No. 23A741

In the Supreme Court of the United States

LUJAN CLAIMANTS *et al.*,

Applicants,

v.

BOY SCOUTS OF AMERICA *et al.*,

Respondents.

On the Application for a Stay of the Bankruptcy Plan Presently Being Implemented in the United States Bankruptcy Court for the District of Delaware (No. 22-1237)

BRIEF OF THE BSA SETTLEMENT TRUST AND TRUSTEE AS *AMICI CURIAE* IN OPPOSITION TO APPLICATION FOR STAY

Kami E. Quinn
Emily P. Grim
GILBERT LLP
700 Pennsylvania Avenue, S.E.
Suite 400
Washington, D.C. 20003

David J. Molton
Counsel of Record
Michael Winograd
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
(212) 209-4800
dmolton@brownrudnick.com

Counsel for Amici Curiae the BSA Settlement Trust and Trustee

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Other Authorities

STATEMENT OF INTEREST

The Honorable Barbara J. Houser (Ret.) (the "Trustee") is the Trustee of the BSA Settlement Trust (the "Settlement Trust"), created by the BSA Settlement Trust Agreement dated and effective as of April 19, 2023 (the "Settlement Trust Agreement"), pursuant to the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC (the "Plan"). The Plan also went effective on April 19, 2023. This brief is respectfully filed by the Trustee and Settlement Trust, as *amici curiae*.[1]

Applicants aver that the Trustee is a "part[y]" to the proceedings below. That is inaccurate. Neither the Trustee nor the Settlement Trust were parties to the Plan confirmation proceedings below in the United States Bankruptcy Court for the District of Delaware, and neither is a party to the appeals at issue (the "Confirmation Appeals") currently pending before the United States Court of Appeals for the Third Circuit (the "Third Circuit"). Nevertheless, despite that the Plan was confirmed in September 2022 and became effective nearly ten months ago in April 2023, the Application in essence requests that this Court affirmatively enjoin the Trustee and Settlement Trust from now continuing to perform their

[1] Pursuant to S. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part and no person or entity other than *amici*, their members, or counsel made a monetary contribution to its preparation or submission.

obligations for the benefit of more than 82,000 aging (and, in many cases, dying) survivors of Boy Scouts childhood sexual abuse who are seeking at least some measure of closure and justice.

SUMMARY OF ARGUMENT

In the proceedings below, on October 3, 2023 and November 2, 2023, respectively, the United States District Court for the District of Delaware and the Third Circuit denied "renewed" motions to stay pending appeal that were filed by the same Applicants here, based on substantively similar arguments as the Application here. Both courts also denied earlier motions to stay pending appeal (on April 11, 2023 and April 19, 2023, respectively) filed by the Applicants that were based in part on different grounds. This Court likewise should deny Applicants' request for at least three independent reasons.

First, having waited more than three months since the Third Circuit's latest stay denial (on November 2, 2023), Applicants — 144 out of more than 82,000 survivors — argue that, absent a stay, they will suffer irreparable harm. They will not, and their delay in filing this Application undercuts any arguments to the contrary. On the other hand, imposing a stay would force the more than 82,000 aging survivors of childhood sexual abuse who do not join Applicants here to endure further delay to the receipt of compensation and obtainment of some measure of closure and justice. Dozens of those claimants have submitted

declarations of exigent health circumstances signed by health professionals indicating they have less than six months to live. A delay would also wreak untold havoc on a substantial and complex settlement trust claims administration process that was built from scratch and has been functioning for nearly ten months, with large day-to-day operations across numerous personnel and retained professionals in full swing and millions of dollars already having been distributed to claimants who have released their claims in exchange.

Second, Applicants also fail to show, as they must, a reasonable probability that this Court would grant *certiorari* to hear, and then reverse, the appellate decision at issue. Notably, there currently is no appellate decision to consider. The Third Circuit has not yet even heard argument on the Confirmation Appeals. Both because the appeal at issue here remains pending before the Third Circuit (oral argument has been scheduled tentatively for April 9, 2024) and because the Third Circuit has twice denied Applicants' motion to stay pending that appeal, Applicants here have "an especially heavy burden" subject to "only . . . the weightiest considerations.'" *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (citations omitted). Moreover, Applicants' reliance on the pending appeal in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44 (2023) ("*Purdue*") is misguided. That appeal involves different issues than those

presented in the Confirmation Appeals, including, notably, that the Plan in *Purdue* never went effective and was never implemented.

Third, the Application also should be denied for another independent reason. Despite that the Application is styled as a request for a "stay," it is not actually that. Instead, it is in fact a request affirmatively to enjoin the Trustee and Settlement Trust from continuing to perform their obligations under the Settlement Trust Agreement. The Plan was confirmed in September 2022 and became effective on April 19, 2023. The Bankruptcy Court's order confirming the Plan ("Confirmation Order") at issue in the Confirmation Appeals has already been enforced and the authorization it provided to implement the Plan has already been exercised. As a result, the Trustee was engaged and commenced her duties, the Settlement Trust Agreement took effect and became binding and enforceable, and the Settlement Trust was formed. The Trustee and Settlement Trust have been performing pursuant to the Settlement Trust Agreement for nearly ten months now. Indeed, more than 82,000 childhood sexual abuse claims, evidenced by proofs of claim, have been channeled to the Settlement Trust and the Settlement Trust alone is charged with the resolution of these claims. In addition, Settlement Trust assets are being managed, inbound funds are being tracked and collected on a monthly basis, thousands of claimants have completed a detailed Claims Questionnaire prepared by the Trustee, and millions of dollars have been distributed by the

Settlement Trust to claimants who have released their claims in exchange. Distributions remain ongoing, including upcoming advance distributions to those demonstrating exigent health circumstances and other eligible claimants. Decl. of Hon. Barbara J. Houser (Ret.) ("Houser Decl.") ¶ 43. All of these and others are functions solely of the Settlement Trust acting through its Trustee and are required and governed by the Settlement Trust documents.

Moreover, the requested injunctive relief is all the more inappropriate given that neither the Settlement Trust nor Trustee are parties to the Confirmation Appeals (and neither was party to the confirmation proceedings).[2] Applicants could have initiated an adversary proceeding in the Bankruptcy Court against the Trustee and Settlement Trust seeking injunctive relief and then moved for preliminary injunctive relief within that proceeding. Due process would have been afforded and an evidentiary hearing would have been held in which the Settlement Trust and the Trustee would have appeared. But Applicants did none of that. They may not now circumvent that process by disguising their Application before this Court as a motion to stay.

