

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

In re:

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,¹

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

Hearing Date: January 19, 2021 at 10:00 a.m. (ET)

Objection Deadline: January 12, 2021 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) APPROVING HENDERSON SETTLEMENT AGREEMENT AND
(II) MODIFYING THE AUTOMATIC STAY, TO THE EXTENT NECESSARY, TO
PERMIT PAYMENT OF SETTLEMENT AMOUNT BY APPLICABLE INSURANCE**

The Boy Scouts of America (the “BSA”) and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the “Debtors”), submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving that certain settlement agreement, substantially in the form attached hereto as **Exhibit B** (the “Settlement Agreement”), by and between the BSA and Oregon Trail Council, Inc. (“OTC” and, together with the BSA, “Defendants”), on the one hand, and Margaret Henderson, as personal representative of the Estate of Nolan Henderson (“Plaintiff” and, together with Defendants, the “Parties”), on the other hand, and (ii) modifying the automatic stay, to the extent

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.

necessary, to permit payment of the settlement amount from applicable insurance. In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a).

BACKGROUND

4. On September 6, 2019, Plaintiff filed a lawsuit in the Circuit Court of the State of Oregon for the County of Lane entitled *Henderson v. Boy Scouts of America, et. al.*, Case No. 19-CV-39445 (the "Lawsuit"). The Lawsuit seeks damages arising from the death of Nolan Henderson as a result of a fall during a camping trip in Klamath Falls, Oregon on October 13, 2018.

5. The Lawsuit was automatically stayed as to the BSA and OTC when the Debtors filed for relief under chapter 11 of the Bankruptcy Code on February 18, 2020.

6. On October 9, 2020, the Court granted Plaintiff's motion seeking relief from the automatic stay to proceed with the Lawsuit to liquidate Plaintiff's claims, provided that any payment on account of such claims, including payment from applicable insurance, would be subject to further order of the Court.²

² See *Order Granting Motion for Relief from the Automatic Stay of Margaret Henderson, Personal Representative of the Estate of N.G.H.* [D.I. 1468].

THE SETTLEMENT AGREEMENT

7. To avoid incurring further litigation expenses in connection with the Lawsuit, the Parties entered into good-faith and arm's-length settlement negotiations. As a result of those negotiations, the Parties have entered into the Settlement Agreement, subject to Court approval.

8. Pursuant to the Settlement Agreement, Plaintiff, on behalf of herself and the Estate of Nolan Henderson (the "Estate") and the Estate's agents, heirs, relatives, assigns, parents, beneficiaries, third-party beneficiaries, attorneys, any and all potential claimants identified in Oregon wrongful-death statute, ORS 30.020, and anyone claiming by or through the Estate (collectively, "Plaintiff Parties"), agrees to dismiss the Lawsuit with prejudice and without costs, and irrevocably and unconditionally releases, acquits, and forever discharges Defendants and all of their respective subsidiaries, parents, affiliates, managing agents, employees, volunteers, servants, consultants, agents, officers, directors, independent contractors, representatives, insurance carriers, attorneys, and all persons acting by, through, under or in connection with any of them, and each of their respective heirs, successor, and assigns (the "Releasees"), from any and all claims asserted in the Lawsuit, as well as any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, cause of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to any claims Plaintiff Parties had, has, or may have, known or unknown, in connection with any facts, matters, property, transactions, or things between all Parties and between Plaintiff Parties and the Releasees, including but not limited to, anything arising from, relating to, or in connection with the matters set forth in the Lawsuit.

9. In exchange for the releases described above, Defendants will pay Plaintiff \$900,000 (the “Settlement Amount”). The Settlement Amount will be paid by Old Republic Insurance Company (“Old Republic”), which issued general liability insurance policies to the BSA covering the time period in which the events that are the subject of the Lawsuit occurred. OTC is a named insured under the applicable Old Republic insurance policies.

10. The Settlement Agreement will become effective after the Court’s order approving the Settlement Agreement pursuant to Bankruptcy Rule 9019 and approving payment of the Settlement Amount by Old Republic pursuant to section 362 of the Bankruptcy Code becomes final and no longer subject to appeal (the “Effective Date”). The Settlement Amount will be paid within seven (7) days of the Effective Date. If the Effective Date fails to occur on or before March 31, 2021, the Settlement Agreement shall be null and void.

