

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

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| In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC, ¹ Debtors. | Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered) |
| BOY SCOUTS OF AMERICA, Plaintiff, v. A.A., <i>et al</i> , Defendants. | Adv. Pro. No. 20-50527 (LSS) Re: A. D.I. 6, 32, and 54 |

**CERTIFICATION OF COUNSEL REGARDING PROPOSED ORDER
PURSUANT TO 11 U.S.C. §§ 105(a) AND 362 GRANTING THE BSA’S MOTION
FOR A PRELIMINARY INJUNCTION AS TO LG 37 DOE ABUSE ACTION**

The undersigned counsel to the Boy Scouts of America (the “BSA”), the non-profit corporation that is, along with its affiliate Delaware BSA, LLC, a debtor and debtor in possession in the above-captioned chapter 11 cases (the “Debtors”) hereby certifies as follows:

1. On February 18, 2020 (the “Petition Date”), the Debtors initiated an adversary proceeding at Adv. Pro. No. 20-50527 (LSS) (the “Adversary Proceeding”) by filing the *Verified Complaint for Injunctive Relief* (A.D.I. 3) (the “Complaint”). In connection with the Complaint,

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtors’ federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors’ mailing address is 1325 W. Walnut Hill Ln., Irving, TX 75038.

the Debtors filed *The BSA's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code* (A.D.I. 6) (the "Motion").²

2. On March 24, 2020, the Court held an evidentiary hearing and heard oral argument on the LG 37 Doe Objection to the Motion.

3. On March 30, 2020, the Court gave an oral ruling and indicated that it overruled the LG 37 Doe Objection and entered the Consent Order (A.D.I. 54). The Court also offered the Debtors and LG 37 Doe the opportunity to submit a separate order specific to LG 37 Doe's overruled objection and consistent with the Court's ruling.

4. The Debtors subsequently worked with LG 37 Doe to draft a form of order (the "LG 37 Doe Order") consistent with the Court's ruling at the March 30, 2020 hearing. A copy of the LG 37 Doe Order is attached hereto as Exhibit A.

5. LG 37 Doe has reviewed the LG 37 Doe Order and does not object to its entry.

WHEREFORE, the Debtors respectfully request that the Court enter the LG 37 Doe Order substantially in the form attached hereto as Exhibit A at its earliest convenience.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Dated: April 1, 2020
Wilmington, Delaware

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PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

LG 37 Doe Order

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

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|---|--|
| In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC, ¹ Debtors. | Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered) |
| BOY SCOUTS OF AMERICA, Plaintiff, v. A.A., <i>et al.</i> , ² Defendants. | Adv. Pro. No. 20-50527 (LSS) Related Adv. Docket Nos. 6, 7, 32 |

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 362 GRANTING
THE BSA'S MOTION FOR A PRELIMINARY
INJUNCTION AS TO LG 37 DOE ABUSE ACTION**

Upon consideration of the Motion for a Preliminary Injunction Pursuant to 11 U.S.C. §§ 105(a) and 362 of the Bankruptcy Code (the "Motion")³ of the BSA, as above-captioned plaintiff (the "Plaintiff") in the adversary proceeding commenced by the Verified Complaint for Injunctive Relief (the "Complaint"), and as debtor and debtor in possession in the above-captioned chapter 11 cases, for entry of an order extending the stay to enjoin the prosecution of the Pending Abuse Actions pursuant to sections 105 and 362 of title 11 of the United States Code

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtors' federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 W. Walnut Hill Ln., Irving, Texas 75038.

