No. 25-490

In the Supreme Court of the United States

LUJAN CLAIMANTS,

Petitioners,

v.

BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC, ET AL.,

Respondents

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

BRIEF FOR THE SCOUTING RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Boy Scouts of America (BSA) is a congressionally chartered, 115-year-old charitable institution. After years of intensive negotiations in BSA's chapter 11 case of "extraordinary" complexity, the bankruptcy court approved a plan of reorganization for BSA that establishes the largest compensation fund for sexual abuse in U.S. history *and* ensures that BSA can continue its charitable mission. As a linchpin of BSA's plan, the bankruptcy court, consistent with Section 363(b) of the Bankruptcy Code, authorized the sale of some of BSA's most valuable assets—rights to some of its nearly 90 years of insurance coverage—in exchange for $1.65 billion to be paid to abuse survivors. BSA emerged from bankruptcy two-and-a-half years ago.

Petitioners are 0.09% of survivor claimants. They asked the court of appeals to vacate the BSA Plan, including the sale of BSA's insurance. The court of appeals found that petitioners' requested relief—to belatedly invalidate the court-authorized insurance-policy sale to good-faith purchasers—is precluded by Section 363(m) of the Code.

The questions presented are:

(1) Did the court of appeals correctly determine that Section 363(m) bars petitioners' requested relief?

(2) Would it be inequitable to unwind a chapter 11 plan that has been effective for more than two-and-a-half years; that has been substantially consummated through thousands of transactions (including payment of more than $295 million to more than 36,000 survivor claimants); and that has generated substantial reliance interests?

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, respondents state as follows:

1. Respondent Boy Scouts of America (BSA) is a nonprofit corporation founded in 1910 and chartered by Congress on June 15, 1916 (36 U.S.C. § 30901 *et seq.*). BSA has no parent corporation and has issued no stock. No publicly held corporation holds any interest in BSA.

2. Respondent Delaware BSA, LLC is a wholly owned subsidiary of BSA. Delaware BSA, LLC has issued no stock, and no publicly held corporation holds any interest in Delaware BSA, LLC.

3. Respondent the Ad Hoc Committee of Local Councils of the Boy Scouts of America is an unincorporated association that comprises eight "Local Councils," the independent nonprofit corporations that partner with BSA to deliver the Scouting mission locally. The Ad Hoc Committee members are the Andrew Jackson Council (Jackson, MS), the Atlanta Area Council (Atlanta, GA), the Crossroads of America Council (Indianapolis, IN), the Denver Area Council (Denver, CO), the Grand Canyon Council (Phoenix, AZ), the Greater New York Councils (New York, NY), the Mid-America Council (Omaha, NE), and the Minsi Trails Council (Allentown, PA). Each Ad Hoc Committee member is a nonprofit corporation. Neither the Ad Hoc Committee nor any of its members has issued stock. Neither the Ad Hoc Committee nor any of its members has a parent corporation. No publicly held company holds any interest in the Ad Hoc Committee or any of its members.

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STATUTORY PROVISIONS INVOLVED

The Bankruptcy Code provides at 11 U.S.C. § 363(m):

§ 363. Use, sale, or lease of property

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

*

Additional relevant statutory provisions are provided in the Addendum to this brief. App, *infra*, 1a-4a.

INTRODUCTION

The Boy Scouts of America ("BSA") "is the largest, and most enduring, training and development organization for young [people] in the United States." Michael Malone, *Four Percent: The Extraordinary Story of Exceptional American Youth* 4 (2015). A congressionally chartered nonprofit institution, 36 U.S.C. § 30901 *et seq.*, BSA since 1910 has prepared young people for life by instilling the virtues of the Scout Oath and Law.[1] Scouting's record of service to America is unparallelled: more than 125 million youth have participated in its programs. In 2019, the year before BSA entered chapter 11 bankruptcy proceedings, nearly three million enrolled Scouts and adult volunteer leaders dedicated more than 13 million charitable service hours.