RELIEF REQUESTED

11. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (i) approving the Settlement Agreement and (ii) modifying the automatic stay, to the extent necessary, to permit Old Republic to pay the Settlement Amount.

BASIS FOR RELIEF REQUESTED

I. Legal Standard

A. Approval of Settlements

12. Section 105(a) and Bankruptcy Rule 9019 authorize the Court to approve settlements of claims. Section 105(a) provides, in relevant part, that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In addition, Bankruptcy Rule 9019 provides that, upon notice and a hearing, the Court “may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

13. Settlements and compromises are favored in bankruptcy proceedings as a means of “minimiz[ing] litigation and expedit[ing] the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). The Court should exercise its discretion to approve a settlement or compromise where it is “fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). The Court need only “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonable.” *In re W.R. Grace & Co.*, 475 B.R. 34, 78 (D. Del. 2012). In determining whether a settlement or compromise should be approved, courts consider a number of factors, including “(1) the probability of success in the litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d at 393.

B. The Automatic Stay

14. Upon the filing of a bankruptcy case, section 362 of the Bankruptcy Code automatically stays, among other things, the commencement or continuation of any proceeding against the debtor “to recover a claim against the debtor that arose before the commencement of the case.” 11 U.S.C. § 362(a). The automatic stay serves a number of important purposes that protect both debtor and creditor interests, including, among other things, “to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it” and “to avoid interference with the orderly liquidation or rehabilitation of the debtor.” *In re Rexene Prods. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (quotations omitted).

15. Section 362(d) authorizes the Court to grant relief from the automatic stay for cause. 11 U.S.C. § 362(d). Although the Bankruptcy Code does not define “cause,” courts in this District often consider whether (i) the debtor will suffer “any great prejudice” from the

“continuation of the civil suit,” (ii) the prejudice to the non-bankrupt party by maintenance of the stay considerably outweighs the prejudice to the debtor if the stay is lifted, and (iii) the non-bankrupt party “has a probability of prevailing on the merits.” *Id.*; *see also In re Scarborough St. James Corp.*, 535 B.R. 60, 67–68 (Bankr. D. Del. 2015).

II. Argument

16. The Settlement Agreement should be approved because it fairly and efficiently resolves the Lawsuit with minimal burden to the estate. The Settlement Amount will be paid solely from proceeds of the Old Republic primary policy for the 2018–19 policy year. The settlement, moreover, will permit the BSA to avoid the uncertainty and expense of litigating the Lawsuit and eliminate the potential for additional expenses and the risk of an unfavorable judgment in the Lawsuit. In addition, under the Settlement Agreement the BSA will receive a full and complete release from all liability in connection with the subject matter of the Lawsuit, thereby eliminating any liability under a plan of reorganization. Accordingly, the Debtors submit that the Settlement Agreement is reasonable and in the best interests of the Debtors’ estates, creditors and other parties in interest. *In re Louise’s, Inc.*, 211 B.R. at 801.

17. Additionally, the automatic stay should be modified, to the extent necessary, to permit Old Republic to pay the Settlement Amount. The question of whether proceeds of an insurance policy are property of the bankruptcy estate is complex and the law is unclear as to the answer. *In re MF Glob. Holdings, Ltd*, 469 B.R. 177, 190 (Bankr. S.D.N.Y. 2012). Although it is “well-settled that a debtor’s liability insurance is considered property of the estate . . . ‘the courts are in disagreement over whether the proceeds of a liability insurance policy are property of the estate.’” *Id.* (quoting *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010)). Even if the automatic stay does apply, cause exists under these circumstances to the permit Old Republic to pay the Settlement Amount.

18. First, as noted in Old Republic's previously filed motion for relief from the automatic stay, the BSA and certain other named insureds (including OTC) are insured under certain general liability policies issued by Old Republic, including a primary insurance policy for the 2018–19 policy year.³ This policy provides coverage up to a limit of \$1.0 million per occurrence with no aggregate limits. Here, the Settlement Amount of \$900,000 falls entirely within the primary policy. Moreover, the Debtors and Old Republic estimate that less than \$100,000 of defense costs have been incurred relating to the Lawsuit and that these costs are also within the limits of the applicable Old Republic primary policy. Therefore, the total of the Settlement Amount and accrued defense costs will likely not exceed the \$1.0 million per-occurrence limit under the Old Republic primary policy.