[2] This brief is filed to avoid any contention that the Settlement Trust or Trustee has waived this jurisdictional objection by failing to respond. The Settlement Trust and Trustee do not intend to become parties to the underlying appeals by filing this brief, or otherwise. They are not consenting to this Court's jurisdiction to grant any relief against them by filing this brief.

Finally, if a stay were to be granted, it should be conditioned on Applicants posting a bond to protect the Settlement Trust against what is readily calculable economic harm that the delay would cause the Settlement Trust to suffer. As described below, the Trustee has estimated such additional economic burden to be at least several tens of millions of dollars, and a bond from Applicants should be no less than such amount. Of note, this amount would cover only potential costs to the Settlement Trust itself and would not address the significant economic and emotional harms that a stay may inflict on others, including the more than 82,000 survivors of childhood sexual abuse, many now elderly, who await their distributions and seek some measure of closure and justice.

ARGUMENT

I. THE APPLICATION AMOUNTS TO A REQUEST FOR AN INJUNCTION AGAINST THE NON-PARTY TRUSTEE AND SETTLEMENT TRUST

The Application before this Court is styled as a request to "stay" implementation of the Plan pending resolution of the Confirmation Appeals. But the Confirmation Order at issue in those appeals has already been enforced and the Plan at issue in those appeals has already been implemented. What Applicants in fact seek is an order from this Court enjoining the Trustee and Settlement Trust — who are not parties to the Confirmation Appeals — from continuing to operate in accordance with the terms of the Settlement Trust Agreement. Those duties have

now been performed for nearly ten months. Indeed, more than 82,000 childhood sexual abuse claims, evidenced by proofs of claim, have been channeled to the Settlement Trust and the Settlement Trust alone is charged with the resolution of these claims. In addition, Settlement Trust assets are being managed, inbound funds are being tracked and collected on a monthly basis, thousands of claimants have completed a detailed Claims Questionnaire prepared by the Trustee, and millions of dollars have been distributed by the Settlement Trust to claimants, who have released their claims in exchange. The Application should be denied on these grounds alone.

A. The Trustee and Settlement Trust Are Not Parties to the Confirmation Appeals

Issuing an injunction against non-parties the Trustee and Settlement Trust would be a deprivation of their due process rights. *See Carpenters 46 N. California Cntys. Joint Apprenticeship & Training Comm. & Training Bd. v. Eldredge*, 459 U.S. 917, 922 (1982) ("[C]ourts will not, I am confident, begin issuing injunctions against non-parties."); *U.S. v. Robinson*, 83 F.4th 868, 879 (11th Cir. 2023) ("As a general matter, a court may not enjoin a non-party that has not appeared before it to have its rights legally adjudicated.") (citing *Chase Nat'l Bank v. City of Norwalk*, 291 U.S. 431, 436–37 (1934)).

Here, neither the Trustee nor the Settlement Trust is a party to the Confirmation Appeals. Houser Decl. ¶ 6. Indeed, the Confirmation Appeals were

filed before the Settlement Trust was established or the Trustee was authorized to commence administration of the Settlement Trust. Houser Decl. ¶ 6. Nor was either a party to the confirmation proceedings in the Bankruptcy Court. Houser Decl. ¶ 9. Again, those proceedings predated the establishment of the Settlement Trust and the appointment of the Trustee. Houser Decl. ¶ 9. Yet the Application seeks to enjoin them from performing the duties they are obligated to perform (and have been performing for nearly ten months) under the Plan and Settlement Trust Agreement. As noted above, the correct procedure would have been for Applicants to have initiated an adversary proceeding in the Bankruptcy Court against the Trustee and Settlement Trust to seek injunctive relief against them. That would have provided an evidentiary proceeding and afforded the Trustee and Settlement Trust due process. Applicants chose not to do so. On this basis alone, the Application should be denied.

B. A Stay of the "Implementation" of the Plan Cannot Suspend the Operation of the Settlement Trust or the Trustee's Performance of Her Duties Under the Settlement Trust Agreement

In denying Applicants' "renewed" stay motion four months ago, the District Court recognized that the relief requested could not preserve the *status quo* or restore the state of affairs as they previously existed when the District Court's order affirming the Confirmation Order (the "Affirmation Order") was entered on March 27, 2023. That is because the subsequent authorized actions that resulted in

the effectiveness of the Settlement Trust Agreement, the creation of the Settlement Trust, and the appointment of the Trustee to administer the Settlement Trust in accordance with the duties set forth in the Settlement Trust Agreement, cannot be undone by a stay of an order that has already been effectuated with respect to those matters. *See Nat'l Union Fire Ins. v. BSA* (*In re BSA*), 2023 U.S. Dist. LEXIS 178016, *17-*23 (D. Del. Oct. 3, 2023).

This point is best understood by considering the fundamental nature of a stay pending appeal. A stay pending appeal operates on an *order* or *judgment*, by "temporarily divesting an order of enforceability" or "temporarily suspending the source of authority to act — the order or judgment in question — *not by directing an actor's conduct*." *Nken v. Holder*, 556 U.S. 418, 428–29 (2009) (emphasis added). In contrast, "an injunction is a judicial process or mandate operating *in personam*" that "tells someone what to do or not to do." *Id.* at 428. Put another way, "[a] stay simply suspend[s] judicial alteration of the status quo, while injunctive relief grants judicial intervention that has been withheld by lower courts." *Id.* at 429 (internal quotations omitted).

Importantly, a stay cannot "divest an order of enforceability" *after* it has been enforced or suspend the order as a "source of authorization to act" *after* the authorized act has taken place. Yet that is what Applicants are asking this Court to do. Here, the Confirmation Order and Affirmation Order were enforced as to the

creation of the Settlement Trust and effectiveness of the Settlement Trust Agreement nearly ten months ago, at a time when the authorization to do so provided by those orders was in place and unstayed. Applicants are not seeking to "temporarily suspend" the Confirmation Order or Affirmation Order insofar as those orders served as the "source of authority" to create the Settlement Trust and effectuate the Settlement Trust Agreement — it is simply too late for that. Rather, Applicants seek injunctive relief against the Settlement Trust and Trustee that would tell the Settlement Trust and Trustee "what not to do," *i.e*., an order of this Court enjoining the Settlement Trust and Trustee from processing the abuse claims and paying them from the Settlement Trust assets in accordance with the Settlement Trust Agreement. Such relief is unavailable in the guise of a "stay."

