

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

<p>In re:</p> <p>BOY SCOUTS OF AMERICA AND DELAWARE Boy Scouts, LLC,¹</p> <p style="text-align:center">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 20-10343 (LSS)</p> <p>Jointly Administered</p>
<p>BOY SCOUTS OF AMERICA,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>A.A., et al.,</p> <p style="text-align:center">Defendants.</p>	<p>Adv. Pro. No. 20-50527 (LSS)</p> <p>Re: Dkt. Nos. 144, 145, 151</p>

**CENTURY’S JOINDER IN SUPPORT OF THE UNOPPOSED RELIEF
REQUESTED IN BSA’S MOTION TO EXTEND THE PRELIMINARY
INJUNCTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 362
AND OBJECTION TO THE STIPULATION
AND PROPOSED ORDER [Dkt. No. 151]**

The most remarkable thing about the Debtors’ motion to extend the preliminary injunction is that the Debtors felt the need to bring it at all. The entities that are the beneficiaries of the preliminary injunction have filed proofs of claim asserting contractual indemnity claims against the Debtors for defense and indemnity of abuse claims brought against them associated with scouting. Thus, actions against these entities will trigger claims back against the Debtors implicating property of the estate pending resolution of their proofs of claim.

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 Boy Scouts, LLC (4311). The Debtors’ mailing address is 1325 West Walnut Lane, Irving, Texas 75038.

Where, as here, the assertion of a claim in the tort system even potentially implicates property of the estate, it is barred by the operation of automatic stay. In *ACandS*, the Third Circuit could not have been clearer in holding that any action even possibly implicating property of the estate is barred by the automatic stay. *ACandS, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 260 (3d Cir. 2006) (holding the “broad purposes served by the automatic stay” require halting any proceeding that could result in an aware that “*could diminish*” a debtor’s estate (emphasis added)). Further, the Court of Appeals went on to hold that any action taken contrary to the automatic stay is a nullity. *Id.* (holding an arbitration award granted in violation of the automatic stay “invalid because it diminishes the property of the estate”).

The Debtors easily meet all the elements for the granting of section 105 injunction it seeks. But the most compelling reason for granting the relief requested is that BSA is separately and independently entitled, as a matter of law, to the protection granted by the automatic stay from abuse claims being asserted against non-debtors alleging claims back against the debtors for those claims pending the resolution of the non-debtors proofs of claim.

Notably, the tort claimants have not objected to any of the proofs of claim filed by the non-debtors asserting contractual claims back against BSA. Hence, they are not in a position to assert that suits by plaintiff firms against these entities in the tort system would not trigger the automatic stay. Nor are the tort claimants in a position to contest that BSA fails to meet the requirements for an injunction under 11 U.S.C. § 105, having stipulated to the prior motions and to this motion.

While the tort claimants lacked a basis to object in this context, the preliminary injunction has worked as a pretext to extract concessions from the Debtors. Mr. Kosnoff and others have sought to use termination of the injunction to publically threaten BSA while it is

recruiting scouts. In this atmosphere, the plaintiffs' lawyers have run roughshod over the Debtors, pressing them to make concessions that have nothing whatsoever to do with the merits of the preliminary injunction.

STATEMENT OF FACTS

Proofs of claim filed by non-debtors assert contractual indemnity claims.

Chartered Organizations such as the Church of Jesus Christ of Latter Day Saints (“LDS”),² along with many others,³ filed claims stating that the BSA is contractually obligated to indemnify the Chartered Organizations for losses, including losses related to the abuse cases. For example, an addendum to the claims filed by the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints against each Debtor states:

In the course of [the parties'] relationship, the Church and BSA have entered into certain contractual arrangements whereby the BSA has agreed to indemnify the Church for losses Specifically, BSA agreed to indemnify, hold harmless, assume, and defend the Church, its employees, officer, and directors . . . regarding any and all costs (including, but not limited to, attorneys' fees, reasonable investigative and discovery costs, and court costs) on account of claims arising or alleged to have arisen out of the BSA activities or the acts or omission of the BSA and/or its local councils⁴

Other Chartered Organizations, including Methodist Churches, Episcopal Churches, Presbyterian Churches, and Rotary Clubs, state in their sworn proofs of claim that they are covered by similar indemnity agreements with BSA.⁵ An article published weeks before the bar date on the official news agency for the United Methodist Church advised, “The Boy Scouts’ bankruptcy could not only eliminate its debts, but also potentially extinguish liabilities related to

² See POC # 12180 (filed against Boy Scouts of America); POC # 1248 (filed against Delaware BSA).

