

Boy Scouts files for bankruptcy amid child abuse allegations

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Boy Scouts of America filed for bankruptcy protection early Tuesday amid declining membership and a drumbeat of child sexual abuse allegations that have illuminated the depth of the problem within the organization and Scouts' failure to get a handle on it.

After months of speculation and mounting civil litigation, the Chapter 11 filing by the scouting organization's national body was unprecedented in both scope and complexity. It was filed in Delaware Bankruptcy Court overnight.

The exact effects on Boy Scouts' future operations are unknown, leading to speculation about the organization's odds for survival, the impact on local troops and how bankruptcy could change the dynamic for abuse survivors who have yet to come forward. Some fear that at a minimum it will prevent survivors from naming their abuser in open court.

"They're going into bankruptcy not because they don't have the money," said Tim Kosnoff, who has tried thousands of child abuse cases, including many against the Boy Scouts and Catholic Church. "They're going into bankruptcy to hide ... a Mount Everest in dirty secrets."

In a statement, the organization said: "The BSA cares deeply about all victims of abuse and sincerely apologizes to anyone who was harmed during their time in Scouting."

"The BSA intends to use the Chapter 11 process to create a Victims Compensation Trust that would provide equitable compensation to victims.

"Scouting programs will continue throughout this process and for many years to come. Local Councils are not filing for bankruptcy as they are legally separate and distinct organizations."

It is exactly that distinction that victims' attorneys say will form the core of the legal battle ahead over which assets Boy Scouts must use to pay legal settlements and which can be shielded. The primary debate, they say, will center on property owned by the 266 regional councils and local troops.

Reports of a potential bankruptcy first emerged at the end of 2018, with rumors that the nonprofit youth organization would follow in the footsteps of the Catholic Church, which

has faced similar claims of abuse. But unlike the Catholic bankruptcy cases, in which more than 20 individual dioceses have filed for protection, the Boy Scouts' case will play out on a national level.

Many saw the Scouts' increase in annual membership fees in October, from \$33 to \$60, as evidence of financial trouble.

Then on Jan. 1, the Church of Jesus Christ of Latter-day Saints – which for 100 years was among Boy Scouts' largest partners – followed through on its plan to pull hundreds of thousands of Mormon youth out of Scouts in favor of its own youth program. That withdrawal caused an 18% drop in membership overnight, to fewer than 2 million.

But the nonprofit organization's chief financial concern, according to victims' attorneys and bankruptcy experts, is rising liability from abuse lawsuits. The suits have led to battles with insurance carriers, who refused to pay out claims saying the Scouts failed to take effective preventive measures to stop the abuse. In 2018, Boy Scouts sued six of its carriers.

"The problem with Boy Scouts is they're caught in a vice grip of, on one hand, having insurance companies not paying on these claims that Boy Scouts have already settled, and second having dwindling economic resources on account of paying out money for sexual abuse settlements," said attorney Paul Mones, who has tried dozens of high-profile cases against Boy Scouts.

The scouting organization has been deeply mired in civil litigation since a landmark case in 2010 that resulted in \$19.9 million in damages, the largest ever for a single individual against the Boy Scouts. That case triggered the release of more than 20,000 confidential documents, which became known as the "perversion files."

Those records named more than 1,000 banned volunteers, revealing that the 100-year-old organization had kept track of suspected and known abusers and failed to

consistently report them to police or inform parents or the public of the extent of the problem.

CRITICS SAY BANKRUPTCY COULD THWART PUBLIC SAFETY

While the bankruptcy filing has long been viewed by some legal experts, and even victims' attorneys, as the best and most likely course of action, it's a controversial move for one of the country's most influential youth organizations.

Boy Scouts currently faces hundreds, if not thousands, of abuse lawsuits. New allegations poured in as efforts to extend the civil statute of limitations for survivors of child sexual abuse gained momentum in recent years.

Thirty-eight states have amended their statute of limitations since 2002, with 10 eliminating civil statute of limitations altogether and 16 reviving expired statutes, according to CHILD USA, a think tank focused on preventing child abuse and neglect.

New York's Child Victims Act opened a one-year window in August for lawsuits from child sexual abuse survivors previously barred by the statute of limitations. The day that window opened, hundreds of suits were filed. California, which passed one of the first pieces of legislation years ago, added another revival window beginning this year.

One reason lawmakers have pushed such legislation is public safety: The legislation gives victims a greater opportunity to publicly name their abusers, who may still be a threat to their communities.

Kosnoff said bankruptcy will largely thwart that public safety effort.

"Individuals will come forward but their avenue will be to file proof of claim in the bankruptcy which is completely confidential," said Kosnoff, who with Abused in Scouting has filed two recent suits against Boy Scouts.

