No. 25-490

In the

Supreme Court of the United States

LUJAN CLAIMANTS,

Petitioner,

v.

BOY SCOUTS OF AMERICA, ET AL.,

Respondents.

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

BRIEF OF *AMICI CURIAE* JOY CLAIMANTS AND GARRISON CLAIMANTS IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTEREST OF AMICUS CURIAE[1]

Amici Curiae are two separate groups of sexual abuse survivors who filed claims under the bankruptcy plan—the Joy Claimants and the Garrison Claimants. The Joy Claimants are approximately 1,000 sexual abuse survivors who are being represented by the Jason J. Joy & Associates law firm in the bankruptcy proceedings. The Garrison Claimants consist of Curtis Garrison, a child sex abuse survivor who runs the website www.scoutingaccountability.org, as well as at least several hundred other claimants who have joined him in his efforts to publicize the unjust nature of the bankruptcy plan.

Amici submit this amicus brief as a means of countering what will no doubt be Boy Scouts of America's (BSA's) primary argument in opposing certiorari—that this case is an improper vehicle to resolve the questions presented, due to the sensitive nature of sexual abuse and the supposed desire of the sexual abuse claimants to have closure. Purporting to be defending the interests of the sex abuse victims they spent decades turning a blind eye to, BSA will no doubt claim that granting certiorari will reopen old wounds for the victims, robbing them of closure just when they thought they had secured it.

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[1] Joy Claimants notified counsel for all parties of its intent to file this brief more than 10 days before the due date. No party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person—besides *amicus curiae* and its counsel—contributed money that was intended to fund preparing or submitting this brief.

Nothing could be further from the truth. As explained further below, the bankruptcy plan is already on its way to being insolvent—that is, it is unlikely that it will have the funds to pay out the vast majority of sex abuse claims, in direct contrast to what BSA's expert witness assured the bankruptcy court. Far from being a model plan for resolving sex abuse claims, the plan will afford practically no relief to most claimants.

SUMMARY OF THE ARGUMENT

This is one of the largest and most consequential mass tort sexual abuse cases in American history. It involves some 82,000 survivors who were sexually abused as minors in connection with Scouting-related activities. In the words of the bankruptcy court, "[t]his is an extraordinary case by any measure," one "about trust-or more accurately-lack of trust." (Apx.404a). Over several decades, BSA and other Scouting-related local entities turned a blind eye as innocent children suffered sexual abuse at the hands of Scouting masters and others in positions of authority. The nature of childhood sex abuse is such that victims rarely speak about or disclose the abuse to others, and for a variety of reasons historically very few victims pursued civil lawsuits against negligent institutions before the normal statutes of limitations expired.

In recent years, many state legislatures (in both Red States *and* Blue States) across the country have enacted legislation that retroactively opens the civil statute of limitations for adult victims of childhood sexual abuse, regardless of when the abuse occurred.

See CHILD USA, Statute of Limitations (SOL) Reform, childusa.org/sol/. As a result of this (remarkably bi-partisan) national trend, the Boy Scouts of America faced a growing number of credible and legitimate lawsuits from victims who were sexually abused in connection with Scouting-related activities. With litigation risks rising and with no end in sight, BSA filed bankruptcy in the District of Delaware. According to BSA's Day One Brief, the purpose was to fully and fairly compensate all legitimate child sex abuse victims for which BSA was likely civilly liable.

According to BSA, this Plan will provide "full compensation" to all eligible sex abuse survivors while at the same time ensuring that the Boys Scouts can continue to serve their local communities. *See* Brief of Amicus Curiae Boy Scouts of America, *Harrington v. Purdue Pharma*, No. 23-124, at 6; Brief Boy Scouts of America in Opposition to Stay *Lujan Claimants v. Boy Scouts of America*, No. 23A741, at 17. But as Lujan Claimants argue in their certiorari petition, the Plan in fact operates as a get-out-of-jail free card for both BSA and tens of thousands of non-debtor (and independently liable) Local Councils and sponsoring and chartering organizations across the country. Despite the fact that none of these non-debtor protected parties have contributed meaningful compensation to survivors, the BSA Plan of Reorganization discharges from liability tens of thousands of entities and individuals that would ordinarily be co-defendants in most civil cases involving CSA.

