

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re: BOY SCOUTS OF AMERICA
AND DELAWARE BSA, LLC,

Debtors.

NATIONAL UNION FIRE INSURANCE
CO. OF PITTSBURGH, PA, et al.,

Appellants,

v.

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,

Appellees.

Chapter 11

Bankruptcy Case No. 20-10343 (LSS)
(Jointly Administered)

Case No. 22-cv-01237-RGA

**REPLY OF THE CERTAIN INSURERS IN FURTHER SUPPORT OF
EMERGENCY MOTION FOR STAY PENDING APPEAL AND A
TEMPORARY STAY WHILE THE COURT RULES ON THE MOTION**

The Certain Insurers hereby submit this reply in further support of their emergency motion for a stay pending appeal and a temporary stay while the Court rules on the motion. The Certain Insurers also request, in the alternative, a short further stay to allow reasonable time for an emergency motion for stay pending appeal to be filed with and considered by the Third Circuit. The motion is fully submitted with this reply, and the Certain Insurers request a ruling from this Court as soon as possible.

1. As the Certain Insurers have explained, they and other appellants have raised many significant issues of public importance in this extraordinary case on which courts have disagreed, and there is a reasonable chance the Third Circuit will rule in their favor with regard to at least some of these issues on appeal. Without a stay, BSA will cause the effective date of its bankruptcy plan to occur immediately after this Court's order is effective, and thereafter seek to deprive the appellants of merits consideration of their appeals by the Third Circuit, causing irreparable harm. BSA admits as much in its omnibus response to appellants' motions.

2. BSA claims the Certain Insurers' appeals are "frivolous" because "two courts" have now ruled on the plan and considered the Certain Insurers' arguments. *See Opp.* at 5-8. But the Third Circuit will exercise plenary review over this Court's ruling, and the Certain Insurers need only show a "reasonable" chance of success on appeal to the Third Circuit, and have done so in their opening papers. *Mot.* at 3-4.

3. BSA contends that the Certain Insurers will not suffer irreparable harm because they point only to "the mere possibility that [their appeals] may become moot" (*Opp.* at 13), but contends that all conditions precedent to the plan's effective date, absent a stay, can be satisfied *immediately* and say nothing about the risk that BSA may seek to moot the appeals (*Opp.* at 2-3; *Mot.* at 8, 10-11). BSA also makes no attempt to address the litany of cases cited by the Certain Insurers addressing the irreparable harm arising from the potential for mootness (*Mot.* at 8) and ignores the

significant appeal issues at stake and harm the plan would cause the insurers, in addition to other harm resulting from denying a stay (Mot. at 8). BSA ignores the condition precedent to the Effective Date that no stay request be pending.

4. BSA claims that the public interest weighs “heavily” in favor of denying a stay (Opp. at 17-19) but ignores the extraordinary nature of the issues raised in this case that are likely to recur in mass tort bankruptcies and the importance of the Third Circuit addressing the merits of those issues on appeal (Mot. at 14-15). BSA points to nothing that would justify depriving the Third Circuit of the ability even to *consider* on the merits the issues in this case.

5. BSA will not be irreparably harmed by a stay. The Certain Insurers have made clear that they are amenable to a prompt briefing schedule that will facilitate the efficient resolution of all appeals on a consolidated basis. Indeed, the record in both the bankruptcy court and this Court proves without doubt the Certain Insurers’ ability to facilitate the timely briefing and argument of the complex issues presented here. *See* Mot. at 13. BSA speculates that the “average appeal” in the Third Circuit lasts “more than a year.” Opp. at 16. That is wrong (*see* <https://www.uscourts.gov/data-table-numbers/b-4> (nine to thirteen months)), but in any event, this is not an “average” case—it is extraordinary—and BSA ignores that the Third Circuit is fully capable of considering the appeals on a shorter timeframe when it deems appropriate. *See* 3d Cir. Local Rule 4.1 (Motions to Expedite).

6. And despite raising unsubstantiated fears of supposed liquidity “risk” and a speculative parade of financial horrors, BSA cannot support its assertions that a short delay of several months would cause liquidation of an organization after operating through more than *three years* of bankruptcy proceedings that included well more than ten thousand court filings. It is simply hyperbole to speculate in the face of the record here that BSA “may be forced to liquidate” and that the plan “may never be consummated” if any stay is granted, let alone the short stay that is requested here. *See Opp.* at 15-16; *see also, e.g.,* Whittman Decl. ¶ 14 (contending that BSA’s membership “stabilize[d]” after the plan was confirmed). Contributions to the Settlement Trust are fixed, the settlement agreements with the plan supporters remain in effect, with no hint from the settling insurers either that a short stay would cause any party to walk away or that they could do so, and BSA itself has contended that substantial preparatory work on the trust remains to be completed before claims are paid. *See Mot.* at 11-13. The claimants and other plans supporters voted for the plan knowing abuse claims would not be paid for many months, or even years, regardless of a stay. *See Mot.* at 12 (citing A. 2619-2620; Bankr. D.I. 11010 at 5-6, 12). *Compare* Whittman Decl. ¶ 19 (wrongly assuming claimants would be paid immediately).

7. For substantially the same reasons, BSA’s request for a staggering \$6.9 billion bond as a condition of a stay is meritless. *See Opp.* at 21-22; *Mot.* at 13; *see*

also, e.g., Whittman Decl. ¶¶ 6-12, 16-18 (speculating about “hypothetical” harms that conceivably could result upon liquidation after a stay of “one to two years”), ¶¶ 11-14 (assuming additional expenses and lost donations and membership fees during such a stay). There is no money judgment against the Certain Insurers here that might require that some bond be posted, and BSA has offered no realistic assessment of its harms that approaches anything near \$6.9 billion, let alone a reasonable bond reflecting the minimal costs that could actually arise from a stay.

8. The Certain Insurers request that this Court act on the motions as soon as practicable. The automatic stay under Federal Rule of Bankruptcy Procedure 8025 will expire after Tuesday, April 11. The Court should grant a stay or, at minimum, a temporary stay to allow a reasonable time for emergency motions to be filed with and considered by the Third Circuit without the plan going effective.

9. Because their appellate rights are at risk, the Certain Insurers respectfully state that, absent a stay, notices of appeal will be filed no later than 12:00 pm ET on Monday, April 10, followed by an expedited stay relief request thereafter in the Third Circuit.

Dated: Wilmington, Delaware
April 7, 2023

Respectfully Submitted,
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CERTIFICATE OF COMPLIANCE

The foregoing reply complies with the type-volume limitation of Federal Rule of Bankruptcy Procedure 8013(f). A proportionally spaced typeface was used, as follows:

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CERTIFICATE OF SERVICE

I, Deirdre M. Richards, hereby certify that on April 7, 2023, I caused a copy of the forgoing ***Reply of the Certain Insurers in Further Support of Emergency Motion For Stay Pending Appeal*** to be served on all registered users of the Court's Case Management/Electronic Case File ("CM/ECF") in this case via CM/ECF.

Dated: April 7, 2023

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