19. Second, the Settlement Agreement will fully and finally resolve the Lawsuit and avoid the uncertainty and expense of litigation and the risk of an unfavorable judgment that could exceed the Settlement Amount. The Lawsuit is still in its initial stages, and the Parties have yet to conduct factual discovery. If the Lawsuit proceeds to discovery and trial, the defense costs would likely be substantial and, together with any settlement or judgment in the Lawsuit, likely begin to erode the applicable Old Republic excess policy, which, unlike the primary policy, is subject to an aggregate limit. *In re Almonacy*, Case No. 10-37235 DHS, 2011 WL 13659, at *3 (Bankr. D.N.J. Jan. 4, 2011) (“When an action seeks to recover from a debtor’s insurance policy and the debtor is represented by the insurer, courts routinely grant stay relief because the burden on the estate is likely to be outweighed by the hardship on the plaintiff if the action is not permitted to continue.”).

³ See *Old Republic Insurance Company’s Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code and Bankruptcy Rule 4001 for an Order Modifying the Automatic Stay to Permit Payments of Claims Against Non-Debtor Insureds and Related Defense Costs Under Insurance Policies* [D.I. 678].

20. Accordingly, there is little prejudice, and indeed material benefit, to the Debtors if the Parties are permitted to enter into the Settlement Agreement and the stay is modified to permit Old Republic to pay the Settlement Amount.

NOTICE

21. Notice of this Motion will be provided to (i) the U.S. Trustee; (ii) counsel to the Creditors' Committee; (iii) counsel to the Tort Claimants' Committee; (iv) counsel to the Future Claimants' Representative; (v) counsel to the Ad Hoc Committee of Local Councils; (vi) counsel to JPMorgan Chase Bank National Association; (vii) counsel to Plaintiff; (viii) Old Republic Insurance Company; (ix) OTC; and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

CONCLUSION

22. For the above reasons, the Debtors respectfully request that the Court enter an order (i) approving the Settlement Agreement, (ii) modifying the automatic stay, to the extent necessary, to permit payment of the settlement amount from applicable insurance and (iii) granting all other relief as is just and proper.

Dated: December 29, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Eric W. Moats (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@mnat.com
emoats@mnat.com
ptopper@mnat.com

– and –

WHITE & CASE LLP

Jessica C. K. Boelter (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200
Email: jessica.boelter@whitecase.com

– and –

WHITE & CASE LLP

Michael C. Andolina (admitted *pro hac vice*)
Matthew E. Linder (admitted *pro hac vice*)
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (212) 881-5400
Email: mandolina@whitecase.com
mlinder@whitecase.com

**ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION**

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

In re:

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,¹

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

Hearing Date: January 19, 2021 at 10:00 a.m. (ET)

Objection Deadline: January 12, 2021 at 4:00 p.m. (ET)

**NOTICE OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) APPROVING HENDERSON SETTLEMENT AGREEMENT AND
(II) MODIFYING THE AUTOMATIC STAY, TO THE EXTENT NECESSARY, TO
PERMIT PAYMENT OF SETTLEMENT AMOUNT BY APPLICABLE INSURANCE**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for Entry of an Order (I) Approving Henderson Settlement Agreement and (II) Modifying the Automatic Stay, to the Extent Necessary, to Permit Payment of Settlement Amount by Applicable Insurance* (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **January 12, 2021, at 4:00 p.m. (ET)** (the "Objection Deadline"); and (c) served so as to be received on or before the Objection Deadline by the undersigned counsel to the Debtors.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A TELEPHONIC HEARING ON THE MOTION WILL BE HELD ON **JANUARY 19, 2021, AT 10:00 A.M. (ET)** BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.²

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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

² Any party that wants to participate in the Hearing must make arrangements to do so through CourtCall by telephone (866-582-6878) or facsimile (866-533-2946) by no later than January 19, 2021, at 9:00 a.m. (ET). If you do not make timely arrangements, you may not be able to participate in the Hearing.