The holding in *In re Player Wire Wheels, Ltd.* is instructive:

> Liquidation of Debtor's assets was the primary objective of the Plan and has been accomplished. Despite attempting to disguise her request as a stay of "confirmation" of the Plan, Mrs. Starr apparently seeks reversal of the sale to Buyer and return to the state of affairs prior to the Confirmation Hearing. The Court, however, cannot "undo" Debtor's sale of its business to Buyer, which occurred properly and in accordance with the confirmed Plan.

428 B.R. 767, 775 (Bankr. N.D. Ohio 2010).

Similarly here, the Court cannot, in the guise of a "stay pending appeal," "undo" the Settlement Trust Agreement — even temporarily. The Settlement Trust Agreement took effect and became binding in the absence of a stay when the

Plan became effective, and now governs the administration of the Settlement Trust and its assets, including the processing of the Boy Scouts childhood sexual abuse claims and the payment on such claims from Settlement Trust assets. Houser Decl. ¶¶ 14, 30.

A stay of the Confirmation Order that enjoins the Trustee from carrying out her duties and exercising her powers under the Settlement Trust Agreement would operate in an improperly retroactive manner that purports to nullify the binding and enforceable nature of an operative document — the Settlement Trust Agreement — that had already taken effect and become binding when the Plan became effective. A stay pending appeal is prospective, not retroactive, and does not invalidate or "undo" what was lawfully done before the stay went into effect. *See In re Verges*, 1992 U.S. Dist. LEXIS 5058, *19–*20 (E.D. La. Apr. 9, 1992); *Nicholson v. Nagel* (*In re Nagel*), 245 B.R. 657, 662 (D. Ariz. 1999) ("By 'undoing' the return to the *status quo ante* through the retroactive application of the stay, the bankruptcy court engaged in a kind of judicial time travel that cannot be reconciled with the law."); *see also Lashley v. First Nat'l Bank of Live Oak (In re Lashley)*, 825 F.2d 362, 364 (11th Cir. 1987) ("While the Bankruptcy Code grants the bankruptcy court the power to retroactively grant relief from a stay, . . . this court is unaware of any authority that grants the bankruptcy court power to retroactively *impose* a stay.") (emphasis in original and internal cites omitted).

In sum, no cited authority supports a "stay" that would operate retroactively to "undo" the binding and enforceable nature of the Settlement Trust Agreement, which took effect when the Confirmation Order was enforceable, and the authorization it provided was in effect. As in the courts below, Applicants have "cited no precedent for the extraordinary relief of staying 'further implementation' of a plan that has become effective, for an undetermined length of time, pending appeal." *In re BSA*, 2023 U.S. Dist. LEXIS 178016 at *22. Accordingly, the Application should be denied.

II. APPLICANTS FAIL TO MEET THE STANDARD FOR OBTAINING A STAY

Even if the relief sought by the Application were actually available, the Application still should be denied because Applicants have failed to satisfy the standard for such extraordinary relief.

A. The Application Fails to Meet an Already High Standard That Is Further Heightened Under the Circumstances Here

"The criteria for deciding whether to grant a stay are well established." *Packwood*, 510 U.S. at 1320. To obtain a stay, "[a]n applicant must demonstrate: (1) a reasonable probability that four Justices would vote to grant certiorari; (2) a significant possibility that the Court would reverse the judgment below; and (3) a likelihood of irreparable harm, assuming the correctness of the applicant's position, if the judgment is not stayed." *Id*. (citation omitted). "In addition, 'in a

close case it may be appropriate to 'balance the equities' — to explore the relative harms to applicant and respondent, as well as the interests of the public at large.'" *Conkright v. Frommert,* 556 U.S. 1401, 1402 (2009) (quoting *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980)). This is a high standard given that "[a] Justice of this Court will grant a stay pending appeal only under extraordinary circumstances." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983).

That standard is even further heightened here. Where, as here, an applicant seeks a stay in a "matter [ ] pending before the Court of Appeals . . . and . . . the Court of Appeals denied his motion for a stay, [that] applicant has an especially heavy burden." *Packwood*, 510 U.S. at 1320. Indeed, "[w]hen a matter is pending before a court of appeals, it long has been the practice of Members of this Court to grant stay applications only 'upon the weightiest considerations.'" *Id*. (citation omitted).

As Applicants acknowledge, the Third Circuit has not ruled on the merits of their appeal of the District Court's Affirmation Order and, as of the filing of the Application, sought to schedule oral argument on that appeal during the week of April 8, 2024. App. at 14. It has now tentatively set oral argument for April 9, 2024. Moreover, more than three months ago, the Third Circuit denied Applicants' substantively similar motion to stay pending appeal (and an earlier motion to stay on different grounds).

Applicants have come nowhere close to meeting any of the requirements to obtain a stay, much less all of them, and much less under the further heightened standard applicable here.

B. Applicants Have Not Shown a Reasonable Probability That This Court Will Grant Certiorari and Reverse a Decision the Third Circuit Has Not Yet Made

Applicants have not met their burden of demonstrating a reasonable probability that this Court will grant certiorari and reverse a hypothetical decision that the Third Circuit has not yet made. Applicants' arguments are speculative at this point. *See Packwood*, 510 U.S. at 1320.

Moreover, the premise of Applicants' argument — that a grant of certiorari and reversal are reasonably probable because "[t]his case presents the exact same issue as *Purdue Pharma*" (App. at 15) — is false. For example, here, the Plan has been effective and the Settlement Trust has been operating for nearly ten months. In *Purdue*, the plan has yet to be implemented at all.

C. Applicants Face No Risk of Irreparable Harm — but Such Harm Would Befall the Trustee and Survivors of Sexual Abuse if a Stay Were Granted

A stay pending certiorari requires a showing "that *the applicant* would likely suffer irreparable harm absent the stay." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays) (emphasis added). Moreover, as noted above, Applicants face an even heavier burden here

given that the Third Circuit has already twice rejected Applicants' stay motion and related claims of purported harm absent a stay. *See Packwood*, 510 U.S. at 1320. Under any standard, however, Applicants fail to establish that they would suffer such harm.

