No. 23-124

IN THE

Supreme Court of the United States

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2,

Petitioner,

v.

PURDUE PHARMA L.P., ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF AD HOC GROUP OF LOCAL COUNCILS OF THE BOY SCOUTS OF AMERICA AS *AMICUS CURIAE* SUPPORTING DEBTOR RESPONDENTS

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INTEREST OF *AMICUS CURIAE* [1]

Amid World War I, Congress and President Wilson chartered the Boy Scouts of America (BSA). For over a century, BSA has used outdoor programs to prepare more than 130 million young men and women for lives of character, self-reliance, and leadership. BSA works with hundreds of local councils to administer scouting programs in their respective territories. These councils are independent nonprofit entities organized under state laws. Although they share in BSA's pension plan and insurance program, each council has its own, independent governing body, and they are not corporate affiliates of BSA. *Amicus* the Ad Hoc Committee of Local Councils of BSA has been the voice for the approximately 250 councils (BSA Councils).

BSA recently obtained confirmation of a Chapter 11 plan, effective since April, that resolved an extraordinary number of tort claims. It achieved remarkable compensation for claimants through the considerable contributions of hundreds of non-debtor third parties—including all of the BSA Councils—who, as a result of these necessary contributions, received a release from further liability for those tort claims upon a finding of necessity and fairness. Given the necessity of those releases to BSA's plan, *Amicus* submits this brief to highlight the importance of third-party releases in the BSA Chapter 11 plan, and in other similar plans, as critical tools for obtaining fair compensation for claimants.

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[1] No counsel for any party authored this brief in whole or in part. No person other than *Amicus*, its members (as well as certain other BSA Councils), or its counsel made a monetary contribution to fund the preparing or submitting of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

BSA filed for Chapter 11 relief in early 2020. By then, it had spent about $150 million resolving hundreds of sex-abuse claims, the "vast majority" alleging conduct from over thirty-years ago. *In re Boy Scouts of Am. & Del. BSA*, *LLC*, 650 B.R. 87, 108 (D. Del. 2023), *appeal docketed*, No. 23-1668 (3d Cir. Apr. 11, 2023). BSA and its local councils, whom BSA generally represented in insurance and litigation matters, nonetheless faced a "sharp[] increase[]" in litigation, as many States enacted legislation re-opening the courts to time-barred claims of childhood abuse. *Id.* After an attempt to achieve in mediation "an equitable and global out-of-court resolution" with certain claimants and insurers failed, BSA was finally driven to seek reorganization under Chapter 11. *Id.*

The confirmed plan of reorganization that resulted from the lengthy and complex proceedings—affirmed by the District Court and now on appeal in the Third Circuit—was "extraordinary for [its] broad support" among "[a]n overwhelming majority of sexual abuse survivors." Statement of [*Amicus*] in Support of Confirmation of the BSA's Plan of Reorganization, *In re Boy Scouts*, No. 20-10343, Doc. 9098, at 2 (Bankr. D. Del. Mar. 2, 2022). All of the approximately 250 local councils also supported it, as "the best path to significant, quick, and equitable compensation for survivors." *Id. Amicus* added that the plan would "ensure that the Scouting movement can continue to benefit the approximately 1 million youth that it serves today, and the millions more who will now have the chance to become Scouts." *Id.*

The BSA plan resolved over 80,000 abuse claims, through what "is apparently the largest sexual abuse compensation fund in the history of the United States." *In re Boy Scouts*, 650 B.R. at 104. The fund contains billions in cash, property, and insurance rights, the vast majority of which was contributed by the approximately 250 non-debtor, third-party BSA Councils, solely for the benefit of abuse survivors. Under the plan, the "holders of Abuse Claims … can expect to be paid in full." *Id.* at 141. The plan has been effective since April 2023, and the compensation fund for abuse survivors is fully operational.

The BSA plan's "cornerstone" is the release of non-debtor third parties like the BSA Councils in return for their contributing hundreds of millions to the compensation fund, including their rights under the global insurance policy they shared with BSA (as well as under their individual policies, in some instances). *Id.* at 105, 111. In affirming the Bankruptcy Court's order confirming the BSA plan, the District Court agreed that those releases are "necessary to ensure an equitable process by which abuse Survivors' claims will be administered and paid." *Id.*; *see also id.* at 137–43 (affirming findings of necessity and fairness). Without the releases, the BSA Councils' contributions "would not have been possible." *Id.* at 139. Further, the insurance companies simply "would not settle" their liability "without the [releases]." *Id.* at 140. And without the releases, further litigation would hamper the BSA Councils in providing scouting programs, membership in which drives BSA's revenue, thus "putting into serious question BSA's ability to continue as a national organization." *Id.* at 139.