³ See examples *infra* at 6.

⁴ See POC # 12180 (filed against Boy Scouts of America); POC # 1248 (filed against Delaware BSA).

⁵ See *infra* at 6.

future claims. Though *indemnification clauses* in the charter agreements historically protected churches from liability, bankruptcy could leave those charters vulnerable.”⁶ The Local Councils assert similar rights.

Neither the official Tort Claimants’ Committee nor the ad hoc Coalition of Abused Scouts for Justice has filed any objection to any of these proofs of claim.

***BSA references these indemnity arrangements
in its moving brief.***

In its moving brief, BSA notes that Local Councils and Chartered Organizations filed approximately 14,000 claims general proofs of claim filed in this case by Local Councils for “for contribution and/or indemnity, based on shared insurance or *other asserted legal bases*.”⁷ Given these arrangements, BSA asserts that “a judgment against a [Local Council or Chartered Organization] has a direct and immediate impact on the BSA and its estate.”⁸

ARGUMENT

POINT I

**BSA, ITS LOCAL COUNCILS AND CHARTERED
ORGANIZATIONS ARE SEPARATELY AND INDEPENDENTLY ENTITLED
TO THE PROTECTION GRANTED BY THE AUTOMATIC STAY**

While the BSA bases its request for extension of the preliminary injunction on the “unusual circumstances” test under § 105(a) and Rule 65 of the Federal Rules of Civil Procedure, actions that tort claimants might bring against Local Councils or Chartered Organizations are likewise barred by operation of the automatic stay in light of the indemnity agreements cited in the proofs of claim filed by those groups.

⁶ Joey Butler, *Churches Urged to File Legal Document in Boy Scouts Lawsuit* UM News (Oct. 29, 2020), <https://www.umnews.org/en/news/churches-urged-to-file-legal-document-in-boy-scouts-lawsuit>.

⁷ Dkt. No. 145 ¶ 35 (emphasis added).

⁸ *Id.* ¶ 45.

Section 362 of the bankruptcy code automatically stays “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”⁹ This provision is among the “fundamental debtor protections supplied by the Bankruptcy Code.”¹⁰ One of the key purposes of the automatic stay is to avoid an “unfair race to the courthouse” that would lead to an inequitable distribution of estate assets—such a risk is particularly manifest here, where counsel to thousands of claimants in this case has threatened exactly this sort of race the moment the Court lifts the preliminary injunction.¹¹

An action against a Chartered Organization that has a contractual right to have the Debtors indemnify it against that claim necessarily implicates the Debtors’ estate. And Chartered Organizations, including the LDS, explicitly claim this right in their proofs of claim. Examples of such claims are set forth in the chart on the following page:

⁹ 11 U.S.C. § 362(a)(3).

¹⁰ *Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1074 (3d Cir. 1992) (citing *Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (In re Atl. Bus. & Cmty. Corp.)*, 901 F.2d 325, 327 (3d Cir. 1990)).

¹¹ See Kosnoff Law (@SexAbuseAttys), Twitter (Mar. 4, 2021 11:58 AM), <http://twitter.com/SexAbuseAttys/status/1367519780912041985> (“There are tens of thousands of lawsuits and thousands more being readied to file against the local councils once J. Silverstein’s injunction expires.”).