First, any argument that the Applicants are facing irreparable harm is undermined by the fact that they waited more than *three months* to seek relief from this Court following the Third Circuit's latest, November 2, 2023, denial of their request for a stay. That delay alone is grounds to deny the Application. *See,*, *e.g.*, *Ruckelshaus*, 463 U.S. at 1317–18 (denying application for stay pending appeal filed "more than seven weeks after the District Court issued its amended judgment" in part because "the Administrator's failure to act with greater dispatch tends to blunt his claim of urgency and counsels against a grant of stay."); *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) ("The applicants' delay in filing their petition and seeking a stay vitiates much of the force of their allegations of irreparable harm.").[3]

[3] Once Applicants finally filed their initial Application in this Court (on February 5, 2024), they promptly withdrew that application to file a new one an additional two days later (on February 7, 2024), which was then docketed two days later on February 9, 2024. Moreover, Applicants have known about the potential impact of *Purdue* for years. Indeed, the *Purdue* plan was vacated by the District Court in that case during the confirmation hearings for the Plan in this case. *In re Purdue Pharma, L.P.*, 635 B.R. 26, 118 (S.D.N.Y. 2021), *rev'd and remanded sub nom. In Re Purdue Pharma L.P.*, 69 F.4th 45 (2d Cir. 2023).

Second, Applicants contend that they "will suffer irreparable harm from being unable to pursue their claims outside of bankruptcy regardless of whether they will, in fact, be fully compensated under the bankruptcy plan." App. at 19. But it is a common feature of Chapter 11 proceedings that claims relating to a debtor's estate — such as the Boy Scouts childhood sexual abuse claims at issue here — are resolved as part of the bankruptcy process.

Third, the "relative harms" to the Trustee and the more than 82,000 claimants she represents who have not joined with Applicants vastly outweigh any purported harms facing the 144 Applicants. *Rostker*, 448 U.S. at 1306, 1308; *see also Ruckelshaus*, 463 U.S. at 1317 (denying application for stay pending appeal in part because "the granting of a stay might well cause irreparable harm to [Respondent] Monsanto."). Those tens of thousands of survivors of childhood sexual abuse would see their distributions and ability to achieve some measure of closure and justice delayed. Approximately half of the claimants are over sixty years old. Houser Decl. ¶ 14. They have waited long enough. Moreover, dozens of claimants have submitted declarations of "exigent health circumstances" signed by healthcare professionals confirming that the claimants have less than six months to live. Houser Decl. ¶ 43. The devastating impact of denying victims distributions or some measure of closure to their suffering while still alive is incalculable.

In addition, the sheer disruption and irreparable harm to the daily administration of the Settlement Trust would be significant. The Settlement Trust is an operating entity with diverse and valuable assets including cash, notes receivable, escrow funds receivables, the right to millions of dollars of anticipated proceeds from the sale of real properties, oil and gas mineral interests and associated production revenues, a significant art collection, and contingent and unliquidated insurance receivables. Houser Decl. ¶ 21. Those assets are now, and must continue to be, actively managed by the Trustee, with input and advice from numerous advisors and other professionals engaged by the Settlement Trust, to preserve and maximize their value for the Settlement Trust's beneficiaries. Houser Decl. ¶¶ 21–25. Separately, to the extent that any of the multitude of current personnel and firms engaged by the Settlement Trust are required to pause their services as a result of a stay, they may not be available to resume their current roles with the Settlement Trust upon the termination of the stay. Immeasurable institutional knowledge would be lost and there also would be significant duplication of prior learning curves and both delay and disruption as a result. Houser Decl. ¶¶ 26, 27.

III. WERE A STAY GRANTED, IT SHOULD BE CONDITIONED ON THE POSTING OF A BOND

The Court may condition a stay pending appeal upon the posting of an appropriate bond. *See* S. Ct. R. 23(4); *see also* Fed. R. App. Proc. 8(a)(2)(E). The

purpose of an appeal bond "is to protect the adverse party from potential losses resulting from the stay." *In re United Merchs. & Mfrs., Inc.*, 138 B.R. 426, 430 (D. Del. 1992). Applicants have the burden of showing, with clear evidence, that a bond in the full amount of the potential harm is not required here. *See*, *e.g.*, *In re W.R. Grace & Co.*, 475 B.R. 34, 205–09 (D. Del. 2012). Yet even the readily calculable costs that would result from a stay here are numerous.

For example, a stay would prolong the Settlement Trust's duration and materially impair the substantial investment that the Settlement Trust has made through its engagement of the Claims Administrators, the General Counsel, the Claims Processor, the Trustee, and certain other professionals, consultants and advisors. Houser Decl. ¶ 20. To date, the Settlement Trust has disbursed more than $36,000,000 in operational costs, predominantly focused on building the claims intake, evaluation and approval infrastructure. Houser Decl. ¶ 20. A stay, and the resultant freeze in the Settlement Trust's operations, at this time would put at risk a material portion of the investment the Settlement Trust has made in the infrastructure to compensate tens of thousands of deserving survivors.

There also would be costs (in addition to immeasurable harm from delays and complications, as discussed above) associated with halting the significant Settlement Trust operation and then rebuilding, rehiring, and retraining as necessary any parts of the Settlement Trust infrastructure that are lost as a result of

the delay. The Trustee estimates that the potential magnitude of the Settlement Trust's "re-start" costs alone would be approximately $24 million. Houser Decl. ¶ 27.

The Trustee also has authorized the sale of real properties for approximately $13,524,000 for the benefit of the Settlement Trust. Houser Decl. ¶ 25. A delay would put those sales in jeopardy. It too would jeopardize the sale of other real estate properties valued at more than $53,632,921, as well as other assets (artwork and oil and gas interests) worth more than another $65 million. Houser Decl. ¶¶ 11, 25.

Taken together, a delay threatens tens of millions of dollars of costs to the Settlement Trust in readily calculable loss alone. A bond of no less than several tens of millions of dollars should be required as a condition to any stay that would suspend the administration of the Settlement Trust, the protection and monetization of Settlement Trust assets, and the processing and payment of victim claims arising from childhood abuse. *See*, *e.g.*, *ACC Bondholder Grp. v. Adelphia Commc'ns Corp.* (*In re Adelphia Commc'ns Corp.*), 361 B.R. 337, 350, 368 & n. 166 (S.D.N.Y. 2007) (requiring $1.3 billion bond as condition to stay pending appeal of confirmation order based on financial risks involved); *In re Chemtura Corp.*, 2010 Bankr. LEXIS 3988, at *2 & n.4 (Bankr. S.D.N.Y. Nov. 8, 2010) (stay of

confirmation order would require bond of hundreds of millions of dollars given potentially enormous harm to parties).

