

**TO:** Chief Judge Roslynn R. Mauskopf, Director, Administrative Office of the United States Courts, The Honorable Chief Justice John G. Roberts, Jr., Presiding Chair, and Honorable Members of the Advisory Committee on Bankruptcy Rules, Committee on Rules of Practice and Procedure, Judicial Conference of the United States

**FROM:** Professor Marci A. Hamilton, Founder & CEO, CHILD USA

**RE:** Reform Needed to Protect Victims of Child Sex Abuse in Federal Bankruptcy Courts

**DATE:** August 24, 2021

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Dear Chief Judge Roslynn R. Mauskopf, Honorable Chief Justice John G. Roberts, Jr., and Honorable Members of the Advisory Committee on Bankruptcy Rules, Committee on Rules of Practice and Procedure, Judicial Conference of the United States,

Thank you for reading this letter related to the negative impact of chapter 11 bankruptcy law, 11 U.S.C. §§ 1101-1195, on the well-being of child sex abuse victims when the institution that endangered them files for reorganization to protect its assets in federal court.

By way of introduction, my name is Marci Hamilton, and I am the Founder & CEO of CHILD USA, the nation's leading interdisciplinary think tank dedicated to the prevention of child abuse and neglect, and the Fels Institute of Government Professor of Practice and Senior Resident Fellow in the Program for Research on Religion at the University of Pennsylvania. Before joining the faculty at the University of Pennsylvania, I clerked for Justice Sandra Day O'Connor at the United States Supreme Court and held the Paul R. Verkuil Chair in Public Law at Benjamin N. Cardozo School, Yeshiva University. I am the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform, or access to justice, for child sex abuse victims, and the textbook, *Children and the Law* (Carolina Academic Press). I am also the author of numerous scholarly articles and merits and amicus briefs in the country's highest courts addressing different aspects of child protection.

**I. It Is Important for Federal Courts to Understand that Child Sex Abuse Results in Life-long, Individualized Trauma**

The following provides the most pressing reforms needed to make federal bankruptcy cases less re-traumatizing to the victims and to serve the public's interest in learning how institutions endanger our children. The foundational principle that should drive federal bankruptcy law in



these cases is that child sex abuse victims suffer individualized trauma and damage. **The bankruptcy system, as it is now situated, is ill-suited for child sex abuse victims to obtain justice.**

Child sex abuse is a widespread public policy crisis. While the prevalence of child sex abuse is difficult to determine because so many victims never report, the best science holds that 1 in 5 girls and 1 in 13 boys are sexually abused before the age of 18.<sup>I</sup> The trauma stemming from child sexual abuse is complex and individualized, and it typically affects victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts the individual. It is settled that PTSD, memory deficits, and complete disassociation are common results<sup>II</sup>, and that such victims suffer disproportionately from depression, addiction, and suicidal ideation and suicide.<sup>III</sup> These trauma effects typically delay disclosure. In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**<sup>IV</sup>

Trauma is only one of the barriers preventing the victims from disclosing abuse during childhood and well into adulthood. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”<sup>V</sup> Studies suggest that roughly one-third never disclose their abuse to anyone.<sup>VI</sup> The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their specific memories.<sup>VII</sup>

The legal system can be a difficult venue for the victims to enter, but it is much more difficult than it should be in the currently configured chapter 11 system. Federal bankruptcy law is being deployed against survivors in a way that foreshortens their access to justice and trivializes their suffering.

## **II. Mandating Training and Victim-Impact Statements in Bankruptcy Proceedings Will Honor Victims’ Experiences and Equip the Courts to Administer Bankruptcy Cases involving Claims Related the Child Sexual Abuse**

The application of chapter 11 law, 11 U.S.C. §§ 1101-1195, has re-traumatized child sexual abuse victims while it shelters the institutions that have endangered children. It also derails the public search for the truth about widespread child sex abuse by short-circuiting discovery and shifting the attention from the victims and systemic failures to the financial needs of the institution. Federal bankruptcy law was never intended to be the clearinghouse for the coverup of child sex abuse. This playing field needs to be leveled for the sake of the victims, their families, and the public. The following are federal reforms federal courts can and should embrace:

- 1) **Trauma-Informed Training for Judges and Court Personnel:** Require federal judges to undergo trauma-informed training regarding the presentation and impact of child sex abuse, as well as trauma-informed administrative practices.

AMENDS 11 U.S.C.A. § 105 TO ADD SUBSECTION § 105(e)

(e) Prior to assignment of a case regarding potential debts or other financial liability arising from allegations of sexual abuse or assault of a child, judges and court personnel shall be required to complete a trauma-informed training regarding the impact and presentation of childhood sexual assault, as well as trauma-informed administration practices. The Court shall maintain a list of such approved trainings and implement a trauma-informed practice in cases involving financial liability incurred as a result of a finding of civil liability arising from facts of sexual abuse or assault.

- 2) **Allow Victim-Impact Statements:** In chapter 11 cases involving child sex abuse claims, judges should be required to give victims the right to read a victim-impact statement before a reorganization plan is confirmed.

AMENDS 11 U.S.C.A. §1109(b) as follows:

(c) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter. In cases for claims related to alleged sexual assault of a child, victims of the alleged sexual assault may appear and have their victim-impact statements heard before confirmation of the plan.

AMENDS 11 U.S.C.A. §1101 TO ADD SUBSECTION §1101(3):

(3) “victim impact statement” means a written or oral statement describing the emotional, physical, and financial impact suffered as a result of the sexual assault of the child.

If the Judicial Conference does not take up these issues, it is imperative that Congress use its authority to mandate these changes so bankruptcy proceedings become empowering—rather than traumatizing—spaces for victims.

### III. Conclusion

Chapter 11 is unintentionally sheltering institutions and affiliated non-debtors from being held publicly accountable for pervasive child sexual abuse, while retraumatizing victims of child sex abuse and silencing their voices. Moreover, the process subordinates the legitimate needs of victims to the financial demands of a debtor institution. The Judicial Conference needs to enact reform equipping courts to battle the institution-based child sex abuse that is plaguing this country.

Please do not hesitate to contact me if you have questions regarding these proposed changes or if I can be of assistance in any other way.

Sincerely,



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<sup>1</sup> G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

<sup>II</sup> Jacobs-Kayam.A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, FRONTIERS IN PSYCHOL. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

<sup>III</sup> van der Kolk, B., *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*. HARVARD REV. OF PSYCHIATRY (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, SCIENTIFIC AMER. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA 30 (2019), available at [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf) (hereinafter "Hoskell").

<sup>IV</sup> See *supra* n. iv.

<sup>V</sup> CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

<sup>VI</sup> *Id.*

<sup>VII</sup> Hoskell, at 24.