Dated: December 29, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Eric W. Moats (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@mnat.com
emoats@mnat.com
ptopper@mnat.com

– and –

WHITE & CASE LLP

Jessica C. K. Boelter (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200
Email: jessica.boelter@whitecase.com

– and –

WHITE & CASE LLP

Michael C. Andolina (admitted *pro hac vice*)
Matthew E. Linder (admitted *pro hac vice*)
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (212) 881-5400
Email: mandolina@whitecase.com
mlinder@whitecase.com

Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Order

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

In re:

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,¹

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

Ref. Docket No. ____

**ORDER (I) APPROVING HENDERSON SETTLEMENT AGREEMENT AND
(II) MODIFYING THE AUTOMATIC STAY, TO THE EXTENT NECESSARY, TO
PERMIT PAYMENT OF SETTLEMENT AMOUNT BY APPLICABLE INSURANCE**

Upon the motion (the “Motion”)² of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the “Debtors”), for entry of an order (this “Order”), pursuant to sections 105(a), 362 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019, (i) approving that certain settlement agreement by and between the BSA, Oregon Trail Council, Inc. (“OTC,” and together with the BSA, the “Defendants”), on the one hand, and Margaret Henderson, as Personal Representative of the Estate of Nolan Henderson (“Plaintiff” and, together with Defendants, the “Parties”), on the other hand, as memorialized in that certain Settlement Agreement attached to the Motion as **Exhibit B**, and (ii) modifying the automatic stay, to the extent necessary, to permit payment of the settlement amount by applicable insurance; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and entry of this Order being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Debtors

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 All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

having consented to the entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and all objections to the Motion, if any, having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. The Settlement Agreement is **APPROVED** and the Parties to the Settlement Agreement are authorized to take such action as is necessary to effectuate the terms of the Settlement Agreement.
3. To the extent necessary, the automatic stay of 11 U.S.C. § 362(a) is modified for the Parties to consummate the Settlement Agreement.
4. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry and the Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Exhibit B

Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (“**Agreement**”) is made and entered into on December 18, 2020 by and between (1) Plaintiff Margaret Henderson (the “**Plaintiff**”) as Personal Representative of the Estate of Nolan Henderson (the “**Estate**”) and the Estate’s agents, heirs, relatives, assigns, parents, beneficiaries, third-party beneficiaries, attorneys, any and all potential claimants identified in ORS 30.020, and anyone claiming by or through the Estate (collectively, the “**Plaintiff Parties**”), on the one hand, and (2) the Oregon Trail Council, Inc., (“**OTC**”) and the Boy Scouts of America (the “**BSA**”) (collectively, the “**Defendants**”) on the other hand. This Agreement settles all claims against all the Defendants and the Releasees (as defined below), relating to the lawsuit entitled *Henderson v. Boy Scouts of America, et. al.*, Lane County Circuit Court, Or., Case No. 19-CV-39-39445 (the “**Lawsuit**”), and any and all claims that could have been filed against the Defendants related to the matters set forth in the Lawsuit. This Agreement is intended to memorialize the terms of the settlement.

Accordingly, in consideration of their mutual promises and other good and valuable consideration hereby acknowledged by the Plaintiff, on behalf of herself and the Plaintiff Parties, and the Defendants (collectively, “the **Parties**”), the Parties agree as follows:

1. Effective Date

This Agreement shall only become effective after an order of the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) is entered: (i) approving the Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 and (ii) approving the payment of the Settlement Amount (as defined below) by Old Republic Insurance Company pursuant to section 362 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532, and such order has become final and non-appealable (the “**Effective Date**”). If no such order is entered **that has**

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

become final and non-appealable on or before March 31, 2021, this agreement shall be null and void.

2. Settlement Terms

The Defendants agree to pay the Plaintiff a total of nine-hundred-thousand dollars (\$900,000.00) (the "**Settlement Amount**") within seven (7) days of the Effective Date. The Defendants further agree that, within a reasonable time after the Effective Date (not to exceed seven (7) days) the BSA shall post the Safety Moment attached as **Exhibit A**, on the BSA website. In exchange for payment of the Settlement Amount and the above-described non-monetary provisions, the Plaintiff agrees to dismiss the Lawsuit with prejudice and without costs and provide the releases set forth below.