IV. APPLICANTS' REQUEST FOR AN ADMINISTRATIVE STAY PENDING RESOLUTION OF THE APPLICATION SHOULD BE DENIED

Applicants' further request for a temporary administrative stay pending resolution of the Application should also be denied. Applicants' contention that such a stay is warranted because of the approaching February 16, 2024 deadline to elect an Independent Review Option ("IRO") for abuse claims (and associated filing fees) is a situation of Applicants' own making. Applicants have known about that IRO deadline since at least October 16, 2023 and have taken no steps since then to seek an extension of that deadline. Houser Decl. ¶ 42. Moreover, with full knowledge of that deadline, they waited more than three months to file this Application after the Third Circuit's latest denial of their request for a stay. The request for interim relief should be denied on this basis alone.

In addition, this request amounts to one for a temporary restraining order pending resolution of the preliminary injunction Applicants request, as discussed above. Yet Applicants have made no effort to argue that they meet any standard that governs requests for such extraordinary relief. They do not meet any such standard.

CONCLUSION

For the reasons set forth herein, the Trustee and Settlement Trust respectfully request that the Court deny the Application and, in the alternative, if the Application is granted, require the posting of an appropriate bond.

February 15, 2024

Respectfully submitted,

David J. Molton
Counsel of Record
Michael Winograd
BROWN RUDNICK LLP
Seven Times Square
New York, NY 10036
(212) 209-4800
dmolton@brownrudnick.com

Kami E. Quinn
Emily P. Grim
GILBERT LLP
700 Pennsylvania Avenue, S.E.
Washington, DC 20003

Counsel for Amici Curiae the BSA Settlement Trust and Trustee

APPENDIX

TABLE OF CONTENTS

Page

DECLARATION OF THE HON. BARBARA J. HOUSER (RET.) IN SUPPORT OF THE BRIEF OF THE BSA SETTLEMENT TRUST AND TRUSTEE AS *AMICI CURIAE* IN OPPOSITION TO APPLICATION FOR STAY

I, Barbara J. Houser, declare as follows:

1. I am the trustee (the "***Trustee***") of the *BSA Settlement Trust* (the "***Settlement Trust***").

2. I am over the age of eighteen years. This declaration (the "***Declaration***") is based on my personal knowledge and experience, my review of relevant documents, and my supervision of various people who report to me as Trustee of the Settlement Trust. As Trustee of the Settlement Trust, I am duly authorized to make this Declaration.

3. The Settlement Trust was created by the BSA Settlement Trust Agreement, dated as of April 19, 2023 (the "***Settlement Trust Agreement***"), and pursuant to the *Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC* [Bankr. Docket No. 10296] (the "***Plan***").

4. The Plan was confirmed by the U.S. Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") pursuant to the *Supplemental Findings of Fact and Conclusions of Law and Order Confirming the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (with Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC* [Bankr. Docket No. 10316] (the

"***Confirmation Order***") and was affirmed by the United States District Court for the District of Delaware (the "***District Court***") pursuant to Order dated March 27, 2023 [Dist. Docket No. 151] (the "***Affirmation Order***"). After the District Court denied the prior requests for a stay of the Affirmation Order and Confirmation Order, *see* [Dist. Docket No. 193], and the United States Court of Appeals for the Third Circuit (the "***Third Circuit***") similarly denied a subsequent request for a stay of the Affirmation Order and Confirmation Order [App. Docket No. 27], the Plan became effective on April 19, 2023 [Bankr. Docket No. 11119] (the "***Effective Date***").

5. The Settlement Trust was formed on April 19, 2023 when the Plan became effective. The Boy Scouts of America ("***BSA***") as the "settlor" did not retain any ownership or residual interest whatsoever with respect to any assets of the Settlement Trust and does not have any rights or role with respect to my management, operation, or administration of the Settlement Trust. Settlement Trust Agreement § 8.1.[1]

6. Neither the Settlement Trust nor I (in my capacity as Trustee or otherwise) was a party to the appeals of the Confirmation Order to the District Court or the appeals of the Affirmation Order and Confirmation Order to the Third Circuit (that are currently pending before the Third Circuit). As described in Paragraph 9,

[1] The BSA Settlement Trust Agreement, dated April 19, 2023 is available at https://scoutingsettlementtrust.my.salesforce.com/sfc/p/#Dp0000016pkB/a/Dp000000sbbl/apL4B5F0g29_sDJkmkrlldh7KaNjy7cSRZobA5eal8k.

the Settlement Trust did not exist, nor was I authorized to commence administration of the Settlement Trust, at the time these appeals were filed with the Third Circuit on April 10, 2023.

7. I am not (in my capacity as Trustee or otherwise), and the Settlement Trust is not, seeking to appear or intervene in the appeals of the Affirmation Order or Confirmation Order by filing this Declaration, which is wholly factual. I am filing this Declaration in support of the Brief of the BSA Settlement Trust and Trustee as *Amici Curiae* in Opposition to Application for Stay.

8. I am an attorney licensed to practice law in the state of Texas. I was an insolvency lawyer for 22 years prior to my appointment as a United States Bankruptcy Judge in the Northern District of Texas in 2000. I served as a United States bankruptcy judge for 22 years and as Chief Bankruptcy Judge in my district for over a decade. As a bankruptcy judge, I handled tens of thousands of bankruptcy cases, including presiding over the allowance and disallowance of claims in each of those cases. I concluded my judicial career in January 2022 and began taking on fiduciary roles in bankruptcy cases such as my role as Trustee of the Settlement Trust.

9. I was not involved in any aspect of the BSA bankruptcy proceedings, including any negotiations regarding the Plan. As noted above, I was a sitting judge until January 20, 2022. My responsibilities as Trustee began only after the Plan was

confirmed in September 2022, and even then, my role was limited to preparing to implement the Plan upon the Effective Date. I worked in this very limited capacity until April 19, 2023, when the Plan went effective and the Settlement Trust came into existence.

A. TRUST ADMINISTRATION

10. On the Effective Date, the Settlement Trust was duly and lawfully formed as a distinct and separate entity by the contemporaneous filing of a Certificate of Trust with the Secretary of State of the State of Delaware.