² A full list of the Defendants in this adversary proceeding is included in redacted form on Exhibit A to the BSA's Verified Complaint for Injunctive Relief [A.D.I 14-1] to protect the privacy interests of abuse victims.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

(the “Bankruptcy Code”) and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); the Court having reviewed and considered the Complaint, the Motion, the briefs, declarations and other documents filed in support of the Motion, all other evidence and argument submitted by the Plaintiff in support thereof, the *Laraine Kelley, Esq. Affidavit in Opposition to (I) the BSA’s Motion for a Preliminary Injunction; and (II) the BSA’s Motion for an Order Appointing a Judicial Mediator* (A.D.I. 32 and D.I. 164) (the “LG 37 Doe Objection”), and all other objections and replies thereto; and due and proper notice of the Motion having been given, and no other or further notice being necessary or required; and the Court having held a hearing; and after due deliberation and sufficient cause appearing therefor; the Court finds and concludes as follows:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Pursuant to 28 U.S.C. §§ 157 and 1334, this Court has related-to jurisdiction over the claims and actions against the BSA Related Parties in *LG 37 Doe v. Douglas Nail, Greater Niagara Frontier Council, Inc., Boy Scouts of America and Boy Scouts of America*, Case No. 1:20-00217 (W.D.N.Y.) (the “LG 37 Doe Abuse Action”).

B. The Court has entered the *Consent Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Granting the BSA’s Motion for a Preliminary Injunction* (the “Consent Order”).

Based on these findings,

IT IS HEREBY ORDERED THAT:

1. For the reasons set forth in the Court’s oral ruling at a hearing on March 30, 2020 (a copy of the transcript is annexed hereto as Exhibit 1, and hereby incorporated as if fully set

forth herein), the relief requested in the Motion is GRANTED as set forth herein and the LG 37 Doe Objection is hereby OVERRULED.

2. The LG 37 Doe Abuse Action, currently pending in the United States District Court for the Western District of New York, is hereby stayed as to the Greater Niagara Frontier Council pursuant to the terms of the Consent Order, until 11:59 P.M. EDT on May 18, 2020. The LG 37 Doe Abuse Action is not stayed as to Douglas Nail.

3. This Order shall be promptly filed in the clerk's office and entered into the record.

4. This Court shall have jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order, subject to the District Court's appellate authority as provided for under 28 U.S.C. Section 158 and the Federal Rules of Bankruptcy Procedure.

Dated: _____, 2020
Wilmington, Delaware

THE HON. LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Transcript

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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| | | . | Chapter 11 |
| IN RE: | | . | |
| | | . | Case No. 20-10343 (LSS) |
| BOY SCOUTS OF AMERICA and | | . | |
| DELAWARE BSA, LLC, | | . | |
| | | . | |
| | Debtors. | . | |
| | | . | |
| BOY SCOUTS OF AMERICA, | | . | |
| | | . | Adv. Pro. No. 20-50527 |
| | Plaintiff, | . | |
| | | . | |
| | v. | . | Courtroom No. 2 |
| | | . | 824 North Market Street |
| A.A., et al., | | . | Wilmington, Delaware 19801 |
| | | . | |
| | Defendants. | . | March 30, 2020 |
| | | . | 11:00 A.M. |

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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1 Proceedings recorded by electronic sound recording; transcript
2 produced by transcription service.

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INDEX

NOTICE OF TELEPHONIC HEARING REGARDING RULING ON THE BSA'S
MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO SECTIONS
105(A) AND 362 OF THE BANKRUPTCY CODE

1 (Telephonic hearing commences at 9:45 a.m.)

2 THE COURT: Thank you, Michael.

3 Good morning, counsel. This is Judge Silverstein
4 and we're here today in the case of Boy Scouts of America,
5 case number 20-10343.

6 Let me just make sure we are live. Counsel, can
7 hear me, please respond yes, if you can.

8 (A Chorus of "Yes, Your Honor")

9 THE COURT: Okay. Thank you very much.

10 This is the time that I set for my ruling on Boy
11 Scouts of America's request for a preliminary injunction.
12 I'm going to be reading my decision into the record, and I
13 will give you the outcome first.

14 First, I will enter the consent order. It has
15 been agreed to be debtor and the two committees and as to
16 those defendants who did not object to the preliminary
17 injunction motion, it provides lesser relief than what was
18 requested.

19 Second, as to LG 37 Doe, the remaining objector, I
20 will overrule the objection. For the reasons I will state, I
21 will extend the consent order as it relates to LG 37 Doe's
22 lawsuit to claims made against the Greater Niagara Frontier
23 Council. (indiscernible 9:46:57) is directed at LG Doe's
24 claims against Douglas Nail.