3. Release

In exchange for the consideration provided to Plaintiff in this Agreement, Plaintiff, on behalf of herself and the Plaintiff Parties, irrevocably and unconditionally releases, acquits and forever discharges all of the Defendants in the Lawsuit and all of their subsidiaries, parents, affiliates, managing agents, employees, volunteers, servants, consultants, agents, directors, officers, independent contractors, representatives, insurance carriers, attorneys, and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns (hereinafter collectively referred to as "**Releasees**"), or any of them, from all claims asserted in the Lawsuit, as well as any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to any claims the Plaintiff Parties had, have, or may have, known or unknown, in connection with

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

any facts, matters, property, transactions, or things between all Parties and between the Plaintiff Parties and the Releasees, including but not limited to, anything arising from, relating to, or in connection with the matters set forth in Lawsuit.

4. General Release

It is understood and agreed that this is a full, complete and final general release of any and all claims among the Plaintiff Parties and the Defendants, and that the Plaintiff, on behalf of herself and the Plaintiff Parties, agrees that the foregoing release applies to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, in law, equity or otherwise, as well as those which are now known, anticipated, suspected or disclosed.

5. Disclaimer of Liability

The Parties agree and acknowledge that this Agreement is not to be construed as an admission of liability or wrong-doing by any Party, but is entered into in compromise of disputed claims.

6. Confidentiality

It is specifically understood, agreed and made part of this Agreement that the Plaintiff, the Plaintiff Parties, and their attorneys shall not comment on any aspect of the Agreement or its terms and conditions to any member of the news media. If any member of the news media inquires of the Plaintiff Parties regarding the resolution of the Lawsuit, the agreed upon response is that “the Lawsuit settled.” This paragraph is intended to become part of the consideration for the settlement of this claim.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

7. Joint Drafting

Each of the Parties has joined in and contributed to drafting this Agreement and each of the Parties agrees that there shall be no presumption favoring or burdening any Party based upon draftsmanship.

8. Authorization

With the exception of the BSA as a chapter 11 debtor requiring Bankruptcy Court approval of its entry into this Agreement, the Parties expressly warrant and represent that the execution of this Agreement is fully authorized by each of them; that the person or persons executing this Agreement have the necessary and appropriate authority to do so; and that there are no pending agreements, transactions, or negotiations to which any of them are a party that would render this Agreement or any part thereof void, voidable, or unenforceable.

9. Applicable Law

This Agreement shall be interpreted in accordance with the laws of the State of Oregon without reference to conflict of law principles. The Parties expressly consent to personal jurisdiction in the State and Federal Courts located within the State of Oregon.

10. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Complete Agreement

This is the entire agreement between the Parties. This Agreement may not be modified in any manner except in writing signed by the Plaintiff and authorized executives of the Defendants. The Parties acknowledge that they have not made any representations or promises to each other than those contained in this Agreement.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

- (a) They have read this Agreement;
- (b) They have been represented by legal counsel of their own choice in the preparation, negotiation and execution of this Agreement;
- (c) They understand the terms and consequences of this Agreement and of the release and waivers it contains;
- (d) They have not relied upon any representations or statements made by the other Party that are not specifically set forth in this Agreement; and
- (e) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Dated: Dec. 18th, 2020

By: Margaret Henderson
Margaret Henderson as Personal
Representative of the Estate of Nolan
Henderson

Dated: _____, 2020

Boy Scouts of America

By: _____

Its: _____

Dated: _____, 2020

Oregon Trail Council, Inc., Boy Scouts of America

By: _____

Its: _____

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

12. Voluntary, Knowing Agreement

This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of any Party, with the full intent of releasing all claims that the Parties have against each other. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented by legal counsel of their own choice in the preparation, negotiation and execution of this Agreement;
- (c) They understand the terms and consequences of this Agreement and of the release and waivers it contains;
- (d) They have not relied upon any representations or statements made by the other Party that are not specifically set forth in this Agreement; and
- (e) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Dated: _____, 2020