BSA today welcomes all young people willing to accept Scouting's values and meet the other membership requirements. Starting in 2018, girls were welcomed to join BSA—rebranded in 2025 as "Scouting America." Today about 200,000 girls have participated in Scouting, and thousands have earned the Eagle Scout rank—the highest achievement in the flagship "Scouts BSA" program. America's Eagle Scouts include a President (Gerald Ford), two Supreme Court Justices (Tom Clark and Stephen Breyer), multiple heroic astronauts (including Neil Armstrong and Jim Lovell), and many distinguished leaders in government, military service, business, sports, and

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[1] The Scout Oath is: "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight."

The Scout Law is: "A Scout is Trustworthy, Loyal, Helpful, Friendly, Courteous, Kind, Obedient, Cheerful, Thrifty, Brave, Clean, and Reverent."

the arts. See Alvin Townley, *Legacy of Honor: The Values and Influence of America's Eagle Scouts* 12, 56, 79-80 (2007); Malone, *Four Percent* 183-193.

For all of Scouting's many accomplishments, BSA has acknowledged the heartbreaking reality that tens of thousands of Scouts are survivors of historical sexual abuse—more than 80% of which occurred before 1988. BSA has worked for the past six years, and devoted nearly all of its financial resources, to compensate those survivors and ensure that Scouting is free from abuse of any kind.

After years of intensive negotiations, the bankruptcy court approved BSA's chapter 11 reorganization plan, which establishes the largest sexual-abuse compensation fund in U.S. history. Importantly, survivors testified that the plan also provides the closure that has eluded them for decades. And the Plan enables reorganized BSA to continue its charitable work with even-further-improved youth-protection efforts. More than 85% of voting survivors accepted the Plan. The bankruptcy court confirmed it after a 22-day trial. The Article III district court affirmed after careful scrutiny.

BSA emerged from bankruptcy in April 2023—more than two-and-a-half years ago. Multiple courts (including this Court) repeatedly declined to stay the Plan. Since the Plan became effective, thousands of transactions authorized or contemplated by it have been completed. BSA's most valuable assets—rights to some of its nearly 90 years of insurance coverage for Scouting-related abuse claims—have been sold for $1.65 billion. Camp properties and valuable artwork have also been sold, with the proceeds vested in the trust for survivors established by the Plan. New donations and Scouting dues have been collected. New directors and officers have been installed for reorganized BSA. Most important: The Trustee has to

date determined more than 43,000 abuse claims and distributed more than $295 million to survivors.

Petitioners are 75 survivors—0.09% of the 82,209 abuse claimants in BSA's bankruptcy proceeding—who appealed seeking to vacate the consummated Plan. Petitioners will be compensated by the Plan, but they seek more money for themselves by forcing all survivors into a "morass of [insurance-]coverage litigation" lasting countless years." Pet.App.617a.

The court of appeals rejected petitioners' unprecedented attempt to belatedly destroy the Plan, force BSA back into bankruptcy years after it emerged, and subject survivors to lengthy and agonizing litigation. The court dismissed petitioners' appeal as barred by Section 363(m) of the Bankruptcy Code, which provides that an appellate court may not "affect the validity of" an authorized "sale" of the debtor's assets "to a good-faith purchaser" where the sale was not stayed. 11 U.S.C. § 363(m). That limitation on appellate relief applies here: The bankruptcy court authorized the sale of BSA's insurance policies to good-faith purchasers, and that sale was not stayed. Petitioners are thus precluded from invalidating that insurance sale, or "fundamentally undermin[ing] that bargain" by "blue-penciling" the releases that were part of the consideration for it. Pet.App.43a.