Amicus agrees that the Bankruptcy Code permits bankruptcy courts to authorize third-party releases like those in BSA's case. *Amicus* submits this brief to highlight the critical benefits third-party releases have provided claimants through Chapter 11 proceedings.

I. Third-party releases are crucial to achieving fair compensation for claimants, particularly in mass tort. As the District Court concluded with respect to the third-party releases in BSA's Chapter 11 case, they are often the "cornerstone" of reorganization plans because they unlock critical funding for claimants. Such compensation can be available only in bankruptcy court, particularly because, given the stringent requirements for class treatment under Federal Rule of Civil Procedure 23, the alternative will usually be uncoordinated and resource-depleting marathons of litigation.

II. For decades, bankruptcy courts have recognized the necessity of third-party releases in certain scenarios for obtaining confirmation of Chapter 11 plans that maximize the fair recoveries of claimants. And this has remained so as the courts of appeals have refined their standards to ensure that necessity and fairness exist in a given case. These scenarios have included various mass torts (not just asbestos), as well as other kinds of litigation, and have arisen both before and since Congress specially approved third-party releases in asbestos cases.

ARGUMENT

I. As BSA's Chapter 11 Case Illustrates, Third-Party Releases Are Critical To Equitable Recoveries For Claimants.

A. Third-Party Releases Expand The Funds Available For Claimants.

A compensation fund achieved through non-debtor third-party funding in exchange for granting such non-debtors releases from the underlying liabilities is often claimants' best hope for meaningful recovery, particularly in mass-tort cases. In a case like BSA's, this mechanism has permitted the debtor and approximately 250 legally autonomous and distinct local councils with which it works in providing scouting programs to achieve bankruptcy's goal of fairly maximizing assets available for claimants by pooling their resources into a single fund. Third parties' contributions can be the backbone of that fund, yet would not occur if the non-debtor entities still faced the overwhelming cost of continued litigation. In exchange for the third parties' release from that burden, claimants obtain access to a more certain and vastly larger pot.

Indeed, without the greater funds third-party releases bring to the table, the compensation fund (if any) resulting from many confirmed debtor plans would simply be insufficient to provide meaningful recovery for claimants. Or, worse, without third-party releases, many plans would simply not come about in the first place. The reality in BSA's case, as the courts concluded, was that third-party contributions and resulting releases were "necessary" to the confirmed plan.

Without this necessary settlement mechanism, thousands or tens-of-thousands of claimants would again overwhelm the tort system in a costly and perhaps futile race to quickly empty the pockets of individual defendants. In the resulting uncoordinated marathons through the tort system, many defendants would face ruin; so early plaintiffs might recover, but many later plaintiffs would never see meaningful, much less timely, compensation for their injuries. With the significant resources third-party releases can marshal, a Chapter 11 plan stemming from a single proceeding provides the best path to equal treatment and fair compensation for claimants (and, in cases like BSA's, the only path).

Nor, in a mass-tort context like BSA's—amid the hundreds of independent legal entities with which it works to carry out its mission—was it practicable, for them or the court system or claimants, for every one of the hundreds of entities to seek to file its own bankruptcy petition. Separate bankruptcies would exponentially increase the cost and complexity of the resulting innumerable proceedings, and perhaps exhaust—certainly deplete—the resources of the smaller entities, without benefit to claimants. Individual bankruptcies would also present intractable complications over property of the estates, most obviously with the shared insurance under BSA's policy. In contrast, in the case filed by BSA, the BSA Councils could and did readily agree to contribute and cede their interests to a single settlement fund under a single plan in that single case in exchange for third-party releases. That in turn maximized property available for all claimants.

BSA's case illustrates this dynamic in the non-profit context. And, as *Amicus* elaborates below in Argument II, the role of the BSA local councils and others in the BSA case followed a well-worn path that should not now be disturbed.

B. Mass-Tort Claimants Have Little Alternative Outside Chapter 11 For A Timely And Equitable Recovery.

Contributing to this resort to bankruptcy in the mass-tort context—and the corresponding necessity of third-party contributions-and-releases—are the significant limits on certifying a mass-tort class action under Federal Rule of Civil Procedure 23, even where the parties have labored to achieve a global settlement. In BSA's situation, for example, it is unlikely that a class action could have been certified and enabled a global resolution.