11. At the Effective Date, I established general bank accounts and investment accounts, to hold the consideration received under the Confirmation Order, which includes:

a. $439,066,303 in cash from Local Councils.

b. $189,871,000 in cash from Settling Insurers (as such term is defined in the Plan).

c. $2,000,000 in cash from the United Methodists.

d. A promissory note (the "***BSA Settlement Trust Note***") whereby BSA is obligated to pay $80,000,000 in accordance with the terms and conditions of such note.

e. A promissory note from the Delaware Statutory Trust ("***DST***") established pursuant to the Plan (the "***DST Note***")

whereby DST is obligated to pay up to $121,000,000 from excess retirement funds of the Local Councils.

f. Over 300 pieces of art, including 59 by Norman Rockwell, with an aggregate value of approximately $59,000,000.[2]

g. Interests in over 1,000 oil and gas properties with an estimated aggregate value of approximately $7,600,000.[3]

h. Assignments of insurance rights to policies estimated to have a value ranging from $4.29 billion to $4.4 billion.[4]

12. In addition, on or after the Effective Date, the following matters to benefit the Settlement Trust occurred:

a. Three separate insurance companies released from escrow a total of $189,871,000 in cash to the Settlement Trust in performance of each insurance company's obligations to purchase insurance policies they issued to BSA and other covered parties; additional funds are to be released from escrow at a later date from a total of four insurance companies in accordance with governing documents.

[2] Plan, Article 1.A.45(c).
[3] Plan, Article 1.A.45(e).
[4] *In re Boy Scouts of America*, 642 B.R. 504, 560–561, table 6 (Bankr. D. Del. 2022).

b. The Settlement Trust entered into an inter-creditor agreement and second lien security agreement with BSA and BSA's secured lender with respect to the common collateral securing BSA's obligations under the BSA Settlement Trust Note.

13. Under the Plan, as of the Effective Date, approximately 66 separately incorporated Local Councils became contractually obligated to sell 96 separate real properties that are located across 32 states for the benefit of the Settlement Trust.

14. In addition, on the Effective Date, the more than 82,000 childhood sexual abuse claims (the "***Abuse Claims***") that were filed in BSA's chapter 11 cases were channeled to the Settlement Trust, and the Settlement Trust assumed the obligation to administer such Abuse Claims. Nearly 50% of the more than 82,000 Abuse Claims are held by individuals that are 60 years of age or older.

15. In addition to my work in connection with the establishment of the Settlement Trust and its receipt of its diverse assets, the Settlement Trust engaged two "Claims Administrators" who, under my supervision, are in charge of the evaluation of more than 82,000 Abuse Claims. The Settlement Trust also engaged an in-house general counsel, who advises me on various legal issues as they arise in the administration of the Settlement Trust (the "***General Counsel***").

16. The firm selected as the Settlement Trust's claims processing firm (the "***Claims Processor***") is a nationally known firm with significant experience assisting

with the design, approval, and implementation of claims reconciliation protocols required to resolve numerous claims in settlements arising from contexts including class actions, multi-district litigation, bankruptcy proceedings, and government enforcement actions. With counsel, I negotiated and entered into a comprehensive three-year engagement agreement with the Claims Processor.

17. I directed the Claims Processor's professional team to create the Settlement Trust's website, which can be found at www.scoutingsettlementtrust.com and which provides a comprehensive resource and communication tool for the Settlement Trust's interactions with claimants.

18. The Settlement Trust holds various insurance rights under the policies assigned to the Settlement Trust by BSA and the Local Councils. The Settlement Trust engaged special insurance counsel to advise the Settlement Trust regarding the enforcement of such rights and to represent the Settlement Trust with respect to certain actions pending against BSA prepetition in Texas and Illinois. On July 18, 2023, I, as Trustee, filed a comprehensive coverage action in Federal District Court in the Northern District of Texas to enforce the Settlement Trust's rights under the assigned insurance policies.

19. I also interviewed, selected, and negotiated the terms of and entered into written engagement agreements with numerous other professionals including outside counsel, a lien-administration firm (the "***Lien Resolution Administrator***"),

an accounting firm, an independent auditing firm, a financial advisor, a sexual abuse consultant, an art consultant and appraiser, and an oil and gas management firm.

20. The Settlement Trust incurs fixed costs as a result of its engagement of the Claims Administrators, the General Counsel, the Claims Processor, me, and certain other professionals, consultants and advisors. For the 8 1/3 months beginning April 19, 2023 through December 31, 2023, the Settlement Trust has disbursed more than $36,000,000 in operational costs for claims administration and other administrative functions, predominantly focused on building the claims intake, evaluation, and approval infrastructure. Any stay of the Settlement Trust's operations would risk losing some or all of the administrative infrastructure that the Settlement Trust has established over the last ten months since its formation, and the unknown but potentially substantial cost and delay entailed in re-creating that administrative infrastructure once the stay is terminated and the Settlement Trust resumes operations.

B. ONGOING OPERATIONS OF THE SETTLEMENT TRUST

21. The Settlement Trust is an operating entity with diverse and valuable assets, including cash, notes receivable, escrow funds receivables, the right to millions of dollars of anticipated proceeds from the sale of real properties owned by Local Councils, oil and gas mineral interests and associated production revenues, a significant art collection, and contingent and unliquidated insurance receivables.

The assets must be actively managed by me as Trustee daily to preserve and maximize their value for the Settlement Trust's beneficiaries. Any stay of the activities of the Settlement Trust must take account of the fact that these assets must be managed, protected, and reduced to cash by a fiduciary in a manner that maximizes the distributable value of the Settlement Trust's assets. It is inconsistent with a trust-fiduciary regime to allow trust assets to languish unmanaged, with the concomitant risk of depreciation or other loss in value of those assets that the Settlement Trust, and ultimately the beneficiaries of the Settlement Trust (the holders of allowed Abuse Claims), would bear.

22. As part of the active management of the Settlement Trust's assets, and with input and advice from advisors and other professionals engaged by the Settlement Trust, I oversee the investment and management of cash that was transferred to the Settlement Trust on the Effective Date. In addition, I monitor the receipt and investment of the revenues derived from the oil and gas interests currently owned by the Settlement Trust.

