party releases, which notably did not include any of the insurer Defendants in this case, submitted supplemental briefing to the Third Circuit to address the impact of the *Purdue* decision. Certain of the insurer Defendants did appeal the Confirmation Order for the BSA Plan, but did so based on their contentions that either: (1) language should be added to the BSA Plan and Confirmation Order concerning the impact of the BSA Plan and Confirmation Order on the insurers’ rights and defenses; or (2) the Confirmation Order should be amended to provide insurers with the right to collect from the Settlement Trust in the event that the judgment reduction provided in the BSA Plan concerning contribution claims against Settling Insurers proves insufficient to fully compensate the Non-Settling Insurers. At the request of the

insurer Defendants, this Court continued to stay this Comprehensive Coverage Action pending the result of the appeal of the BSA Plan to the Third Circuit.

The Third Circuit issued its decision upholding the Confirmation Order and validity of the BSA Plan on May 13, 2025.<sup>10</sup> In doing so, the Third Circuit: (1) rejected the request of certain groups of Abuse Claimants to reverse the Confirmation Order based on the *Purdue* decision and dismissed their appeals; (2) declined to add language to the BSA Plan requested by certain insurers relating to their rights and defenses; and (3) ordered that the judgment reduction clause in the BSA Plan be modified to impose a “Settlement Trust backstop” as proposed in one of the appealing insurer’s briefs.<sup>11</sup>

This Court’s previously expressed concerns regarding the potential impact of a decision in *Purdue* and/or in the *BSA Appeal* have now been addressed. The BSA Plan, including its vesting of insurance rights under policies issued to BSA and its Local Councils in the Trustee to pursue to pay Abuse Claims, is valid and effective and will remain so.

## **V. Current Status of This Action.**

The motions to dismiss this Comprehensive Coverage Action filed by the insurer Defendants and fully briefed in 2023 remain pending. There is no basis for any further stay or delay in this case and the Court should proceed with addressing the pending motions, including, as further addressed below, the (1) the Undersigned Defendants’<sup>12</sup> Motion to Dismiss the Complaint (the “UD Motion”); (2) Defendants Great American Assurance Company, Great American E&S Insurance Company, Great American Insurance Company, Arch Insurance

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<sup>10</sup> On May 27, 2025, two groups of claimants filed petitions for rehearing en banc which remain pending before the Third Circuit Court of Appeals. See Lujan Claimants’ Petition for Rehearing En Banc, *In re Boy Scouts of Am.*, No. 23-1664 (3d Cir. May 27, 2025), ECF No. 271; Petition for Rehearing En Banc, *In re Boy Scouts of Am.*, No. 23-1666 (3d Cir. May 27, 2025), ECF No. 279.

<sup>11</sup> This minor modification does not affect or impact any of the claims asserted herein.

<sup>12</sup> The Undersigned Defendants are defined in their motion to dismiss, ECF No. 225.

Company, Arrowood Indemnity Company, Axis Specialty Insurance Company, Axis Surplus Insurance Company, Continental Insurance Company, Endurance American Specialty Company, Endurance American Insurance Company, Everest National Insurance Company, General Star Indemnity Company, Swiss Re Corporate Solutions Capacity Insurance Corporation, and Westport Insurance Corporation's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) (the "Great American Motion," and the insurers, the "Great American Insurers"); and (3) Defendant Gemini Insurance Company's ("Gemini") Motion to Dismiss (the "Gemini Motion") (all three motions together, the "Motions").

As the Trustee asserted in her Consolidated Response in Opposition to these Motions (ECF No. 284), the insurer Defendants' contention that the Trustee's claims are not ripe or adequately pled based on their assertion that the Settlement Trust must process all of the Abuse Claims before proceeding with this litigation is wrong as a matter of law. And, given the developments with respect to the Trustee's processing, determination, and payment of Abuse Claims described above, the insurer Defendants' factual contentions are outdated and incorrect.

## **ARGUMENT**

### **I. The Trustee's Claims Are Ripe.**

In her Complaint, the Trustee asserted causes of action for: (1) declaratory judgment, seeking a determination by this Court as to how the insurance policies purchased by BSA and its Local Councils should be required to respond to Abuse Claims; (2) breach of contract against insurer Defendants for refusing to pay Abuse Claims under the insurance policies they issued; and (3) bad faith against such insurers based on their unreasonable and unfounded refusal to provide coverage and pay for Abuse Claims. Several insurer Defendants argued that the Trustee's claims were not ripe. *See* Br. in Supp. of Great American Insurers' Mot. to Dismiss at 11–16, ECF No. 211. However, the claims and causes of action asserted against the insurer Defendants were

ripe for resolution in 2023 for the reasons set forth in the Trustee's Consolidated Response in Opposition and remain so today. The only difference is, as discussed above and in the attached Declaration of the Honorable Barbara J. Houser (Ret.), and as the Third Circuit has now affirmed, the BSA Plan went effective on April 19, 2023, remains valid and effective, and has now been implemented.