This Court established limits on class actions in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999), and *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622 (1997). Both cases involved sprawling settlement-only classes attempting to fairly resolve crippling mass litigation stemming from exposure to asbestos.

In *Ortiz*, the Court considered a limited-fund settlement class under Rule 23(b)(1)(B), which, unlike a class under Rule 23(b)(3), provided objectors no opt-out right. While the Court declined to decide "the ultimate question whether Rule 23(b)(1)(B) may ever be used to aggregate individual tort claims," it emphasized that the Advisory Committee "did not contemplate" such use and that the Court's own early understanding had been that Rule 23's "growing edge" for "class treatment of mass tort litigation … would be

the opt-out class authorized by subdivision (b)(3), not the mandatory class." 527 U.S. at 844–45, 861–62. And reviewing the settlement class in *Ortiz*, the Court also demonstrated the difficulty of satisfying Rule 23 in particular cases, even if mandatory class treatment might be possible in other mass-tort cases. The Court noted that, among other flaws, only "the[] agreement" of the parties, not specific evidentiary findings, demonstrated that the fund was too limited to compensate all claims other than on a pro rata basis. *Id.* at 849, 853. As the Court acknowledged, however, there are "difficulties" meeting this requirement when attempting to resolve "huge numbers of actions for unliquidated damages arising from mass torts." *Id.* at 850.

And in *Amchem*, this Court underscored the difficulties in attempting to employ even *opt-out* settlement-only classes in mass tort. The Court held that such classes must comply with the entirety of Rule 23, whether or not the certifying court had deemed them "fair" under Rule 23(e)'s settlement-class-specific rubric. Rule 23(e)'s "fairness" requirement, the Court concluded, is "additional [to]," not in place of, the commands in Rule 23(a) and (b); indeed, courts must give "undiluted, even heightened, attention" to a putative settlement class's compliance with those prescriptions. 521 U.S. at 620–21.

Applying those requirements, the Court held that the *Amchem* settlement class failed Rule 23(b)(3)'s mandate that common legal or factual questions predominate over individual ones. Neither the class members' obviously "shared experience of asbestos exposure," nor "their common interest in receiving prompt and fair compensation for their claims, while

minimizing the risks and transaction costs inherent in the asbestos litigation process," satisfied this mandate. *Id.* at 622 (cleaned up). The Court identified, as "disparate questions undermining class cohesion," that class members were exposed to asbestos in different forms and ways, for different amounts of time, over different periods, suffering different injuries and presenting different medical histories bearing on causation. *Id.* at 624. Of course, such "disparate questions" are nearly inevitable in cases featuring virtually all mass torts, undermining the viability of Rule 23's solutions in that context.

Taking the BSA Councils' facts as an example, abuse survivors invariably allege injury in different degrees and caused by different individuals, in different locations and at different points across decades. After *Amchem*, alleged abuse in a scouting program, and a common need to receive fair compensation without the cost of further litigation, appear insufficient to pass muster under Rule 23, rendering certification even of a settlement-only opt-out class virtually impossible, no matter how "fair." (And an MDL similarly could not address the inevitable hold outs in the mass-tort context regardless of a deal's fairness, nor could it solve the problem of future claimants and state-court claims.) Indeed, *Amchem* itself, while hazarding that "mass tort cases arising from a common cause or disaster *may*, depending upon the circumstances, satisfy the predominance requirement," acknowledged the Advisory Committee's note that "significant" individualized questions are "likely" in that context. *Id.* at 623–25 (cleaned up; emphasis added).

In short, Rule 23 puts high hurdles in the way of resolving mass-tort claims through class litigation. This leaves defendants and tort claimants to pursue justice through the costly and slow labyrinth of uncoordinated litigation in the federal system and each State, facing the prospect of unequal outcomes as funds inevitably run dry. The substantial compensation funds and third-party releases available in a global Chapter 11 proceeding are an effective solution to equitably maximize benefits for claimants.