The Scouts, in its statement issued earlier today, flipped that, saying, a settlement fund “is the best means of compensating victims in a way that is equitable and protects their identities.”

By filing for bankruptcy, the Boy Scouts can consolidate all of the lawsuits against the organization and pursue a settlement that potentially is far lower than settlements outside of bankruptcy.

But Pamela Foohey, associate professor at the Indiana University Maurer School of Law, said there are benefits for survivors who have filed suit recently and would otherwise have faced a long legal battle and dwindling resources.

“It stops everything and it puts it in one place for the Boy Scouts to have time to assess the breadth, the scope of the litigation, of the claims, and then deal with it collectively,” Foohey said.

Typically, abuse survivors will be represented on a required committee of unsecured creditors or on a separate committee established to represent their interests, she said. The committee will try to negotiate a settlement in which the nonprofit sets aside a pot of money to settle claims.

To gain access to those funds, survivors will have to file a claim by a date set by the bankruptcy judge. Critics say that process can be stacked in favor of the organization by forcing victims who may not be ready to come forward to file their claims.

“It’s a huge advantage for these entities, and it cuts survivors off at the knees,” said Tim Hale, a California attorney who has settled numerous cases against the Catholic Church.

THE LONG HISTORY OF SCOUTING IN AMERICA

Founded in England by cavalry officer Robert Baden-Powell, the scouting movement first made its way to the United States in 1909 thanks to Chicago newspaperman William D. Boyce. Seven years later, Congress unanimously passed a charter that helped enshrine Boy Scouts' as a respected U.S. institution.

From the outset, Boy Scouts has operated on a decentralized structure, much like the Catholic Church, with the National Council serving as more advisory body and much of the day-to-day operations, including some fundraising, happening at the local level.

The youth organization says 110 million Americans have participated at some time in their lives, with a peak of more than 4 million members a year in the 1970s. Some of those members included future astronauts, Supreme Court justices and presidents, including John F. Kennedy and Gerald Ford.

The organization also has played an important role in American culture.

Norman Rockwell started his career creating illustrations for the Boy Scouts' Hike Book, becoming art editor for its monthly Boys' Life magazine at 19. He'd go on to create dozens of works featuring Scouts, including during his stint at The Saturday Evening Post. The Scouts still own about 70 of the famed artist's works.

The Boy Scout mission embodied in its oath – “to keep myself physically strong, mentally awake, and morally straight” – inspired major contributions from other icons and business leaders as well.

Irving Berlin donated royalties from his composition “God Bless America” to the Boy Scouts and Girl Scouts through his trust, the God Bless America Fund. Waite Phillips, of Phillips Petroleum Company, donated his favorite New Mexico ranch, the 140,000-plus-acre Philmont Scout Ranch, as well as Tulsa's iconic Philtower building.

Such properties and cultural relics have added to the national organization's holdings, which Boy Scouts valued at \$1.4 billion in 2018 tax documents. In bankruptcy, Boy Scouts may be forced to sell off those assets to pay creditors – or may do so voluntarily.

Last year, Scouts confirmed it was using Philmont, where an estimated 22,000 scouts backpack every summer, as collateral for an existing line of credit for insurance.

In the bankruptcy proceedings, Scouts are likely to argue that assets such as property owned by local troops are separate and should be left untouched. The survivors are likely to argue that the court should not allow the Boy Scouts to protect those assets.

In its filing early today, Boy Scouts estimated its assets at \$1 to \$10 billion and its liabilities between \$500 million and \$1 billion.

But much of Boy Scout property actually is owned by regional councils across the country rather than the national council, which claimed just \$240 million in land assets in its 2018 tax filings. By contrast, the USA TODAY Network found \$101 million in local councils' property in New York alone.

"Assets are separate — they're going to make that argument, and we're going to contest it," said Kosnoff, the attorney. "Under the bylaws of the Boy Scouts they have absolute control over the assets that may be titled to the council."

As the bankruptcy proceedings continue, the Boy Scouts could attempt to argue that some of its property is held in a land trust, which could protect it from a sale, said Foohey, who described Chapter 11 bankruptcy as an opportunity to reorganize a business.

"What's the point of business reorganization?" she asked. "It's to get as much money as possible to creditors while potentially keeping the business going."

HOW BANKRUPTCY WILL AFFECT ABUSE SURVIVORS

The period established for victims to file claims during a bankruptcy allows the organization to sidestep windows opened by states in response to sex abuse scandals.

Hale, the California attorney who works with sexual abuse victims, said that bankruptcy can dissuade survivors who haven't shared their stories yet since the public typically interprets bankruptcy to mean that the organization is out of money.

That strategy, however, has backfired for the Catholic Church.

In late 2007, a federal judge dismissed a bankruptcy case filed by the Catholic Diocese of San Diego after lawyers reached a settlement that paid 144 survivors \$198 million. The diocese had filed for Chapter 11 bankruptcy protection just hours before the trial was set to start.

