

Chapter 11 Bankruptcy Reform for Child Sexual Abuse Cases to Ensure Victims Are Treated Fairly and the Public Learns the Truth

Chapter 11 allows organizations to reduce debt so that they can move forward, free of future liability for past acts. When the debtor and its partners negligently endangered children, Chapter 11 perversely constructs a pathway to keep their secrets and dramatically reduce their liability while it reduces discovery to a trickle and provides no voice for the brave survivors. This is an injustice for the victims and an affront to the public. Chapter 11 currently prevents the public from learning the truth it needs to know to protect the country's children going forward.

The following four reforms would remove Chapter 11's barriers to the truth and create a more just system for the victims.

I. Require Consent for Non-Debtor Releases in Chapter 11 Proceedings Involving Child Sex Abuse Claims Through the Creditors' Committee(s), and Codify Standards for Courts in Granting Non-Debtor Releases

Here's why:

USA Gymnastics (USAG): The USAG filed for bankruptcy in December 2018 facing lawsuits from approximately 300 victims of Larry Nassar.¹ Proposed reorganization plans were structured to include a blanket liability release for numerous non-debtor organizations and individuals, including the U.S. Olympic and Paralympic Committee (USOPC), even though a court found that there was a "distinct possibility of liability on the part of USOPC." Others to be released included USAG chief executive, Steve Penny; former national team directors, Bela and Martha Karolyi; and the former U.S. Olympic team coach, Don Peters. Such a release did not require consent of the victim "creditors" and permitted releases for those who were not debtors. Therefore, they did not have to disclose their holdings or even contribute to the settlement fund. After three years, a reorganization plan was approved consisting of a \$380 million settlement, paid mostly by USAG insurers, and other nonmonetary commitments regarding athlete safety. The USOPC received the non-debtor release for all victims of Nassar while it contributed less than 10% of the total, approximately \$34 million, to the settlement (as well as a \$6 million loan to USAG). Other affiliated entities and individuals, including the Karolyis and Penny, received releases without contributing anything from their own pockets.

The Boy Scouts of America and Its Charter Organizations and Local Councils: The Boy Scouts of America (BSA) filed for bankruptcy protection in February 2020 as the organization faced 275 lawsuits filed by victims alleging child sexual abuse. More than 82,000 claims are now pending in the BSA Chapter 11 proceedings. The BSA has vehemently argued for liability releases of their charter organizations, which are typically churches hosting a troop, and local councils, which are

¹ For the definitive case study of the Larry Nassar cases, see the Game Over Commission to Protect Youth Athletes: A Case-Study of Systemic Abuse in Sports Perpetrated by Larry Nassar, available at <https://childusa.org/wp-content/uploads/2022/01/Game-Over-Commission-Report-FINAL-1.28.22.pdf>.



often campgrounds. The BSA fought for their releases for at least two reasons: (1) to avoid litigation against the charters and councils that would have added to the public's knowledge of Scouts' bad acts, and (2) to allow them to hide their actual worth, which puts the victim creditors at a disadvantage in negotiations.

This information asymmetry in Chapter 11 proceedings results in families and taxpayers shouldering the costs of child sex abuse rather than those who caused or insured against the abuse. The estimated lifetime cost to society of child sexual abuse cases occurring in the U.S. is \$9.3 billion.² The average lifetime cost of child maltreatment—which includes physical abuse, sexual abuse, emotional abuse (psychological abuse), and neglect—is \$830,928.00 per victim.³ The BSA reorganization plan allows non-debtor charters and local councils to wash away the claims of thousands of victims with a contribution to the settlement that is dramatically lower than ordinary civil litigation would yield. Under the plan, the BSA and its partners will pay \$3,500 to \$2.7 million per victim, depending on the severity of the abuse. Compare that to the recent \$25 million jury verdict in upstate New York against a Boy Scout perpetrator.⁴

The Diocese of Camden, New Jersey: The Diocese filed for Chapter 11 protection in October 2020, with over 300 claims currently filed against the Diocese. In March 2022, the bankruptcy court denied a motion filed by the Committee of Tort Claimant Creditors which sought standing to bring certain claims against the Diocese and various third parties, such as parishes, missions, and schools within the Diocese. They argued that the parishes and certain bank accounts should be considered property of the Diocese's estate as the Diocese is permitted to commingle the assets of each parish with its own assets, as well as hold significant cash and investments in the parish's bank account that the parish then needs its permission to deposit or withdraw. The Committee also claimed a fraudulent transfer and breach of fiduciary duty by the Diocese to hide financial resources from its creditors. The alleged value of these alleged resources is more than \$250 million that would have been brought into the Diocese's estate. Not only should the Committee of Tort Claimant Creditors agree to any releases related to the parishes, but the court should be required to make findings of the necessity and fairness of such releases based on the relationship between the diocese and parishes, their financial assets, and other considerations.