II. Third-Party Releases Have Long Provided A Mechanism For Claimants To Achieve Fair Compensation In Chapter 11 Cases.

For decades, in Chapter 11 cases stemming from many kinds of litigation including various types of mass tort, bankruptcy courts have employed their authority to approve third-party releases *when necessary*, so that plans can maximize the distributions to claimants and, thus, give claimants fair and maximum compensation. Over these decades, the many courts of appeals that have approved third-party releases[2] have refined their standards to ensure that courts confine their use only to appropriate cases. *See, e.g.*, *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d Cir. 2005) (requiring "truly unusual circumstances render[ing] the release terms important to success of the plan"); *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (requiring

[2] Several circuits arguably do not permit third-party releases, *see* Debtor Opp. to App. for Stay 24–29, though even one of these courts has left open the possibility of using third-party releases in mass-tort cases, *see In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009).

"unusual circumstances"). And most courts continue to recognize third-party releases as a crucial tool of modern bankruptcy. Without them, and the well-funded, comprehensive reorganization plans they enable, organizations of all sorts would be left to "litigate until they liquidate." And as they withered, claimants increasingly would be left with even less than a viable entity could have provided—much less than a viable one aided by third-party funding (and corresponding releases) could have provided.

A. Third-Party Releases In Bankruptcy Predate The Bankruptcy Code.

Although third-party releases have acquired more of a role since Congress enacted the Bankruptcy Code in 1978, they have roots reaching back before its enactment—not only through centuries of historical equity practice, as discussed elsewhere (*see* Debtor Resp. Br. 27–29), but under the Bankruptcy Code's federal predecessor. Decades before the Bankruptcy Code, this Court recognized that a bankruptcy court has the "power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction." *Continental Ill. Nat'l Bank & Trust Co. v. Chi. Rock Island & P. Ry. Co.*, 294 U.S. 648, 675 (1935); *accord Pepper v. Litton*, 308 U.S. 295, 304 (1939).

A pre-Bankruptcy Code example of a court exercising power over tort claims against non-debtor third parties is *In re Equity Funding Corporation of America*, which arose under Chapter X of the Bankruptcy Act (one of the precursors to Chapter 11), a few years before the Bankruptcy Code. *See* 396 F. Supp. 1266, 1268–69, 1274 (C.D. Cal.), *aff'd sub nom.* 519 F.2d 1274 (9th Cir. 1975). There, the Central

District of California enjoined securities and fraud claims against a debtor's subsidiaries related to alleged injuries from their investment in the debtor. In granting the injunction, the court concluded that it had jurisdiction over third-party disputes whose "resolution … is *necessary* for [the] reorganization to proceed, or if it is *impossible* to completely administer the estate of the debtor without determining that controversy." *Id.* at 1274 (emphases added). The court concluded that, without enjoining the claims against the debtor's subsidiaries, the court's "ability … to reorganize" the debtor would be "frustrate[d]" or even "impossible." *Id.*

B. Under the Bankruptcy Code, Third-Party Releases Have Been "Essential" To Plans Across Mass-Tort—And Other—Contexts, Both Before And After § 524(g)'s Enactment.

Under the Bankruptcy Code, third-party releases became critical bankruptcy tools in a variety of mass-tort contexts. This includes several cases *before* Congress in 1994 added the asbestos-specific blessing of such releases in 11 U.S.C. § 524(g), and in both asbestos and non-asbestos cases even *after* it did so. Even as they gradually clarified the boundaries of the use of non-consensual third-party releases, courts have continued to recognize and approve them when they are found to be essential and integral to, and necessary for, reorganization plans in appropriate cases. Without third-party releases as a restructuring tool, many organizations simply would fail, unable to meaningfully compensate claimants. But with them, debtors can honor bankruptcy's goal of equitably maximizing the assets available to claimants.

1. The Johns-Manville bankruptcy in the 1980s was the first to confirm a Chapter 11 plan of reorganization addressing a debtor's significant asbestos liabilities. *See Matter of Johns-Manville Corp.*, 68 B.R. 618 (Bankr. S.D.N.Y. 1986), *aff'd*, *In re Johns-Manville Corp.*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988). The cornerstone of that plan was a trust and related channeling injunction prohibiting any entity from pursuing any cause of action against Manville "or its subsidiaries or any settling insurance company, or any of their transferees, or against the Trust" except as allowed through the plan. *Id.* at 624.

Confirming the Chapter 11 plan, the bankruptcy court noted its authority to "issue injunctions when necessary to effectuate reorganizations." *Id.* at 625. And the court found the channeling injunction in the Manville plan appropriate because of, among other things, its manifest necessity. *Id.* at 626. Without it, "the intended beneficiaries of the reorganization [asbestos claimants] *will certainly suffer*" and the purpose of "preventing the inequitable, piece-meal dismemberment of the debtor's estate, *cannot be achieved*." *Id.* (emphases added).