All civil claims against any of the protected parties involving in any way BSA-associated childhood sexual abuse is ostensibly transferred or funneled to the Scouting Settlement Trust established by the Plan, which is directly repugnant to the Court's holding under *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). The Court should not be hesitant about granting certiorari and voiding this plan. Contrary to what BSA will no doubt argue, it does not provide just compensation for the countless sex abuse victims who have suffered at BSA's hands. The bankruptcy plan's own data demonstrates that it is unable to fund all abuse claims in their entirety, and that for all practical purposes it will soon be insolvent. This is contrary to BSA's expert testimony before the bankruptcy court, which assured everybody that there would be sufficient funds to satisfy all claims. How did such a flawed plan come about? Among other things, litigation financing played a large role, which incentivizes plaintiff's firms to engage in representation of mass tort claimants while providing them with little-to-no substantive legal services on the merits of their claims.

Given the above, this Court should not hesitate to grant certiorari and void the Plan.

ARGUMENT

I. Per the bankruptcy plan's official data, eligible sex abuse victims will only recover, at best, 4-7% of their claims' values.

As Lujan Claimants note in their petition, the bankruptcy plan passed with "a bare 59% approval rate among all 82,209 survivors (voting and non-voting).") (Pet.at.15, quoting Apx.481a). Naturally, this 59% approval rate stemmed from the assumption that the plan would, in fact, be able to pay all eligible Scouting-related child sex abuse ("CSA") claims in full. Had there been no assurance that the claims would be paid in full, the Plan would never received confirmation in the first place.

BSA and Plan Supporters represented to the 82,000 victims, to the lower courts, as well as to this Court that all eligible Abuse claimants would be fully compensated—that is, paid in full—under the Plan. BSA's experts testified in the confirmation trial that it would cost no more than $3.6 billion to fully compensate all eligible abuse victims. (Apx.132a-133a). BSA has reiterated that position before this Court. *See* Brief of Amicus Curiae Boy Scouts of America, *Harrington v. Purdue Pharma*, No. 23-124, at 6; Brief Boy Scouts of America in Opposition to Stay *Lujan Claimants v. Boy Scouts of America*, No. 23A741, at 17.

In the 2 years and 7 months since the Plan's "effective date" the gross inadequacy of the contributed settlement funds ($2.46 billion) have

become indisputably clear, and it is a statistical certainty that the aggregate cost of eligible Matrix Claims, *alone*, will likely exceed **$33 billion**. *See infra* at 4-10. Simple math and official BSA claims data and information provided by the Trustee confirms beyond any reasonable doubt that the Scouting Settlement Trust's estate will be insolvent long before it pays out all of the eligible child sex abuse claims.[2] The Trustee's own sworn declarations in the coverage action and the monthly Program Claims Statistics posted on the Trust's official website, www.ScoutingSettlementTrust.com.[3]

Earlier this month, Liberty Mutual Insurance Company filed a motion to enforce the Plan (Doc.13249)[4] and therein points out that "BSA… represented that the Trust ultimately would be able to pay *all* Abuse Claims in full, and votes were solicited based on a 100% recovery." (Doc.13249:8). "This leads, reluctantly, to the conclusion that there has been and continues to be a fundamental breakdown between what the Plan . . . [was] designed to do . . . such that Abuse Claims will not be paid in full." (Doc.13249:10).

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[2] This catastrophically bad situation for eligible survivors is a bitter and surprise to most BSA claimants. *See*, *e.g.*, Becky Yerak, Boy Scouts Abuse Survivors Face Increasingly Dim Prospects of Payment, Wall St. J., Sept. 16, 2025, available at bit.ly/47QO1Or.

[3] The Trustee Judge Barbara Houser (Ret.) began publishing the Monthly Claims Data needed to calculate total Plan costs sometime in November 2024, shortly after oral arguments were held at the Third Circuit.

[4] This is the PACER-generated document number before the bankruptcy court, Case No. 20-10343.

Scouting Settlement Trust, *Monthly Program Statistics* (Nov. 4, 2025) *available at* bit.ly/3LT4Q2B.

Significantly, attached to Liberty Mutual's Motion is a sworn declaration of The Hon. Barbara J. Houser (Ret.), the Trustee of the Scouting Settlement Trust[5] (Doc.13249-1). Per her own admission, as of August 10, 2025, the Trust had evaluated and issued "allowed claim notices" to 35,373 (of the approximately 58,000 submitted) Matrix Claimants (via their counsel, generally). The average compensation amount was $575,000 per claimant, and worth a combined aggregate amount of $20,571,754,218. And 22,279 unprocessed Matrix Claims remained pending and an estimated an estimated 98.12% will eventually be determined eligible for compensation, based on the Trust's historical data. (Doc.13249-1 at ¶9). *See also* Scouting Settlement Trust, *Monthly Program Statistics* (Nov. 4, 2025) *available at* bit.ly/3LT4Q2B.