23. With the assistance of Settlement Trust advisors, I oversee and monitor BSA's performance under the $80,000,000 BSA Settlement Trust Note. In addition, the Settlement Trust receives quarterly reports that contain information used to determine the amount(s) of various mandatory prepayments under the BSA Settlement Trust Note.

24. With the assistance of the Settlement Trust advisors, I also oversee the performance of the Local Councils with respect to their obligations arising under the DST Note. Under the terms of the DST Note, the Local Councils make monthly contributions into an account owned by DST (the "***LC Reserve Account***") in an amount equal to the required percentage of the Local Councils' respective payrolls. The Settlement Trust must monitor these payments as any excess funds are used to pay down the obligations under the DST Note. The Settlement Trust is required to monitor the account balance of the LC Reserve Account and the annual minimum thresholds that determine whether excess cash can be used to pay down the $121,000,000 outstanding under the DST Note.

25. As noted above in Paragraph 13, the Settlement Trust holds contractual rights regarding the sale of approximately 96 separate parcels of real property (the "***Local Council Properties***") owned by certain Local Councils. To date: (a) 24 Local Council Properties have been sold that resulted in approximately $11,500,000 in sale proceeds being paid to the Settlement Trust; (b) 10 other Local Council Properties are under contract that, when closed, will yield approximately $13,524,000 to the Settlement Trust; and (c) the remaining approximately 62 Local Council Properties, with an approximate aggregate value of more than $53,632,921, are currently being marketed. All of the proceeds from the sale of the Local Council Properties have been, or will be, deposited into Settlement Trust bank accounts managed by me.

26. A stay that suspends the operation of the Settlement Trust will subject it to the risk of losing some or all of the administrative infrastructure that the Settlement Trust has established over the last ten months since its formation, and the unknown but potentially substantial cost and delay entailed in re-creating that administrative infrastructure once the stay is terminated and the Settlement Trust resumes operations. To the extent that any of the multitude of personnel and firms engaged by the Settlement Trust in the course of establishing this administrative infrastructure are required to pause their services as a result of a stay, they may not be available to resume their current roles with the Settlement Trust within the needed time frame (or even at all) following the termination of a stay. Even if a firm that is currently engaged by the Settlement Trust is available to resume its work upon termination of a stay, the individuals who currently staff its engagement might not be available, and their replacements would have to go through a duplicative learning curve. In the event these very real risks come to pass, I believe the Settlement Trust could face significant delays in becoming fully operational again and incur additional costs entailed in engaging new personnel and going through a duplicative learning curve.

27. I estimate that an appropriate benchmark for determining the potential magnitude of the Settlement Trust's "re-start-up" costs following the termination of a stay would be between one-third and two-thirds of the Settlement Trust's existing

investment in systems, personnel, and procedures, depending on the magnitude of loss of the current professionals and advisors. Thus, potentially $24 million (two-thirds of the investment to date) could be required to re-start and restore the Settlement Trust's functionality following a cessation of operations.

28. After its formation, and at my direction, the Settlement Trust filed motions with the Bankruptcy Court and other state and federal courts for the purpose of carrying out my duties and obligations under the Settlement Trust Agreement. Those motions sought, among other things, to: (a) enforce certain plan injunctions against a holder of an Abuse Claim that has sued certain insurers in violation of the "insurer injunction" under the Plan;[5] and (b) extend the deadline for claimants to make the election to have their Abuse Claims reviewed under the IRO (as defined in Paragraph 34 below) (the "***Trust Amendment Motion***").[6]

29. In addition, I, as Trustee, have commenced litigation and participated in pending litigation to: (a) enforce the Settlement Trust's rights with respect to the insurance rights assigned to it by BSA and the Local Councils by dismissing the

[5] *See Motion of the Honorable Barbara J. Houser (Ret.), in Her Capacity as Trustee of the BSA Settlement Trust, to Enforce the Confirmation Order and Plan* [Bankr. Docket No. 11376]. This motion was heard by the Bankruptcy Court on September 12, 2023, and is awaiting a decision.

[6] *See Motion for Approval of Amendment of the Trust Distribution Procedures* [Bankr. Docket No. 11514]. The Bankruptcy Court granted this motion on October 16, 2023. *See* [Bank. Docket No. 11537].

coverage action previously brought by BSA and certain Local Councils;[7] (b) assert claims against 91 defendant insurers in a comprehensive coverage action involving more than 3,000 insurance policies issued to BSA and/or Local Councils from 1942-2020;[8] and (c) dismiss, and if unsuccessful in dismissing, defend a prepetition coverage action involving BSA and Local Councils in Illinois.[9]

C. CLAIMS PROCESSING

30. As noted above, on the Effective Date, BSA channeled more than 82,000 Abuse Claims to the Settlement Trust.

31. At my direction and with my active engagement, the Claims Processor established a robust website for the Settlement Trust. The website includes a claims processing portal through which all Abuse Claims are being managed and evaluated by the applicable Claims Administrator, the Claims Processor, and, ultimately, me.

32. At my direction and with my active engagement, an "Expedited Distribution Questionnaire" was developed. The Expedited Distribution Questionnaire was made available on August 3, 2023, to more than 7,000 holders of

[7] *See* notice of nonsuit filed in *Boy Scouts of America et al. v. Insurance Company of North America, et al.*, No. DC-18-11896 (Dallas Cty., Tex.). This action was dismissed on August 3, 2023.

[8] *See Houser v. Allianz Global Risks US Insurance Company, et al.*, No. 3:23-cv-01592 (N.D. Tex.). This action is currently stayed pending this Court's decision in *Harrington v. Purdue Pharma LP*.

[9] *See National Surety Corporation v. Houser et al.*, No. 17-CH-14975, currently pending in Cook County, Illinois.

Abuse Claims who elected to release their Abuse Claim in exchange for a flat $3,500 payment.

33. As of February 14, 2024, approximately 5,877 Expedited Distribution Questionnaires have been signed by claimants and their counsel, if represented, and submitted to the Settlement Trust. From review and analysis of the Expedited Distribution Questionnaires received to date, the holders of 5,666 Abuse Claims have been determined to be eligible to receive their Expedited Distribution payment. Beginning on September 19, 2023, the Settlement Trust commenced making distributions to the holders of Abuse Claims that elected to receive an expedited distribution, provided that those claimants returned a fully executed release to the Settlement Trust. As of February 14, 2024, the Settlement Trust has issued payments totaling $7,386,990 on 2,914 Abuse Claims whose claimants made the Expedited Distribution election and returned a fully executed release to the Settlement Trust. Additionally, payments of $827,810 are in process for another 366 claimants who made the Expedited Distribution election and returned a fully executed release to the Settlement Trust. The Lien Resolution Administrator is actively working to resolve liens, if any, against such claimants' Expedited Distribution payments.