The confirmed Chapter 11 plan in *UNR Industries, Inc.*—an asbestos bankruptcy contemporary with *Manville*—likewise included third-party releases in favor of insurers that contributed to the settlement trust, as "necessary to preserve the settlement that was approved as part of the reorganization." *UNARCO Bloomington Factory Works v. UNR Indus., Inc.*, 124 B.R. 268, 272, 278–79 (N.D. Ill. 1990).

But the cases approving third-party releases did not just involve asbestos. A prominent contemporaneous

example outside that context is *In re A.H. Robins Co.*, 88 B.R. 742, 743 (E.D. Va. 1988), *aff'd*, *Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694 (4th Cir. 1989). A.H. Robins filed for bankruptcy in 1985 in the wake of thousands of personal-injury claims related to the Dalkon Shield contraceptive device. An "important aspect" of the confirmed plan "was the protection against further liability of not only [the debtor], but also nondebtor parties," including "corporate officers, directors, attorneys, and claimants' health care providers." S.E. GIBSON, CASE STUDIES OF MASS TORT LIMITED FUND CLASS ACTION SETTLEMENTS & BANKRUPTCY REORGANIZATIONS 203 (2000). Affirming the confirmation order, the Fourth Circuit held it "essential to the reorganization" that plaintiffs "either resort to the source of funds provided for them in the Plan … or not be permitted to interfere with the reorganization" through further lawsuits. *Menard*, 880 F.2d at 702. The "settlement/injunction arrangement was *essential … to a workable reorganization*," and plaintiffs "could *have … their claims fully satisfied* by staying within the settlement," so the injunction "falls within the bankruptcy court's equitable powers." *Id.* at 701–02(cleaned up; emphasis added); *see also In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (similar).

2. In 1994, Congress enacted § 524(g) of the Bankruptcy Code, which expressly authorizes third-party releases in asbestos bankruptcies. *See* Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111(a), 108 Stat. 4113 (adding 11 U.S.C. § 524(g)); S.L. Esserman & D.J. Parsons, *The Case for Broad Access to 11 U.S.C. § 524(g) in Light of the Third*

Circuit's Ongoing Business Requirement Dicta in Combustion Engineering, 62 N.Y.U. ANN. SURV. AM. L. 187, 190 (2006) (stating that § 524(g) was enacted "to authorize the techniques pioneered in the [*Manville*] case"). Congress included a Rule of Construction ensuring this addition would not be the basis for a negative inference: The Rule clarified that nothing in § 524(g) "shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Pub. L. No. 103-394, § 111(b) (1994). Congress thereby implicitly recognized the prevalence of third-party releases and that they were not unique to asbestos bankruptcies.[3]

3. Since the enactment of § 524(g) of the Bankruptcy Code nearly thirty years ago, bankruptcy courts have continued to confirm Chapter 11 plans containing releases for third parties when they found them to be essential to the reorganization. These include asbestos bankruptcies, in which courts have concluded that, by marshaling greater assets for the compensation fund, the releases "confer[red] material

[3] The legislative history leading up to § 524(g) reinforces that Congress recognized the importance of this restructuring tool (and had no interest in disturbing it). Most notably, in unanimously approving one of § 524(g)'s forerunners, the Senate specified that the bill left intact "the court's existing authority to issue an injunction pursuant to an order approving a plan of reorganization." S. 1985, 102 Cong., § 206 (1991). This addition came after one Senator emphasized bankruptcy courts' "latitude in crafting responsible reorganizations that fit the specific needs of each case" and endorsed their issuing of "supplemental permanent injunctive relief," with another Senator adding that the bill was "not an exclusive remedy" for "mass tort claim litigation." 138 Cong. Rec. 15063–64 (1992). Similar statements explicated subsequent bills. *See* 140 Cong. Rec. 8021, 28358 (1994).

benefits on … creditors" and were "*essential* to the formulation and implementation of the Plan," *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 156, 170 (D. Del. 2006) (emphasis added), as well as "fair and equitable" for claimants, *In re J.T. Thorpe Co.*, 308 B.R. 782, 790 (Bankr. S.D. Tex. 2003); *see also, e.g.*, *In re Paddock Enters., LLC*, 2022 WL 1746652, at *25, *28 (Bankr. D. Del. May 31, 2022) (third-party releases "essential to the Plan and the Debtor's reorganization efforts"); *In re Garlock Sealing Techs., LLC*, 2017 WL 2539412, at *21 (W.D.N.C. June 12, 2017) (third-party releases "essential to the Debtors' reorganization efforts and feasibility of the Plan"); *In re Flintkote Co.*, 2015 WL 4762580, at *23–24 (Bankr. D. Del. Aug. 12, 2015) (third-party release "essential to the Plan and [the] reorganization").