Specifically, for more than two years, the Trustee has, among other things: (1) managed and overseen the Settlement Trust's substantial assets and finances; (2) established and administered procedures to evaluate, process, and pay Abuse Claims, including for "Matrix" claims, and claims under the BSA Plan's Independent Review Option; and (3) established and administered expedited processes for determining and paying Abuse Claims for Claimants with exigent health concerns. As of May 30, 2025, the Trust has paid \$163,994,038 to 22,605 Survivors of sexual abuse in Scouting. Houser Decl. ¶ 7.

Certain of the insurer Defendants have received invoices (the first of which were issued in September 2024) demanding payment for approximately \$7 billion in Abuse Claims that have been processed and valued by the Trust. *Id.* ¶ 32. To date, the insurer Defendants have paid nothing. Moreover, these insurer Defendants have made clear in their communications with the Trustee that they dispute their obligations to provide coverage under their respective policies for Abuse Claims and that they intend to litigate those disputes. The ripeness of the Trustee's insurance coverage claims and causes of action in this litigation is beyond dispute at this point.

## **II. The Trustee's Complaint Adequately Alleges Claims for Declaratory Relief, Breach of Contract, and Bad Faith.**

The insurer Defendants' contentions that the Trustee has failed to state a claim upon which relief can be granted with respect to any of her causes of action are likewise unfounded. As explained in the Trustee's Consolidated Response in Opposition to the Motions, the Complaint set

forth with specificity all of the required elements and factual support for her claims. The subsequent developments in the administration of the Settlement Trust and the insurer Defendants' refusals to pay only amplify that: (1) there are disputes between the parties regarding coverage for Abuse Claims under the insurance policies identified in the Complaint; (2) the insurer Defendants have in fact refused to pay Abuse Claims billed to them under the policies they issued to BSA and its Local Councils; and (3) the insurer Defendants have done so unreasonably and in bad faith. Indeed, it defies credibility that not a single insurer Defendant, including insurer Defendants who paid abuse claims asserted against BSA prior to the BSA bankruptcy case, has paid a single dollar of coverage under any of the thousands of insurance policies at issue in this Comprehensive Coverage Action despite the Trust's issuance of its first bills to insurers for Abuse Claims eight months ago. The Trustee has pled with specificity insurance coverage disputes and contractual breaches that give rise to her causes of action. It is time for this Court to address those claims.

The scope of the insurance policies at issue in this litigation, and the Trustee's rights thereunder, remains the same as it was on the day the Trustee commenced this litigation on July 18, 2023. The only difference is that the Trustee's processing and valuation of Abuse Claims; her demands to the insurer Defendants for payment; and the insurers' wrongful and unreasonable refusals have further confirmed all of the factual and legal contentions in the Complaint and that they were properly pled.

This Comprehensive Coverage Action has been pending for almost two years. The Survivors on whose behalf this action was commenced have waited decades for some measure of justice to be provided to them for the sexual abuse they suffered as children. Many Survivors are elderly. Several Survivors have died while awaiting resolution of the appeals of the Confirmation Order and this litigation. Recovery under the insurance policies at issue in this litigation will

materially enhance —perhaps triple—the recovery that Claimants with allowable claims for childhood sexual abuse can receive. It is time for this action to begin to move forward towards a substantive resolution of the Trustee’s rights under those insurance policies so that the Survivors of childhood sexual abuse in Scouting receive the recognition and justice they deserve.

### **CONCLUSION**

For the foregoing reasons, the Trustee respectfully requests that the Court proceed with deciding the pending motions so that the merits of the Trustee’s claims can be heard and decided as promptly as possible based on the operative Complaint, this supplemental briefing, and the accompanying declaration of the Trustee. Should the Court so direct, the Trustee will seek leave to file a supplemental brief pursuant to Federal Rule of Civil Procedure 15(d) to formally incorporate the developments described herein and in the Trustee’s declaration into the Trustee’s prior briefing on the pending motions.

Dated: June 2, 2025

Respectfully submitted,

/s/Jeffrey M. Tillotson

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(Ret.), in her capacity as Trustee of the BSA  
Settlement Trust*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing pleading was served through the ECF filing system upon all counsel of record on June 2, 2025.

*/s/Jeffrey M. Tillotson*

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Jeffrey M. Tillotson