25 Now, I will get into the text of my ruling.

1 Boy Scouts of America or BSA filed its bankruptcy
2 case on February 18, 2020. In its filing, it acknowledges
3 the damage and pain suffered by victims because of sexual
4 abuse at the hands of individuals involved in scouting.

5 Debtors state that the bankruptcy filing had a
6 dual purpose: to equitably compensate victims of abuse and to
7 ensure that BSA emerges from bankruptcy with the ability to
8 continue its mission of preparing young people for life
9 consistent with Boy Scout values.

10 At the time of the bankruptcy filing, there were
11 approximately 275 lawsuits pending against Boy Scouts in
12 state and federal courts around the country brought by abuse
13 victims.

14 Further, attorneys for abuse victims have
15 identified another 1400 claims that had not been filed by the
16 petition date.

17 After the filing, the office of the United States
18 Trustee formed two committees: one consisting of abuse
19 victims, the tort claimant's committee and; one, consisting
20 of other holders of general unsecured claims, the unsecured
21 creditors committee.

22 None of the 261 local councils are part of these
23 bankruptcy cases, but they too have organized by forming an
24 ad hoc committee.

25 The filing of the adversary proceeding and the

1 request for a preliminary injunction are part of what BSA
2 would characterize as an organized approach to address the
3 abuse cases. Other parts of BSA's organized approach include
4 the filing of a placeholder plan and disclosure statement on
5 the first day, filing a motion to require mandatory mediation
6 before a judicial mediator regarding a global consensual
7 resolution, seeking court appointment of a future claim's
8 representative, and filing a motion to set a schedule to
9 determine anticipated disputes over debtor's available
10 assets. BSA also removed state court actions to district
11 court and filed a motion in the Delaware District Court
12 seeking to transfer all the moot cases to that court.

13 Others, particularly the abuse victims, might
14 characterize the approach differently. Indeed, those filing
15 objections characterized the bankruptcy case as an attempt to
16 avoid liability and rest control of the underlying cases away
17 from plaintiff. I make no characterization of the approach,
18 nor am I going to comment now on any matters other than the
19 request before me.

20 The request in the preliminary injunction motion
21 is to stay the underlying abuse litigation for a period of
22 180 days from the issuance of the injunction. Since the
23 request was made, BSA has negotiated with the tort claimant's
24 committee and the unsecured creditor's committee and has
25 filed with the court a proposed form of consent order.

1 The proposed consent order would stay the
2 underlying litigation through May 18, 2020 or a period of
3 fifty-five days from the hearing as against what is defined
4 as the BSA related parties. These nondebtor parties are
5 listed on Schedule 2 to the proposed consent order and
6 consist of Learning for Life, local council, and chartered
7 groups that organize scouting units.

8 In its reply to the objections, BSA makes clear
9 that the consent order does not enjoin the underlying
10 litigation as against alleged abusers.

11 The proposed consent contains many detailed
12 provisions, which I will not try to discuss in full here, but
13 of particular importance, it does not enjoin the filing or
14 service of a complaint against the BSA related parties. This
15 ensures no statute of limitations as to those parties expire
16 while the stay is in place. And the proposed consent order
17 provides for an extension of deadlines in the underlying
18 litigation.

19 In exchange for the agreed to injunction, BSA has
20 committed to using its reasonable best efforts to produce and
21 provide access to relevant information that could support a
22 global resolution of the bankruptcy cases through a
23 consensual plan of reorganization. Debtor represents that it
24 has provided both committee's advisers with access to a
25 secured data room containing certain materials.

1 The consent order can be extended by mutual
2 agreement of BSA and the two committees, via a stipulation.
3 Plaintiffs in the underlying action can object to any
4 extension. And if any objection is not resolved, the court
5 will decide whether the stay will be extended in any given
6 underlying action.

7 Five objections were filed to the preliminary
8 injunction motion. Since the proposed consent order was
9 filed on the docket, four of those objections have been
10 resolved. The remaining objection is that filed by LG 37 Doe
11 against Boy Scouts of America, Greater Niagara Frontier
12 Council, Inc., and Douglas Nail.