The Joy Claimants have consistently calculated that eligible BSA survivors will likely receive, at best, a mere 4% to 7% of their determined claim value.[6] Other law firms representing substantial numbers of BSA survivors have reached identical

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[5] As Trustee, she administers and pays eligible Abuse claimants, among other responsibilities for which she is generously compensated (the rate per month is substantial). The Claimants pay for this and other costs.

[6] See Jason Joy & Associates, *Letter to the U.S. Trustee* (Dec. 1, 2024), https://survivingscouting.org/bankruptcy/letter-to-the-us-trustee; and *Supplemental Letter to the U.S. Trustee* (Feb. 2025), https://survivingscouting.org/bankruptcy/2025-02-letter-to-the-us-trustee

conclusions. *See* Hurley, McKenna & Mertz, *Town Hall* (video conference, Aug. 28, 2025), at 4:00, *available at* bit.ly/48pprV2 ("[S]ome attorneys predict 4% -7%" gross recovery.") The gross recovery is then reduced by contingency attorney fees and litigation costs and expenses (e.g. filing fees, medical expenses, forensic and consulting experts, etc.)

This conclusion is further bolstered by the latest Monthly Program Statistics released on 11/04/25 on the official Trust website. *See* Scouting Settlement Trust, *Monthly Program Statistics* (Nov. 4, 2025) *available at* bit.ly/3LT4Q2B . As of 11/04/25, the Trust has now paid issued 29,710 eligible Matrix Claimants so-called Initial Distributions totaling $268,297,915. Because each of these payments represents a mere 1.5% of the claimants' "allowed claim amount," this figure necessarily corresponds to $17,886,525,667 in aggregate allowed compensation for that subset alone. This results in an average allowed claim value of approximately $600,000, consistent with the Trustee's earlier sworn average of roughly $575,000.[7]

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[7] A substantial majority of Jason Joy & Associates claims are not properly assessed by the Trustee – the statute of limitations is often incorrect, and/or the "impacts of abuse" multipliers are not properly credited, despite the fact that virtually all Joy Claimants submitted a detailed excomprehensive forensic psychiatric in additional to all required documents and information establishing Scouting-related abuse), thus require the JJJ firm to appeal the trusts claim determinations. [7] *See* Jason J. Joy & Associates' Brief in Support of Reconsideration for Claim SST-331279, Feb. 19, 2025, *available at* bit.ly/445Kdqg.

The November 2025 report also reflects the issuance of 40,605 total claim determinations as of 11/04/25. Applying the Trustee's own average valuation of $575,000 (per the Houser Declaration dated 8/10/25) per allowed Matrix Claim, these (40,605) determinations equate to $23.3 billion in allowed compensation. And because approximately 58,000 Matrix Claims were submitted in total, even under conservative assumptions (such as assuming that only 55,000[8] claims will ultimately be deemed eligible—the aggregate allowed compensation amount will almost certainly exceed $31.6 billion (55,000 × $575,000). These deeply alarming calculations are not hypothetical numbers or tenuous estimates. The total cost of Matrix Claims, alone, will almost certainly exceed $33 billion.

Against these figures and other Trust-provided data points that virtually guarantee a total Trust price tag of around $35 billion (when including Matrix along with Individual Review Option ("IRO") and QuickPay claims, and the Trust "administrative expenses"), however, the Plan provides only $2.46 billion in committed contributions to pay all eligible Abuse claims.

Although the Trustee has stated publicly in several Town Hall meetings she hosted with BSA survivors that an additional $4.0 to $4.4 billion is recoverable from roughly 120 "non-settling insurers.

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[8] SST data reflects 98.8% acceptance, 1.2% denial rates. 55,000 assumes a 5.2% fall-out rate. A nearly 5x increase (433%) and therefore, highly unlikely as a matter of statistical significant probability of full payment

See White & Carse Leads Boy Scouts of America Through its Landmark Chapter 11 Reorganization and Defense of Plan Confirmation Appeals, May 19, 2025, available at bit.ly/4pjMTsm. Thus, Houser has strongly suggested (if not outright represented) to Matrix Claimants that the $2.46 billion will grow by "at least" "$4.0 to $4.4 billion" that she expects to recover in coverage litigation(s) in NDTX coverage action. Thus, most BSA survivors reasonably assume the total pot of funds will grow to at least $6.46 billion to $6.86 billion.