II. Exempt Child Sex Abuse Cases from the Bankruptcy Code's Automatic Stay Provision

Here's why:

The Diocese of Harrisburg, Pennsylvania: The Diocese of Harrisburg became the first diocese in Pennsylvania to file for Chapter 11 protection in February 2020 following the 2018 Attorney General's grand jury report that found church leaders throughout the state had covered up child sex crimes at the hands of more than 300 priests over a period of 70 years resulting in thousands

² Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 *Child Abuse Negl.* 413 (2018).

³ Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States*, 2015, 86 *CHILD ABUSE NEGL.* 178 (2018).

⁴ Jay Tokasz, *Jury awards \$25 million to child sex abuse victim of Boy Scout leader*, *THE BUFFALO NEWS* (Mar. 30, 2022), https://buffalonews.com/news/local/crime-and-courts/jury-awards-25-million-to-child-sex-abuse-victim-of-boy-scout-leader/article_2e6c03e0-b083-11ec-b391-ef0d46b03d40.html.

of victims.⁵ The filing froze all current lawsuits against the Diocese with an approximately 200 outstanding claims, just as the diocese was beginning to disclose an estimated 100,000 pages of internal documents related to clergy sexual abuse from 1970 to 2002 in the pending civil litigation process. Victims were “incredibly frustrated” by the filing as they “wanted full transparency” and would “inevitably be denied the opportunity to confront witnesses that have the answers to the questions that have haunted them for many years.” The bankruptcy case is still pending as the system elevates the organization’s desire to reorganize above a discovery process that would help the public and parents learn who is responsible for creating a system dangerous for children and prevent it from happening in the future.

USA Gymnastics: The victims of Larry Nassar who filed lawsuits sought “to ‘get to the truth’ of how the abuse continued for as long as it did and who within USA Gymnastics knew about it.” USAG’s bankruptcy filing halted all lawsuits against USAG and the USOPC’s decertification process of USAG. As a result, victims fought for answers related to the extent that USAG and the USOPC knew about Nassar’s abuse and what steps, if any, were taken to conceal the abuse or prevent it from happening to future athletes. Eight subpoenas were issued for current and former USOPC directors, officers, and employees. In response, the USOPC filed a motion for a protective order to limit the request. The bankruptcy judge issued a split decision, agreeing with the USOPC that the claimants “stray[ed] significantly from the narrowly tailored and relevant discovery parameters” but that the claimants could depose three current and former directors and officers, and seek information on a narrow range of topics addressing USOPC’s response to sexual abuse claims.

Compared to other bankruptcy cases, the Nassar victims’ opportunity to pursue limited information from high-ranking individuals within USAG and the USOPC was expansive. Regardless, Chapter 11 turns discovery into a trickle as compared to what the public would learn if the cases went through the ordinary civil process. Other categories of cases have been exempted from the automatic stay provisions, including child custody, domestic violence, and asbestos cases. For similar reasons, child sex abuse cases should also be exempt.

III. Amend the Bankruptcy Code to Require an Opportunity for Victim Impact Statements Before Confirmation of a Reorganization Plan

Here’s why:

The Archdiocese of Portland, Oregon: In July 2004, the Archdiocese of Portland became the first Roman Catholic diocese in the United States to file for bankruptcy amidst pending lawsuits of victims alleging clergy sex abuse. The full truth was squelched when, on the eve of two civil trials, the Archdiocese declared bankruptcy. The plaintiff in one case, James Devereaux, said he was “determined to have a public hearing of his case against the church.” On the day of the filing, Devereaux’s attorney indicated that he wanted his day in court over any financial settlement. After two and a half years pending in court, the Archdiocese emerged from bankruptcy with a \$75 million settlement plan. Insurance companies paid approximately \$52 million with the remainder coming from Archdiocesan holdings and loans. No parish or school within the Archdiocese

⁵ *In re: Fortieth Statewide Investigating Grand Jury*, Nos. 75, 77- 82, 84, 86-89 (July 27, 2018), <https://www.attorneygeneral.gov/report/>.

contributed to the settlement, and Devereaux, along with every other survivor, did not get their day in court.

Purdue Pharma. One recent example shows the value of victim impact statements in bankruptcy proceedings for the public’s edification. At the suggestion of a mediator, the Chapter 11 settlement reached by OxyContin-producer Purdue Pharma and its owners, the Sackler family, provided those directly affected by the opioid crisis an opportunity to read impact statements in open court. Three members of the Sackler family attended the virtual hearing that lasted roughly two hours with 26 speakers, who educated the public on the harm done in a way ordinary court filings never would.

May 17, 2022

About CHILD USA

CHILD USA is the leading national nonprofit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal and social science research and analysis to derive the best public policies and produce evidence-based solutions and legal analysis needed by policymakers, organizations, media, and society as a whole to increase child protection and the common good.

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