13 LG Doe's objection took the form of the affidavit
14 of Lorraine Kelly, a senior partner in the firm representing
15 LG 37 Doe. In it, LG 37 Doe objects to the motion for a
16 preliminary injunction, as well as the mandatory mediation
17 motion. The mandatory motion is not currently before me.

18 The status of LG 37 Doe's case is not disputed.
19 The complaint was filed in the Supreme Court of the State of
20 New York County of Erie on December 3, 2019. Douglas Nail
21 filed his answer on January 15, 2020. And Boy Scouts of
22 America and the Greater Niagara Frontier Council filed a
23 joint answer on February 3, 2020.

24 On February 19, 2020, BSA filed a notice of
25 removal in the United States District Court for the Western

1 District of New York. On March 19, 2020, plaintiff filed a
2 motion to sever, remand, and/or abstain. Judge Frank P.
3 Geraci, Jr. has ordered that defendant's response is due on
4 April 3, 2020 and plaintiff's reply is due April 10, 2020.

5 LG 37 Doe makes three arguments in the objection:

6 First, he argues that the preliminary injunction
7 is in direct contravention of the New York State Child
8 Victim's Act;

9 Second, he argues that Boy Scouts has failed to
10 show unusual circumstances to extend the automatic stay to
11 nondebtors;

12 Third, LG 37 Doe argues that Boy Scouts cannot
13 meet the traditional test for a preliminary injunction.

14 In its reply to LG 37 Doe's objection, debtor
15 contends it meets all applicable standards and confirms that
16 it seeks to have the consent order extended to the underlying
17 case and not the original six-month preliminary injunction
18 request.

19 The preliminary injunction hearing was held on
20 March 24. I took evidence and entertained argument. The
21 declaration of Brian Whitmore was admitted into evidence as
22 were two declarations made by Adrian Azer. Both witnesses
23 appeared by Skye Videoconference.

24 LG 37 Doe did not proffer any affirmative
25 evidence, but I am considering the documents attached to Ms.

1 Kelly's declaration. Also, LG 37 Doe's counsel cross-
2 examined both witnesses.

3 Based on the record established at the hearing, I
4 conclude that debtor has met its burden to show that it is
5 entitled to the issuance of a preliminary injunction at this
6 time, particularly given the short duration in the consent
7 order.

8 And, again, on the record made, I conclude that I
9 have related to jurisdiction over the LG 37 Doe lawsuit as it
10 relates to claims against the Greater Niagara Frontier
11 Council.

12 As for jurisdiction, I first observe the LG 37 Doe
13 did not argue in its objection that subject matter
14 jurisdiction did not exist. Debtor, however, addressed it,
15 and I will as well.

16 As this adversary proceeding was commenced
17 preconfirmation, the relevant test for related to
18 jurisdiction is that set out in the Third Circuit's Pacor
19 Decision as refined in circumstances such as this by its
20 later decision, two decisions in W.R. Grace and Federal
21 Mogul.

22 Pacor sets forth an expansive test finding related to
23 jurisdiction exists if the outcome of the proceeding could
24 conceivably have any effect on the estate being administered
25 in bankruptcy. An action is related to bankruptcy if the

1 outcome could alter the debtor's rights, liabilities, options
2 or freedom from action, either positively or negatively and
3 which in any way impacts upon the handling and administration
4 of the bankruptcy estate.

5 I am satisfied that the record developed, at this
6 early stage of the proceeding, is sufficient to establish
7 related to jurisdiction over the claims against the Greater
8 Niagara Frontier Council.

9 First, I think that LG Doe's claims against BSA
10 are inextricably intertwined with the claims against the
11 Greater Niagara Frontier Council. This is evident from a
12 reading of the complaint. The complaint makes no distinction
13 between the actions of the Boy Scouts and the actions of the
14 Greater Niagara Frontier Council accepted to their respective
15 corporate forums.

16 The complaint lumps the Boy Scouts and the Greater
17 Niagara Frontier Council together and all of its allegations
18 by labeling them collectively as Boy Scouts of America. LG
19 37 Doe alleges that the Boy Scouts and the Greater Niagara
20 Frontier Council have a single mission and an organization
21 style that creates an environment conducive to child abuse.