By: _____
Margaret Henderson as Personal
Representative of the Estate of Nolan
Henderson

Dated: _____, 2020

Boy Scouts of America
By: _____
Its: _____

Dated: Dec. 16, 2020

Oregon Trail Council, Inc. Boy Scouts of America
By: [Signature]
Its: Scout Executive

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

12. Voluntary, Knowing Agreement

This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of any Party, with the full intent of releasing all claims that the Parties have against each other. The Parties acknowledge that:

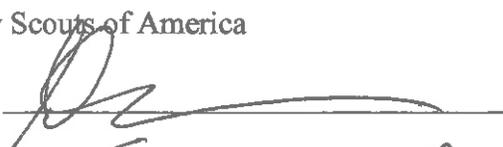
- (a) They have read this Agreement;
- (b) They have been represented by legal counsel of their own choice in the preparation, negotiation and execution of this Agreement;
- (c) They understand the terms and consequences of this Agreement and of the release and waivers it contains;
- (d) They have not relied upon any representations or statements made by the other Party that are not specifically set forth in this Agreement; and
- (e) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Dated: _____, 2020

By: _____
Margaret Henderson as Personal
Representative of the Estate of Nolan
Henderson

Dated: 12/16, 2020

Boy Scouts of America
By: 
Its: Secretary & General Counsel

Dated: _____, 2020

Oregon Trail Council, Inc., Boy Scouts of America
By: _____
Its: _____

Exhibit A



BSA SAFETY MOMENT

FATAL FALL – NOLAN'S STORY

SUMMARY

Tragedy struck our Scouting family on Oct. 13, 2018, when Nolan Henderson, a 16-year-old Star Scout, was fatally injured while hiking and bouldering with his troop on Maiden Peak in the Cascade Range of central Oregon. An adult leader had started the hike with the youth. When younger youth wished to turn around, the leader returned to the base camp as well. Nolan and the remaining youth were allowed to continue up to the peak without adult supervision. When one of those youth got stuck during the ascent, Nolan went to his aid. After he scaled a shear face of the peak to help the other Scout to safety, a handhold gave way and Nolan tragically fell to his death.

LESSONS LEARNED

Scouting's two-deep adult supervision requirements, which exist both to prevent abuse and to safeguard against tragedies like these, were not followed.

- Adults supervise youth activities.
- Two-deep adult supervision by registered adult leaders 21 years of age or over are required for all Scouting activities. This includes patrol activities. These enhanced requirements have been in effect since October 2018.

Parents expect and demand that every activity is supervised by adults who help guide good decisions during an outing. This climb should have ceased when the adult supervisor went back to base camp.

Climb on Safely protocols — supervision, instruction, equipment, and an established safe area — were not in place for a climb or bouldering in this area.

WHAT YOU CAN DO

- Share Nolan's story before your next outing.
- Ensure that proper two-deep adult supervision is provided for all Scouting activities, especially those that might expose participants to a risk of serious injury or death.
- Utilize and review the four points of [SAFE](#) when delivering the Scouting program.
- Understand how changing terrain and conditions can cause unrecognized hazards that result in tragic consequences.
- On a hike, stay together. On the trail, be prepared:
 - Designate a pacesetter who leads at a speed comfortable for everyone in the group, followed by a navigator who makes sure the group is on course.
 - The hike should match the maturity, skill level, and fitness of participants.
 - Stop or turn back (as a group), if adverse conditions develop

RESOURCES

- Guide to Safe Scouting: <https://www.scouting.org/health-and-safety/gss/toc/>
- Climbing Safety Moment: <https://www.scouting.org/health-and-safety/safety-moments/climbing/>
- Campout Safety Checklist: https://filestore.scouting.org/filestore/HealthSafety/pdf/campout_checklist.pdf
- Backpacking merit badge pamphlet: <https://www.scoutshop.org/backpacking-merit-badge-pamphlet-655139.html>
- Hiking merit badge pamphlet: <https://www.scoutshop.org/catalog/product/view/id/5199>
- Fatal Falls Incident Review: https://filestore.scouting.org/filestore/pdf/680-056_FatalFalls.pdf