However, even this ("$4.0 to $4.4 billion") is extremely misleading to most claimants, because per the Plan only 20% of any additional settlement recoveries will go towards compensating Matrix Claimants; whereas the other 80% must go towards compensating IRO claimants. So, even assuming for the sake of argument that the Trustee somehow secures the full projected range, Matrix Claimants would only receive, at best, another $800 million to $880 million.

No self-respecting sexual abuse victim would have knowingly voted in favor of a Plan that less than 10% of the agreed upon claim value.

II. The Boy Scouts' primary insurers avoided paying tens of billions in abuse liability through deeply inadequate policy buybacks.

Significantly, the BSA, standing by itself, has sufficient assets to fully compensate its victims. In other words, this is not a situation where the debtor's estate is simply not big enough to fully compensate

all eligible creditors (here, the 82,000 victims of child sexual abuse). The BSA purchased thousands of liability insurance policies that collectively provide primary coverage that is sufficient to fully satisfy all legitimate and verified sex abuse liabilities. "There is no doubt whatever about that. You will therefore permit me to repeat, emphatically, that [BSA has unlimited liability insurance that can easily pay in full all eligible claims]."[9] *See* https://survivingscouting.org/bankruptcy/2021-03-tcc-settlement-demand-letter.

The structural problems of the mass-tort bankruptcy model are illustrated by the role of firms such as Krause & Kinsman. The firm is currently a defendant in a Louisiana class-action lawsuit alleging systemic misconduct in its mass-tort hurricane-claims practice. *See Heard v. Krause & Kinsman Trial Lawyers, LLC*, No. 2024-08026 (Civ. Dist. Ct. Orleans Par., La. Aug. 29, 2024). In this bankruptcy, the same firm has entered appearances on behalf of **thousands of Boy Scouts abuse survivors**, a scale of representation that is possible only within the economics of modern mass-tort financing. These litigation-finance structures—under which firms acquire enormous client inventories, often through high-volume marketing arrangements funded by outside capital—create powerful incentives to agree to global resolutions that prioritize speed and certainty over individualized representation. The

[9] Charles Dickens, *A Christmas Carol*, Stave 1 (1843). Dickens had to emphasize from the very beginning that Marley was in fact dead, otherwise the story would not make any sense. Here, the BSA's unlimited insurance coverage is as important as the Plan's insufficient funding levels.

resulting dynamic contributes directly to the systemic under-valuation of claims and helps explain how a plan promising "full payment" produced a trust now projected to deliver only a fraction of the allowed value of survivors' claims.

The dramatic settlement funding shortfall is largely due to a series of questionable and extraordinarily one-sided transactions involving the "Settling Insurers" particularly Hartford and Chubb entities. These Hartford and Chubb-entity policies provided virtually unlimited primary coverage for CSA liabilities for those time periods (1960s through 1980s) in which most of the BSA survivors were abused and/or otherwise trigger coverage.

Hartford and Chubb, the "Settling Insurers," sold policies to BSA that provide the lion's share of primary insurance coverage for Scouting-related CSA claims involving abuse that occurred during the 1960s through the 1980s – the time period when most of the BSA's 82,000 claimants were actually abused. But BSA and Plan supporters inexplicably allowed the primary sources of funding (Hartford and Chubb) to "buy back" those priceless assets for reasons and at a price that cannot be reasonably justified under the extreme circumstances presented by this historic case. Hartford and Chubb pay a combined $1.5 billion when they are otherwise on the hook for most of the $35 billion Plan costs. This is primarily why the Plan is not in fact, a "paid in full" accord.

To add insult to injury, by labeling these transactions as Sec. 363(m) "sales," the BSA's high-priced team of attorneys convinced a divided Third

Circuit panel to uphold this indisputably illegal (per Purdue Pharma) and deeply injurious (on many levels) Plan based on the strained rationale that it would be "unfair" to….Hartford and Chubb to unwind this Plan now. In other words, never mind the 82,000 BSA victims of childhood sexual abuse that were supposed to be "paid in full" and are now left with essentially nothing, according to the Third Circuit, Hartford and Chubb are entitled to a massive financial windfall. (See Apx.31a-52a). The BSA claimants can be forgiven for feeling violated yet again. And they have eminently legitimate reason(s) to feel that way.

Moreover, because of the prohibited third-party releases, Survivors have no legal firepower left to obtain the unpaid 93-96% from other Protected Parties for their own independently wrongful conduct. The BSA Plan has for all intents and purposes taken the guns and ammo required to seek full compensation against non-debtors. *See* U.S. Const amend. II. So, not only does this Plan not provide anything close to "full pay," it also illegally and immorally confiscates the legal weaponry that Claimants need to recover the settlement funding shortfall from other, co-liable non-debtor entities and individuals (churches, schools, etc.). *See* Thomas Paine, *The American Crises*, No. 1 (1776) ("These are the times that try men's souls.").