34. Claimants who did not elect to receive an Expedited Distribution may choose between two other claims processing options. One of those options is the so-

called "Matrix" claims process, pursuant to which Abuse Claims are evaluated and placed in a "tier" of abuse with a base value and a maximum value for each of six possible tiers. The criteria for evaluating Matrix claims are set forth in the Trust Distribution Procedures ("***TDP***") and are quite complex. The other claims processing alternative — the so-called Independent Review Option ("***IRO***") — allows holders of Abuse Claims to have a neutral — designated in the TDP as a retired judge with tort experience (a "***Neutral***") — evaluate their claims through a process that is designed to replicate what a jury might award to such claimants outside the Settlement Trust process.

35. At my direction and with my active engagement, a detailed "General Claims Questionnaire" for submission by all other holders of Abuse Claims (both Matrix and IRO claimants) was developed. The claimants' answers to the questions set forth in the General Claims Questionnaire will allow the Settlement Trust to evaluate the claims consistent with the TDP.

36. The process of developing the General Claims Questionnaire involved more than 12 weeks of work by the Claims Administrators, the staff of the Claims Processor, General Counsel, and me. The criteria that must be analyzed and applied for the holder of an Abuse Claim to qualify for one of six payment tiers in the Matrix claims process as detailed in the TDP are complex. In addition, the Claims Administrator and I must apply aggravating and mitigating scaling factors when

evaluating the Abuse Claims in the Matrix claims process. A careful analysis of what information needs to be gathered to apply all the required criteria to each holder's Abuse Claim properly was necessary and was the reason for the extensive commitment of time invested by the Settlement Trust team.

37. Once the General Claims Questionnaire was finalized and following rigorous testing procedures to ensure the security of the claims processing platform, the General Claims Questionnaire was made available to more than 75,000 holders of Abuse Claims, or their counsel of record, on August 17, 2023. As of February 14, 2024, approximately 18,406 holders of Abuse Claims, or their counsel, have begun providing information responsive to the General Claims Questionnaire. As of February 14, 2024, an additional 5,449 General Claims Questionnaires have been completed, signed by Matrix claimants and their counsel, if applicable, and submitted to the Settlement Trust. The Settlement Trust has commenced the review and analysis of the completed General Claims Questionnaires received to date from Matrix claimants and their counsel.

38. As of February 14, 2024, seven Matrix claimants have had the allowed amount of their claims determined by the Settlement Trust. Two of those Matrix claimants received their Acceptance Packages from the Settlement Trust on February 1, 2024, and the other five Matrix claimants received their Acceptance Packages from the Settlement Trust on February 9, 2024. The Plan requires that all

claimants sign an irrevocable release before receiving any payment from the Settlement Trust on their allowed claims. One of these Matrix claimants has already executed this release, and the Settlement Trust disbursed its initial distribution on his allowed claim on February 13, 2024.

39. On January 31, 2024, I announced a bar date of May 31, 2024 for the submission of Abuse Claims under the Matrix claims processing option.

40. As noted previously, the holders of Abuse Claims may elect to have their Abuse Claims resolved under a third claims processing alternative — the IRO. Pursuant to this alternative, holders of Abuse Claims are entitled to have a Neutral evaluate their claims through a process that is designed to replicate what a jury might award to such claimants outside the Settlement Trust process. As of February 14, 2024, the Settlement Trust had entered into engagement agreements with 15 Neutrals for 15 of the 16 IRO cases in which complaints have been filed by the respective claimants. These Neutrals have held scheduling conferences with the parties with respect to particular claims and have entered Scheduling Orders. The first IRO hearing has been scheduled for May 6, 2024. A Neutral will be engaged by the Settlement Trust and appointed for the 16th IRO case in which a complaint has been filed in the next few days. Moreover, the Claims Administrator assigned to work with me on the IRO is actively interviewing additional potential neutrals for hire, and, to date, has interviewed 185 potential candidates.

41. As of February 14, 2024, 211 holders of Abuse Claims have submitted their General Claims Questionnaires to the Settlement Trust having elected the IRO. Of those, 42 holders of Abuse Claims have paid the initial required $10,000 administrative fee associated with the IRO. The next step for these claimants is to file their respective complaints, which will precipitate further action by the Settlement Trust, including the assignment of a Neutral for each claim.

42. The bar date for the submission of IRO claims is February 16, 2024. As noted above, this deadline was established by the Bankruptcy Court on October 16, 2023, after I filed the Trust Amendment Motion. On January 23, 2024, the Settlement Trust Advisory Committee and two law firms representing claimants (Pfau Cochran Vertetis Amala PLLC and the Zalkin Law Firm, P.C.) filed two motions before the Bankruptcy Court seeking to extend this bar date. The motions expressed concerns with some aspects of the IRO process and uncertainty surrounding the *Purdue* decision. The movants and I were able to resolve these concerns with minor modifications to the IRO process, and both motions were subsequently withdrawn. Neither the Applicants nor any other party has sought an extension of the IRO deadline with the Bankruptcy Court.

43. All claims received by the Settlement Trust are processed on a "first in, first out" basis. However, claimants who have severe health concerns may seek expedited processing of their claims by submitting an Exigent Health Declaration

from their physician, stating that there is substantial doubt that the claimant will survive beyond the next six months. Claimants who submit Exigent Health Declarations are moved to the front of the processing queue. As of February 14, 2024, 57 claimants have informed the Settlement Trust that they have exigent health circumstances, 29 of which have submitted an executed Exigent Health Declaration.

44. The Settlement Trust also implemented the Advance Payment Program (the "***APP***") on February 12, 2024, which will provide eligible claimants, many of whom are elderly and in poor health, with an advance on their initial distribution from the Settlement Trust. Under the APP, eligible claimants will be able to receive payments of $1,000 before their allowed claim amount is finally determined. Eligibility to participate in the APP is determined based upon a rigorous application of criteria to the information provided to the Settlement Trust by individual claimants in their General Claims Questionnaires.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of February 2024 at Fort Collins, Colorado.

Hon. Barbara J. Houser (Ret.)