During the bankruptcy trial, Judge Louise DeCarl Adler ripped the diocese for being "disingenuous" and "byzantine," and threatened to hold several church officials in contempt of court. Later, she told The San Diego Union-Tribune that the diocese should never have filed the bankruptcy claim as a way to deal with survivors.

"Bankruptcy is the biggest scam going," said Jonathan Little, an Indianapolis-based attorney who represents a handful of women who say they were abused by USA Gymnastics doctor Larry Nassar.

In January 2018, Nassar was convicted and sentenced to up to 175 years in prison. While Nassar remains locked up, USAG continues to deal with fallout from abuse claims from hundreds of athletes.

Both Hale and Little said large organizations also can be strategic or even cunning in their arrangement of assets. With USA Gymnastics, for example, the USA Gymnastics Foundation is not included in the bankruptcy filing, which "is basically giving USAG \$20 million to reorganize after this is all done," Little said.

In April 2019, Little filed a federal lawsuit to protect potentially thousands of survivors who might not have known about a deadline for filing claims because of the USAG bankruptcy. Little said he's trying to get the bankruptcy case thrown out.

"Bankruptcy is the ultimate get-out-of-jail-free card for these organizations," he said. "I understand there's a finite amount of resources. But they make deals with secured creditors and vendors and then they screw over unsecured creditors – mainly little kids."

For some survivors who have dealt with the repercussions of abuse for decades, the bankruptcy filing feels like another way to dismiss their abuse and evade accountability.

"I really believe something needs to be done because a lot of changes have been made and none of them are for the good," said James Kretschmer, 56, who claims a leader groped him at a Boy Scout camp when he was in middle school.

Kretschmer is among nearly 2,000 former Scouts represented by attorneys with Abused in Scouting. The group launched abusedin scouting.com as well as television and Google ads last spring.

Kretschmer said he came forward only after seeing the ad.

"In my view, I think Boy Scouts should be shut down totally," Kretschmer said. "I would never put one of my children in scouting today."

THE REVELATION OF THE "PERVERSION FILES"

Several civil suits reviewed by USA TODAY, including two filed by Abused in Scouting, allege that Boy Scouts knew it had a rampant child sexual abuse problem as far back as the 1920s but hid the issue to protect its wholesome image.

In a 1935 New York Times article, the chief scout executive detailed a "red flag" system for weeding out volunteers who had been removed from the organization "for various

causes, including moral perversion.” That is the system that decades later would come to be known as the “perversion files.”

Those files again made news in the 1980s, when they were entered into evidence in civil suits in Virginia and Oregon. The Oregon case resulted in a \$3.7 million verdict against Boy Scouts, the largest of its kind at that point in U.S. history.

According to a 1993 CBS investigation, Boy Scouts had been sued more than 50 times since 1981, paying more than \$15 million in damages. Yet, when national Scout representatives were asked if they required all troops to perform background checks on volunteers, or whether video training for volunteers to help spot potential abuse was mandatory, a Boy Scout representative said no.

Boy Scouts has since adopted more assertive “Youth Protection” trainings, background checks and messaging for kids and parents warning of potential dangers, including a “How to Protect Your Child from Child Abuse” insert in the scout handbook. In its statement on the bankruptcy, the organization vowed: “Scouting will continue to provide unparalleled programs to young people – keeping them safe, supported and protected as it prepares them for their futures.

“The BSA today has some of the strongest, expert-informed youth protection policies found in any youth-serving organization, including mandatory youth protection training and background checks for all volunteers and staff, as well as policies that prohibit one-on-one interaction between youth and adults and require all volunteers and staff to report any suspected abuse to law enforcement.

“Additional information about the BSA’s multilayered safeguards, our commitment to support victims, and our efforts to be part of the broader solution to child abuse is available at www.scouting.org/youth-safety.”

But many, like attorney Paul Mones who tried the 2010 Oregon case, say that even after that landmark verdict, the Scouts didn’t pay adequate attention to child abuse.

“Boy Scouts could have gotten ahead of this early on but literally chose not to,” he said.

“Instead of reaching out to Scouts when they had the opportunity to do so, they dug in their heels. The first thing they did, after being just hit for \$19.9 million, they filed a motion to try to keep the ‘perversion files’ secret.”

The Boy Scouts lost that case and in 2012 the Oregon Supreme Court ordered the public release of those files.

“That was the dam that broke the Boy Scouts,” Mones said.

Because the organization chose over the years to err on the side of protecting its image, Mones said, the problem persists. In December, he filed suit on behalf of a 17-year-old client who said he was abused in 2018.

“I believe they’ve been trying to look at the problem,” he said, “but the problem is that it’s a day late and a dollar short.”