Claimant	Claim Number	Basis for Claim Against Debtor
Corporation of the President of the Church of Jesus Christ of Latter-Day Saints	12179	“BSA agreed to indemnify, hold harmless, assume, and defend the Church, its employees, officer, and directors . . . regarding any and all costs (including, but not limited to, attorneys’ fees, reasonable investigative and discovery costs, and court costs) on account of claims arising or alleged to have arisen out of the BSA activities or the acts or omission of the BSA and/or its local councils”
Christ Episcopal Church	7296	“To the extent that Claims relating to or involving the Debtor in any way, including without limitation Abuse Claims, have been, or in the future are, asserted against Claimant (“ Third-Party Claims ”), Claimant hereby asserts and/or reserves the right to assert claims against the Debtor for, <i>inter alia</i> , . . . contribution, indemnification, reimbursement and any and all similarly applicable claims.”
St. Andrews Episcopal Church	7330	
Episcopal Church of the Resurrection, Rainbow City, Alabama	7781	
First Presbyterian Church, Livermore	5261	“BSA’s obligation to provide insurance coverage, indemnification, and contribution to claimant under BSA’s policies of general liability insurance, and all other agreements, documents and laws providing such rights to claimant.”
Pilgrim Presbyterian Church	5687	“[P]otential indemnification, contribution and similar claims may be asserted by the Church at a later time in the event that either any claims are presented against the Church, litigation is filed against the Church, or other adverse action is taken against the Church, on account of facts or circumstances relating to or involving the debtor, including, but not limited to, any claims by or on behalf of persons alleging abuse claims against the debtor.”
First Presbyterian Church of Stillwater	5970	“This proof of claim is filed to assert and preserve contingent claims that may arise from claims of the Troop or Packs, or members or former members of the Troop or Packs, or any other claims that are subject to indemnities made by the BSA, other contractual rights against BSA or tort claims against BSA that may be assertable as claims, third party claims or cross-claims in the event that any claims are made against Claimant by any person or entity arising out of or relating to Claimant’s relationship as a Chartered Organization to Local Council BSA.”
River Cities Rotary	5830	“. . . BSA’s obligation to provide insurance coverage, indemnification and contribution to the claimant under BSA’s policies of general liability insurance, and all other agreements, documents, and laws in place that provide such rights to claimant.”
Tunica County Rotary Club, Inc.	12716	
Pikeville United Methodist Church	5763	
Lascassas United Methodist Church	5991	
Wayside United Methodist Church	5986	
Rotary Club of Shepherd	10648	“Indemnification and insurance coverage under charter agreement.”

POINT II

UNDER THE THIRD CIRCUIT’S DECISION IN *ACANDS*, THE CLAIMS AGAINST LOCAL COUNCILS AND CHARTERED ORGANIZATIONS SHOULD BE BARRED PENDING RESOLUTION OF THEIR PROOFS OF CLAIM

In *ACandS*, the Third Circuit explained that the appropriate remedy, in the event that a case is allowed to go forward before another tribunal in violation of the automatic stay, is to hold that award “invalid.”¹² In *ACandS*, an arbitration award in favor of an insurer was held invalid under 11 U.S.C. § 362(a)(3) because the award impermissibly “diminish[ed] future recoveries from a debtor’s insurance policies.”¹³ Because the award was in violation of the automatic stay, the Circuit declared it “void ab initio” on the grounds that only the bankruptcy court possess statutory authority to grant relief from the automatic stay.”¹⁴

Here, cases against Chartered Organizations, who claim a direct right to indemnification from the Debtors, should not be allowed to go forward in the tort system in potential violation of the automatic stay until those Chartered Organizations’ claims are resolved. Otherwise, there is a risk that the cases might ultimately be declared a nullity after significant expense is incurred defending the claims.

POINT III

THE DEBTOR’S MOTION SHOULD BE GRANTED WITHOUT GRATUITOUS, UNRELATED RELIEF FOR WHICH THERE WAS NO NOTICE OR MOTION

The Court should not go beyond entering an order, the purpose of which is to extend the preliminary injunction. The instant motion was only noticed to extend the preliminary

¹² *ACandS*, 435 F.3d at 259.

¹³ *Id.* at 260–61.

¹⁴ *Id.* at 261.

injunction. It would be inappropriate for the Court to go beyond the relief noticed in entering an order.

The Fourth Stipulation between the Debtors, the TCC, and the UCC was filed hardly an hour before the objection deadline to the Debtors' motion. It contains provisions concerning the turnover of rosters identifying children and their affiliation with religious and other Chartered Organizations. There is not a factual basis for the Court to grant wholesale approval for these terms or a necessity for the Court to do so. It would be particularly inappropriate to grant the relief here, where the arrangement that has been inserted into the proposed order attached to the Fourth Stipulation implicates matters of privacy and the interests of the over 250 Local Councils and many more Chartered Organizations. There is no evidence that those parties have consented to this arrangement, nor was any party served with notice that BSA was seeking the Court's approval of these provisions until this evening.

There is no reason for the Court to grant any relief or sign an Order that does anything beyond grant the relief sought in the motion, that is extend the preliminary injunction.

Dated: March 8, 2021

Respectfully Submitted,

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