22 In Counts two through eight, LG 37 Doe alleges
23 that both Boy Scouts and the Greater Niagara Frontier Council
24 are liable for the same actions. Boy Scouts agrees and, in
25 fact, broadly argues in support of the preliminary injunction

1 that it and its Local Council jointly administered the Boy
2 Scout's mission.

3 BSA and the Greater Niagara Frontier Council filed
4 a joint answer to LG 37 Doe's complaint. They too do not
5 parse out the allegations between them or attempt in any way
6 to distinguish the Boy Scout's conduct from that of the
7 Greater Niagara Frontier Council.

8 In this lawsuit, the evidence shows that the legal
9 claims against BSA are identical to those claims against the
10 Greater Niagara Frontier Council and are based on identical
11 facts. Further, and, more generally, I find based on the
12 evidence submitted that BSA has retained national
13 coordinating counsel to oversee litigation against BSA and
14 the Local Councils, that it retain joints defense counsel for
15 itself and local counsel in given cases, such as here, that
16 it retains the majority of records responsive to discovery
17 requests in the underlying litigation, and that BSA's
18 involvement includes formulating defense strategies,
19 assisting in discovery, protecting against the disclosure of
20 privileged or, otherwise protected documents, attending
21 depositions, and preparing witnesses.

22 Second, I find that there is shared insurance that
23 covers LG 37 Doe's claims. LG 37 Doe alleges abuse during
24 the years 1983 through 1987. Mr. Azer testified that one
25 insurance policy would be available to cover claims brought

1 by LG 37 Doe, an excess insurance policy issued by INA in
2 1983.

3 The excess policy was attached to Mr. Azer's
4 second declaration and follows form to the primary insurance
5 policies. The excess policy has limits of \$25 million
6 dollars. Prepetition, the limits of the policy were
7 partially eroded such that there is now approximately \$18
8 million dollars in coverage remaining.

9 The name of insured on the face of the policy
10 includes Boy Scouts of America and National Regional and all
11 Local Council as more specifically identified in the named
12 insured endorsement attached to the policy. Thus, both BSA
13 and the Greater Niagara Local Council are insureds under the
14 INA excess policy. Further, I find that there are other
15 abuse victims with claims that began in the year 1983 so that
16 BSA would look to this specific INA excess policy for
17 coverage.

18 Based on the uncontroverted evidence, I conclude
19 that the INA excess policy is property of the estate and that
20 any draw on the policy by Greater Niagara Frontier Local
21 Council would deplete the policy. This further supports the
22 conclusion of related to jurisdiction over the claims
23 asserted by LG 37 Doe against the Greater Niagara Frontier
24 Local Council in the underlying litigation.

25 Having found related to jurisdiction, I turn to

1 the request for a preliminary injunction.

2 The request for a preliminary injunction are
3 governed by Rule 65 of the Federal Rules of Civil Procedure.
4 The standard developed is a four-part test: likelihood of
5 success; risk of irreparable harm; the balance of harm
6 between the debtors and the non-moving parties and; whether
7 public policy supports entry of the injunction.

8 Before addressing the standard, I note that LG 37
9 Doe objects to the requested relief because the BSA and
10 Greater Niagara Frontier Council are separate entities. LG
11 37 Doe correctly points out that BSA represents to the court
12 that each Local Council is separately incorporated under the
13 non-profit laws of its respective state and has an
14 independent board of directors. This fact, however, does not
15 preclude the requested relief. To the contrary, there would
16 be no need for a preliminary injunction if BSA and the
17 Greater Niagara Frontier Council were not separate entities.
18 Rather, the automatic stay would already protect the Council.

19 I will now turn to the four factors.

20 Likelihood of Success. The likelihood of success
21 in this context means the debtor's prospects for a successful
22 reorganization. And in the beginning of a case, such as this
23 one, some courts have stated that the debtor must only
24 establish that its reorganization is proceeding on track and
25 there is no reason to believe or suspect that the

1 reorganization will fail. This prong of the test is easily
2 met.

3 BSA's bankruptcy case was filed six weeks ago.
4 BSA has started discussion with its committees, as evidenced
5 by the consent order. It has focused on a path toward an
6 exit that I previously characterized as BSA's organized
7 approach to the case and a possible consensual resolution of
8 all victim's claims.