III. This case embodies the problems associated with litigation financing for mass-tort bankruptcy claims.

In light of the forgoing, it is fair to wonder how things could get so egregiously bad for survivors. Our American legal system assumes that counsel for all parties will provide zealous and competent legal representation; the end result will more or less, and more often than not, approximate some semblance of American justice. We are, after all, supposed to be a government of laws, not men. But when that assumption begins to get undermined, the entire system begins to break down.

The recent and dramatic rise of third-party litigation financing, particularly in the mass tort and bankruptcy context, has its pernicious fingerprints all over this unfolding tragedy. *See generally* Samir D. Parikh, *Opaque Capital and Mass-Tort Financing*, 133 Yale L. Rev. Forum 32 (2023).

The ad hoc Coalition of Abused Scouts for Justice (CASJ or Coalition) is comprised of a small handful of law firms that represent collectively most of the 82,000 claimants. The CASJ Voting Member firms negotiated (and publicly taken credit for) inter alia the controversial Hartford and Chubb settlements, supra. Most of those same firms have objectively enormous inventories of individual BSA clients. This has drawn criticism and legitimate questions. *See* Alex Wolf, *Scouts Lawyer Seeks to 'Shine a Light' on Mass Tort System Flaws*, Bloomberg Law (Nov. 3, 2025), *available at* bit.ly/4r4ND6w.

The problem with "Lit-Fin" is the inherent conflicts such transactions invariably create. *See* Matthew Feingerg, *Litigation Funding Could Create Ethics Issues for Attorneys*, Law360, Nov. 18, 2025, *available at* bit.ly/3XL9CSp. Litigation finance is now closely associated with Arizona ABS entities that legally permit non-attorney ownership of law firms. *See* Ryhan Boysen, *California Bill Blocking Fee Sharing with ABS Firms Heads to Governor*, Law360, Aug. 18, 2025, *available at* bit.ly/43EUEAZ. The concern is that the investors and hedge funds that provide the significant capital required to obtain say, 10,000 individual clients, are primarily interested in making a profit, rather than a genuine concern to ensure that best interest of all 10,000 clients are zealously protected. Here, a legitimate question exists as to whether those firms with staggering numbers of BSA clients (6,000, even 10,000 or more) were acting in their clients' best interests – or, their own (or, their investors). *See* Robert Wilkins, *Tracking the Evolution in Litigation Finance*, Law 360, April 17, 2025, *available at* bit.ly/44gnlnV.

Already, at least one Voting Coalition Member firm (with roughly 6,500 BSA clients) has been linked to the infamous McClenny Moseley & Associates "MMA") debacle. *See* Jim Sams, *Former MMA Lawyer Suspended; Hedge Funds Win Injunction to Protect Funds Loaned to Firm*, Claims Journal, Jan. 2, 2024, *available at* bit.ly/43H44fh; Ganesh Setty, *Law Firms Sued Over Louisiana Hurricane Claim Fee Scheme*, Law360, Sept. 23, 2025, *available at* bit.ly/3XaL1q2.

Some of these firms have little to no experience handling any cases or clients, let alone thousands upon thousands of child sex abuse survivors in a major mass tort bankruptcy proceeding, But for law firms that borrow, say, $20 million from a hedge fund at 17-23% interest (particularly those ABS-affiliated "non-attorney owned" law firms), the primary business model seems to be more concerned with turning a profit rather than practicing law and zealously protecting each clients legal best interests. There is good reason to believe the worst fears voiced by litigation finance opponents have in fact proven true.

IV. The above difficulties make this case the ideal vehicle to grant certiorari and resolve the questions presented.

In drawing the Court's attention to the above problems with the bankruptcy plan, Joy Claimants are not suggesting that certiorari should be granted to resolve the merits of third-party litigation or order the trustee to reconsider their claims on the merits within the bankruptcy plan. Rather, the above discussion illustrates how, contrary to what BSA will no doubt argue, granting certiorari and invalidating the plan will not reopen old wounds or rob sexual abuse victims of their peace. To the contrary, invalidating the plan under *Purdue Pharma* will assist those who have suffered sexual abuse at the hands of BSA and its local affiliates to have their actual day in court. It will enable them to litigate their claim on the merits knowing that they have a legitimate chance of recovering an amount of

compensation that will actually reflect the harm they have suffered.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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