Judge Rendell concurred. She would have held that petitioners' appeal is foreclosed not by Section 363(m) but by the doctrine of "equitable mootness." Pet.App.77a. The Third Circuit, like every other court of appeals, has recognized that it would be grossly inequitable to disturb reliance interests by unwinding a chapter 11 plan—like BSA's—that has taken effect and been substantially consummated through thousands of transactions.

Petitioners offer no sound basis for this Court's review, which would further delay survivors' long-overdue recoveries. The petition does not identify any court of appeals that would disagree with the Third Circuit's decision below—on either question presented. This Court has often and recently declined to review both questions, neither of which would even be sufficient to reverse the judgment below.

This case, moreover, presents a constellation of unique facts that make it particularly unsuitable for certiorari. The BSA Plan was negotiated, voted on, confirmed, and took effect under then-prevailing precedent before *Harrington* v. *Purdue Pharma L.P*, 603 U.S. 204 (2024), which sharply limits this case's future relevance. Any concern about implementation of *Purdue* can be addressed in a future case where a bankruptcy court applies *Purdue*. And if this Court were interested in addressing either Section 363(m) or equitable mootness, then it should do so in a conventional bankruptcy, not this case of "extraordinary" "complex[ity]." Pet.App.102a-104a.

Finally, and importantly, the equities of the case overwhelmingly favor finality. Granting certiorari now, and subjecting survivors to months (or even years) of additional litigation with the highest stakes, would be a devastating, re-traumatizing blow. The survivor population is aged, and the number of petitioners here is fewer than the number of survivors who have *died* waiting for the closure that will come when petitioners' appeal ends. Granting review would also throw BSA's future into question, risking the loss of a venerable American institution that currently serves hundreds of thousands of families.

This Court previously denied petitioners' request to stay implementation of the BSA Plan. The U.S. Trustee told this Court that this case is materially distinguishable

from *Purdue*. And the Court in *Purdue* expressly left open whether that rule would control a case like this one. The Court should not take up petitioners' splitless questions or force survivors to wait several more months for the Solicitor General's views.

The petition for a writ of certiorari should be denied.

STATEMENT

The bankruptcy court, district court, and court of appeals each rejected petitioners' attempts to destroy BSA and derail survivors' only path to prompt, full, and fair satisfaction of their claims.

A. Statutory background

Congress enacted Section 363(m) because it recognized that, without protection for good-faith purchases of distressed assets, purchasers would be reluctant to transact with debtors in bankruptcy proceedings. See 3 *Collier on Bankruptcy* 363.11 (16th ed. 2025). Section 363(m) thus enables debtors to maximize their estates for the benefit of creditors. *Ibid.*; see *In re Trism, Inc.*, 328 F.3d 1003, 1006 (8th Cir. 2003).

Congress implemented that policy by limiting appellate relief: Section 363(m) prevents an appellate court from "affect[ing] the validity" of "a sale … of [the debtor's] property" if (1) the appeal is from "an authorization under subsection (b) or (c) of this section of a sale"; (2) the sale was made "in good faith, whether or not [the purchaser] knew of the pendency of [an] appeal"; and (3) the sale was not "stayed pending appeal." 11 U.S.C. § 363(m); see *MOAC Mall Holdings LLC* v. *Transform Holdco LLC*, 598 U.S. 288, 291-292 (2023); Pet.App.38a.

Subsection 363(b) authorizes "[t]he trustee, after notice and a hearing, [to] use, sell, or lease, other than in the

ordinary course of business, property of the estate." 11 U.S.C. § 363(b). In a chapter 11 proceeding, the debtor holds "all the rights … and powers … of a trustee." 11 U.S.C. § 1107(a); see *MOAC Mall*, 598 U.S. at 292.

B. BSA's chapter 11 proceeding.

1. For more than a century, BSA has taught young Americans self-sufficiency, love of country, leadership, and civility. See generally Chuck Willis, *Boy Scouts of America: A Centennial History* (2009). Scouting helps parents instill values that develop children into citizens.