9 Whether BSA's chosen path will ultimately be
10 successful is not before me. Clearly, there is no reason to
11 believe or suspect that reorganization will fail. This brief
12 spell to permit BSA to further explore its path is
13 appropriate at this stage of the case.

14 Risk of Irreparable Harm. BSA has also met its
15 burden of proof to show that it will be irreparably harmed
16 without the stay. I have already recognized the central role
17 which BSA has taken in defending all of the abuse lawsuits,
18 including LG 37 Doe's lawsuit.

19 LG 37 Doe's complaint against BSA is identical as
20 to both the factual and legal basis as its claims against the
21 Greater Niagara Frontier Council. Thus, record taint and
22 collateral estoppel are material risks if the case goes
23 forward.

24 LG Doe 37 argues that BSA is simply choosing to be
25 involved in the underlying case, but is not required to be.

1 LG Doe 37 is correct. There is no order of any court that
2 requires BSA to participate. And, perhaps, BSA would not be
3 required to produce documents in the underlying case.

4 But while these arguments may be technically
5 correct, as a practical matter, the claims against BSA and
6 the Greater Niagara Frontier Council are inextricably
7 intertwined. Because the claims are inextricably
8 intertwined, the possibility or risk of estoppel, records
9 taint, and evidentiary prejudice exists.

10 LG 37 Doe argues that his complaint is just a
11 pleading and not evidence. He also argues that he is willing
12 to merely accept discovery from the Greater Niagara Frontier
13 Council so that BSA is not prejudiced.

14 I do not find these arguments persuasive. LG 37
15 Doe framed the complaint and that is the only operative
16 document that LG 37 Doe placed before me.

17 And given my finding that the claims are
18 inextricably intertwined, going forward against the Greater
19 Niagara Frontier Council in any fashion ignores the reality
20 of the way the case is being defended, as well as the factual
21 findings that could be made.

22 Balancing of the Harms. I recognize the harm and
23 am sympathetic to the harm, to LG 37 Doe, that the delay in
24 the progress of his case, even a short delay, causes. LG 37
25 Doe alleges abuse that took place in the 1980's, over thirty

1 years ago, and has waited a long time to have his day in
2 court. But in the scheme of litigation, a stay of fifty-five
3 days is not a long time or, for that matter, even unusual.

4 There is no suggestion in the underlying lawsuit
5 which is in its infancy, that this delay in the beginning of
6 the case will ultimately delay a resolution through a trial
7 or otherwise.

8 On the other hand, I see harm to debtor and other
9 players in the bankruptcy case in a piecemeal approach to
10 litigation at this stage of the bankruptcy case. Debtor
11 should be given an opportunity to see if it can forge an exit
12 from bankruptcy.

13 LG Doe 37 argues that it is harmed for multiple
14 reasons. He argues that the injunction conflicts with the
15 New York State Child Victim's Act. I disagree. LG Doe 37
16 appears to have timely filed his lawsuit under the Act, and
17 the preliminary injunction does not change that. Further, no
18 order entered today will preclude LG Doe 37 from taking any
19 position in his underlying case. It will not preclude LG Doe
20 37 from seeking to remand his case or opposing any relief
21 debtor seeks in this bankruptcy case.

22 At this point, the injunction simply stays the
23 matter as against the Greater Niagara Frontier Council for
24 fifty-five days. On balance then, I find that permitting the
25 underlying case to proceed at this time as against the

1 Greater Niagara Frontier Council causes more harm to BSA and
2 its estate than the harm caused to LG 37 Doe by staying the
3 case for this short period of time.

4 Public Policy. Each side can lie claim to a
5 significant public policy interest. LG Doe 37 correctly
6 argued that there is a strong public interest in permitting
7 victims of abuse to pursue their rights and remedies and to
8 persecute their claims in the time, fashion and place they
9 choose. On the other hand, there is a significant public
10 policy interest in promoting reorganization.

