

## BASIC BSA BANKRUPTCY INFO

The Boy Scouts of America (“BSA”) filed a Chapter 11 Bankruptcy Proceeding in the US Bankruptcy Court for the District of Delaware earlier this year. The motivation for the bankruptcy is it provides a structure for dealing with the myriad of sexual abuse claims which have arisen across the country. The deadline for filing claims in that bankruptcy is **NOVEMBER 16, 2020**. More on the claims filing process later.

Episcopal churches and other Episcopal entities may have claims against BSA if they have ever sponsored a scouting program as a Chartered Organizations (“CO”) but may also have claims if they hosted a scouting activity on their property even though something else served as the CO.

As a CO, the church may have some liability if a child associated with its scouting program was sexually abused by someone associated with that program. The church which hosted a scouting activity might also be liable if the sexual abuse occurred on church property during the scouting activity even though the church may not have had any control over or supervision of that activity. (This is a bit of a stretch but clever plaintiff’s lawyers are known to “stretch.”)

We are advised that the North Carolina statute of limitations for child sex abuse claims is ten years from the date the child attains the age of eighteen. That means that, for planning purposes the period of time we are concerned with is anytime after January 1, 1992. If the church was a CO or hosted any scouting activity on its property during any part of this period, it needs to take steps to protect its interest in the BSA bankruptcy.

The church's claim against BSA would be for indemnification from any liability the church might have to the sexual abuse claimant arising from either its role as a CO or host. Fortunately, effective in 1984 BSA agreed to provide liability insurance coverage for the CO for any claims arising from the scouting activities. It's that liability insurance that will likely be the primary source for the claims settlement pool that will be created upon the confirmation of the BSA Plan of Reorganization. Anyone wanting to be reimbursed from that pool **MUST FILE A PROOF OF CLAIM BY 5:00 PM ON NOVEMBER 16, 2020**. Whether that liability insurance protects a host church which was not a CO is less clear at this time.

Included in the documents identified *above/below* are some "Remarks on BSA Bankruptcy (10/19/2020)" and "Answers to Chartered Organizations (10/22/2020)" that have been prepared by BSA and we commend the review of these. The "Remarks" have some particularly helpful POC preparation and filing information. That claim must be received by the deadline.

If a church has already received a claim for child sexual abuse arising out of its scouting program, it should have already reported that to its insurance carrier and should already have a relationship with a lawyer defending that claim. If that is the case, the church should double check with that lawyer to make sure that he or she knows about the BSA bankruptcy and will file a claim for the church.

However, we are not concerned simply about claims already asserted. The statute of limitations may still permit claims to be asserted even though the scouting program or activity at the church was terminated years ago. By way of an illustration of the problem, assume that whatever the churches involvement with scouting was (as CO, host or otherwise) was terminated on December 31, 2005. Further assume that on July 1, 2004, a scout in the church's program or then present on

church property was abused and that the abused scout's birth date was June 1, 1994. That scout turned 18 on June 1, 2012 and, therefore, has until June 1, 2022 to file a claim. The BSA bankruptcy doesn't bar the scout from filing his claim against the church but it would bar the church from seeking indemnification from BSA and its insurer unless a "Protective Claim" is filed by November 16, 2020.

Please understand that the Diocese of North Carolina will not file this claim for the church. Whether the church was a parish, mission or other entity at the time of the scouting program, it will need to file the proof of claim itself. To assist in that process, we have included *above/below* a Generic proof of claim ("POC") form and an Addendum to Proof of Claim which we have received from the TEC General Counsel which can be attached to the POC. The Generic POC provides some guidance on how to complete the POC. A "clean" blank POC is also enclosed to be completed and filed. Please read the Addendum and make sure you understand it. To the extent that help is needed with any part of this filing, please seek assistance from a local experienced bankruptcy attorney **BUT DO IT ASAP**. The POC may be filed either:

Through the website of the BSA Claims and Noticing Agent at <http://www.omniagentsolutions.com/bsaclaims>; Or

By first class mail, overnight courier or hand deliver to:

Office of the Clerk  
U.S. Bankruptcy Court  
824 Market Street, 3<sup>rd</sup> Floor  
Wilmington, DE 19801

Unlike NC Absentee Ballots the POC must be actually received by 5:00 PM on November 16, 2020; the postmark date on the mailed envelope has no impact here at all.

If the church having some association with a scouting program during the exposure window (1/1/92 to the present) was a mission at any point during the exposure window, the Diocese will likely file its own POC to cover any liability that the Diocese may have on account of its ownership of the real estate used by the mission at the time even though it was not a PO or responsible for the mission's operation of the PO and scouting program. However, since the mission may have liability in its own right, it should file a POC if it was involved with scouting during the exposure window.