As before the enactment of § 524(g), however, courts have also continued to authorize third-party releases in non-asbestos mass-tort cases when such approval was found to be necessary for the reorganization. For example, in the prominent *In re Dow Corning* case, the courts approved third-party releases in favor of the debtor's shareholders and insurers for claims related to the debtor's manufacture of silicone implants. *See* 280 F.3d at 655. In confirming Dow Corning's Chapter 11 plan, the district court found that the releases were "essential" to the plan's confirmation "and to … creditors," saying that, without settling with the released parties, "the Debtor would not have had sufficient funds to finance the Joint Plan." *See In re Dow Corning Corp.*, 287 B.R. 396, 402–13, 416 (E.D. Mich. 2002).

Third-party releases, when found to be necessary, have figured in other Chapter 11 plans resolving a

variety of products-liability cases, running the gamut from opioids (as here); to air bags, *see In re TK Holdings, Inc.*, 2018 WL 1306271, at *15–16 (Bankr. D. Del. Mar. 13, 2018); to fuel containers, *see In re Blitz U.S.A. Inc.*, 2014 WL 2582976, at *4–6 (Bankr. D. Del. Jan. 30, 2014). Here too, courts have recognized third-party releases as "*critical* to the success of the Plan" in some cases, as they unlock key contributions for the benefit of creditors. *In re Blitz U.S.A.*, 2014 WL 2582976, at *6 (emphasis added); *see In re TK Holdings*, 2018 WL 1306271, at *16 ("The failure to implement the injunctions, releases, and exculpation would seriously impair the Debtors' ability to confirm and consummate the Plan.").

Third-party releases have likewise been necessary in limited and unique circumstances to fairly maximize estate resources for creditors in bankruptcies stemming from litigation over construction defects, *see, e.g.*, *In re Magnum Constr. Mgmt., LLC*, No. 19-12821-AJC, Doc 707, at 23 (Bankr. S.D. Fla. Dec. 13, 2019) (bridge collapse); partnership obligations, *see, e.g.*, *In re Gaston & Snow*, 1996 WL 694421, at *5–6 (S.D.N.Y. Dec. 4, 1996); *In re Heron Burchette, Ruckert & Rothwell*, 148 B.R. 660, 667, 686 (Bankr. D.D.C. 1992); governmental obligations, *see In re City of Detroit*, 524 B.R. 147, 172–76 (Bankr. E.D. Mich. 2014); as well as other instances of sex abuse, *see, e.g.*, *In re Roman Cath. Diocese of Harrisburg*, No. 20-bk-00599, Doc. 1530, at 16–17 (Bankr. M.D. Pa. Feb. 17, 2023); *In re Diocese of Duluth*, No. 15-50792, Doc. 420, ¶ 3 (Bankr. D. Minn. Oct. 21, 2019); *In re Archdiocese of Milwaukee*, No. 11-20059-svk, Doc. 3322, at 19 ¶ 39 (Bankr. E.D. Wis. Nov. 13, 2015); *In re Christian Bros.*

Inst., No. 11-22820, Doc. 652, at 18 (Bankr. S.D.N.Y. Jan. 13, 2014); *In re Cath. Diocese of Wilmington, Inc.*, No. 09-13560, Doc. 1471, at 31–32 (Bankr. D. Del. July 28, 2011); *In re Diocese of Davenport*, No. 06-02229-lmj11, Doc. 295, at 9–11 (Bankr. S.D. Iowa May 1, 2008).

CONCLUSION

In appropriate cases that satisfy the strict standards for granting third-party releases as necessary to an effective reorganization, courts have approved them. When permitted, third-party releases equitably and ratably provide fair compensation for creditors while successfully reorganizing a faltering organization. In the case of the BSA Councils, third-party releases have been crucial to fair and maximum compensation to claimants and to ensuring a future for scouting programs for American young people, which would be in danger of ceasing without such releases. This Court should not disturb the decades of settled practice that, as in BSA's case, have benefited creditors and debtors alike, including tort claimants of all sorts. This Court should affirm the decision of the Second Circuit.

Respectfully submitted,

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