11 All in all, I find that public policy weighs in
12 favor of the requested relief. While one lawsuit proceeding
13 may not pose a particular threat to reorganization, and while
14 I am not prejudging anything, there is a strong public policy
15 interest in giving BSA space to see if a consensual
16 resolution can be achieved with all victims of abuse.

17 Thus, I conclude BSA has met its burden to show
18 the preliminary injunction is appropriate as to the claim in
19 LG Doe 37's lawsuit against the Greater Niagara Frontier
20 Council.

21 I will enter the preliminary injunction effective
22 as of 11:33 a.m. prevailing Eastern Time today which is March
23 30, 2020. It will expire at 11:59 p.m. prevailing Eastern
24 Time on May 18, 2020.

25 I ask counsel for BSA and LG Doe 37 to discuss

1 whether a separate order is necessary or how they would like
2 to document this.

3 That concludes my ruling but let me note a couple
4 of things.

5 First, I am not making any ruling that the only
6 coverage available to LG 37 Doe is from the 1983 INA excess
7 policy. Mr. Azer's testimony was clear that that matter was
8 not strictly before me.

9 Second, in my ruling today, I dealt only with the
10 remaining objection. The same analysis may apply to other
11 underlying lawsuits or there may be a broader ruling that I
12 can make applicable to all lawsuits. But given the
13 negotiated consent order and given that all other plaintiffs
14 in the underlying litigation did not object or ultimately
15 resolved their objections, I thought it was appropriate to
16 keep this ruling focused on the sole remaining objection.

17 Third, let me emphasize that I am not ruling on
18 any other matters in this case, including any of the motions
19 I listed as included in BSA's organized approach to these
20 cases.

21 Finally, this morning I received a copy of a
22 filing termed, "Joint Notice of Correspondence to Tort
23 Claimant's Committee Regarding the BSA's Motion for a
24 Preliminary Injunction." The filing was made jointly by BSA
25 and the tort claimant's committee, and attaches

1 communications from a plaintiff in underlying litigation
2 which the tort claimant's committee has called Defendant 72.

3 This plaintiff has used his name in his
4 communications, but I will use the pseudonym Defendant 72
5 until such time as he consents to his name being made public.

6 The letter of communications from Defendant 72 are
7 dated March 27 and March 29. There is also attached a notice
8 of filing verified response of Defendant 72 to the BSA's
9 reply brief dated March 26th. And a verified answer of
10 Defendant 72 to verified complaint for injunctive relief
11 dated March 10. The verified answer is captioned in the
12 adversary proceeding but does not appear to be on the docket.

13 Defendant 72 is currently incarcerated in Georgia
14 which could be a possible reason that his filing has not
15 reached the clerk's office. Defendant 72 also asks that he
16 be permitted to participate at this hearing. Through my
17 courtroom deputy, I ask that counsel for BSA and/or the tort
18 claimant's committee to attempt to arrange for Defendant 72
19 to be on the call. I understand that attempts were made.

20 All that being said, the hearing today is solely
21 for my ruling on the preliminary injunction hearing that took
22 place on March 24. It is not an evidentiary hearing, nor am
23 I in a position today to take evidence.

24 Defendant 72's underlying lawsuit will be included
25 in the consent order so that it is stayed through 11:59 p.m.

1 prevailing Eastern Time on May 18, 2020.

2 I will treat the papers I have received today as
3 an objection to any extension of the preliminary injunction
4 should such a request be made and these five papers should be
5 included in any agenda that reflects a motion seeking to
6 extend the preliminary injunction.

7 If Defendant 72 wants any relief prior to that
8 time, he should make a filing with the clerk of the court and
9 a hearing will be set consistent with Chief Judge Sontchi's
10 general order dated March 16, 2019 [sic] on the conduct of
11 hearings during the outbreak of COVID-19 and any further
12 order he may enter.

13 That is the ending of my reading of the decision
14 on the Boy Scout's motion for a preliminary injunction.

15 Let me ask if there are any questions?

16 (No verbal response)

17 THE COURT: I hear none. This hearing is now
18 adjourned.

19 (A Chorus of Thank you, Your Honor)

20 (Teleconference ends at 10:17 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski
Mary Zajaczkowski, CET**D-531

March 31, 2020