

Insurers Call Boy Scouts Del. Ch. 11 Schedules Unworkable

By **Jeff Montgomery**

Law360 (August 17, 2021, 7:42 PM EDT) -- A troop of insurers challenged on Tuesday timetables and disclosures for confirmation of a Boy Scouts of America Chapter 11 reorganization in Delaware, saying current plans for the massively complex case are outdated, premature and unrealistic.

Objections from the 18 insurers involved hit the court's docket as a larger wave of opposition to BSA's disclosure statement, originally scheduled for a hearing on Aug. 25, washed across the proceedings. Those objections were led by insurers and chartered scouting groups who flatly branded the current plan unconfirmable, unfair and potentially inconsistent with Third Circuit law.

The 18 insurers joining in the schedule objection pointed out that some deadlines in question already have passed, and noted that U.S. Bankruptcy Judge Laurie Selber Silverstein's pending decision on BSA's contested restructuring support agreement could force a wholesale schedule rework if the RSA is rejected.

Even with court approval of the RSA, BSA's current fourth amended plan, up for a disclosure statement hearing on Aug. 25 and confirmation on Sept. 27, will have to be amended to remove Hartford Insurance as a contributor and participant, the insurers' objection noted. Rejection, they added, would send BSA back to the drawing board.

"In short, what comes next regarding the RSA will determine what discovery is required, what issues need to be litigated, the necessary witnesses for deposition, the subjects of expert opinions, and so on," the insurers said. "Any confirmation schedule therefore should not begin until the date on which a disclosure statement is approved and there is a solicitation version of the plan."

U.S. Bankruptcy Judge Laurie Selber Silverstein took the RSA and testimony for and against under advisement late Monday after a three-day hearing. The insurers recommended scheduling the confirmation hearing no sooner than about seven months after the disclosure statement approval.

BSA sought Chapter 11 protection in February 2020 after allegations that thousands of sexual abuse claims involving Scouting figures, some stretching back decades, had been ignored or papered over.

Tens of thousands of claims have been filed since the bankruptcy case began, with BSA estimates of potential liability ranging from \$2.4 billion to \$7.1 billion. Attorneys for some insurers victims have warned that claims outside bankruptcy could push the total above \$100 billion, although that estimate has been challenged as ignoring large numbers of claims too old to pursue and likely only to obtain a recovery through the Chapter 11.

According to the insurer objections, case deadlines and sequences already are jammed up, leaving insufficient time to complete and respond to reports and depositions. No provisions have been made for investigating issues tied to ballots and voting on the plan.

"Debtors want confirmation objections to be filed on the same day as the deadline to complete depositions, thus effectively precluding objections based on depositions taken in the final days before the deadline," the insurers said.

The Boy Scouts did not immediately respond to a request for comment.

The RSA calls for a \$600 million contribution from local councils and \$250 million from the national organization under a pact that would release the two from 90,000 sexual abuse claims. Provisions for tens of thousands of chartered units operated by faith-based, civic, educational and other groups remain unresolved.

Among the disclosure objections filed on Tuesday were observations from the Roman Catholic and Ad Hoc Committees that the chartered groups are the only ones identified in the plan as remaining subject to suits from victims after confirmation, without liability releases or compensation for loss of rights to access insurance policies.

"The patent unfairness of the plan to the chartered organizations is remarkable: Debtors agree that chartered organizations' rights will be subordinated without their consent," the chartered organizations' objection said. "While the Catholic and Methodist Committees would like to see debtors emerge from bankruptcy, undermining chartered organizations' contractual rights is not a proper path forward."

Ominously for Scouting, the Catholic and Methodist chartered group objections — representing about a third of BSA's current 1 million members — cautioned that BSA has acknowledged that it needs chartered group support to execute its plan, while advancing a plan that "incentivizes chartered organizations to abandon Scouting."

"If a sufficient number of chartered organizations terminate their relationships with the debtors, then it is unlikely the Debtors will be able to meet their financial obligations under the proposed plan," the chartered groups' objection said.

American Zurich Insurance Company, American Guarantee and Liability Insurance Company and Steadfast Insurance Company are represented by Robert D. Cecil of Tybout Redfearn & Pell, Mark D. Plevin, Kevin D. Cacabelos, Clifford J. Zatz, Tacie H. Yoon and Rachel A. Jankowski of Crowell & Moring LLP.

The Continental Insurance Company and Columbia Casualty Company are represented by Maria Arile Sawczuk of Goldstein & McClintock LLP and Laura McNally and Emily Stone of Loeb & Loeb LLP.

Allianz Global Risks US Insurance Company is represented by David M. Fournier, Marcy J. McLaughlin and Harris B. Winsberg of Troutman Pepper Hamilton & Sanders LLP and Margaret H. Warner and Ryan S. Smethurst of McDermott Will & Emery LLP.

National Surety Corporation and Interstate Fire & Casualty Company are represented by Todd C. Jacobs and John E. Bucheit of Bradley Riley Jacobs PC and David M. Fournier, Marcy J. McLaughlin and Harris B. Winsberg of Troutman Pepper Hamilton & Sanders LLP.

Clarendon America Insurance Company, Maryland Casualty Company, Maryland American General Group and American General Fire & Casualty Company are represented by Matthew G. Summers and Chantelle D. McClamb of Ballard Spahr LLP, and Harry Lee, John O'Connor and Brett Grindrod of Steptoe & Johnson LLP.

General Star Indemnity Company is represented by Kathleen M. Miller of Smith Katzenstein & Jenkins LLP and Gary P. Seligman and Ashley L. Criss of Wiley Rein LLP.

Arrowood Indemnity Company is represented by Michael J. Joyce of Joyce LLC, Kevin Coughlin, Lorraine Armenti and Michael Hrinewski of Coughlin Midlidge & Garland LLP and Britton C. Lewis of Carruthers & Roth PA.

Travelers Casualty and Surety Company, Inc., St. Paul Surplus Lines Insurance Company and Gulf Insurance Company are represented by Louis J. Rizzo Jr. of Reger Rizzo & Darnall LLP.

Munich Reinsurance America, Inc. are represented by Thaddeus J. Weaver and William E. McGrath Jr. of Dilworth Paxson LLP.

The Roman Catholic Ad Hoc Committee is represented by Everett Cygal, David Spector, J. Mark Fisher, Neil Lloyd, Daniel Schufreider and Jin Yan of Schiff Hardin LLP.

The United Methodist Ad Hoc Committee is represented by Edwin G. Rice of Bradley Arant Boult Cummings LLP.

The case is In re: Boy Scouts of America and Delaware BSA LLC, case number 1:20-bk-10343, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Rick Archer, Hailey Konnath and Vince Sullivan. Editing by Amy Rowe.