BSA is the national organization responsible for designing and maintaining Scouting programs. But most scouts never interact directly with the national organization. Scouting units (*e.g.*, "troops," "packs," or "crews") are locally organized and sponsored by one of tens of thousands of chartered organizations such as religious institutions, schools, or civic associations. Pet.App.414a-419a. Chartered organizations are supported by more than 230 local councils, which BSA authorizes to operate Scouting programs in a geographic area. *Ibid.* Local councils are independent non-profit corporations, each with its own articles of incorporation, bylaws, board, officers, and employees. *Id.* at 414a.

2. BSA commenced its chapter 11 case in February 2020 after changes in state statutes of limitations enabled sexual-abuse survivors to assert historical Scouting-related abuse claims that had previously been time-barred. After spending more than $150 million on settlements and legal fees from 2017 to 2019 alone, BSA determined that it could not address abuse claims case-by-case. BSA sought to use the chapter 11 process to equitably compensate survivors and ensure a future for its charitable work. Pet.App.103a-104a. During BSA's bankruptcy,

82,209 abuse claims were timely filed. More than 80% of abuse allegedly occurred more than 30 years before the bankruptcy filing. Since the late 1980s, BSA has implemented volunteer-screening, supervision, reporting, and other youth-protection policies that meet or exceed the highest industry standards.[2]

3. After two years of mediated negotiations, the bankruptcy court confirmed BSA's reorganization Plan. The Plan resolved an enormously "complex array of overlapping liabilities and insurance rights" and established "the largest sexual abuse compensation fund in [U.S.] history": a Settlement Trust worth multiple billions of dollars. Pet.App.102a. The Trustee was empowered to review abuse claims and compensate survivors once BSA emerged from bankruptcy. *Ibid.*; see *id.* at 457a-470a (explaining survivors' options for compensation). The Plan was funded with nearly all of BSA's assets—hundreds of millions of dollars in cash, artwork, and other valuable properties—plus cash and real property from local councils and some chartered organizations. The Plan also ensures survivors' direct participation in further improvements to BSA's ongoing youth-protection efforts and public recognition of their past abuse. *Id.* at 118a, 475a-480a.

One of the most important parts of the chapter 11 proceeding involved maximizing the value of Scouting-related insurance policies to fund survivors' recoveries. BSA had purchased insurance coverage since 1935; local councils had been named as additional insureds under BSA's policies since 1971; and chartered organizations since 1976. Pet.App.424a-426a. That structure meant that billions of dollars in insurance coverage for Scouting-related abuse claims was shared between BSA, local coun-

[2] https://scouting.org/training/youth-protection/

cils, and chartered organizations. *Ibid.*

Given the overlapping coverage and interrelated liabilities of BSA, local councils, and chartered organizations, monetizing BSA's insurance coverage necessarily required coordination. After intensive negotiations, the bankruptcy court authorized an "Insurance Policy Buyback" whereby the respondent Settling Insurers purchased from BSA the policies they had issued "free and clear of all claims and interests," in exchange for a collective payment of $1.65 billion to the Trust. Pet.App.507a-508a. To ensure that the Settling Insurers would pay maximum value—and that local councils and chartered organizations would surrender their coverage rights—the Plan released BSA, Settling Insurers, local councils, and chartered organizations from liability for Scouting-related abuse and channeled all such claims to the Trust. *Id.* at 507a-508a, 521a-522a. "The undisputed evidence [was] that without the Scouting-Related Releases, the Settling Insurers would not settle their liability" and unlock billions of dollars for survivors. *Id.* at 507a. The Trust also received under the Plan assignment of BSA's, local councils', and chartered organizations' Scouting-related insurance coverage with *non-settling* insurers, which is estimated to be worth at least $4.2 billion. *Id.* at 137a. No perpetrator of abuse is released by the Plan.

The bankruptcy court exhaustively scrutinized the legality and fairness of the Plan, including the Insurance Policy Buyback, in a 22-day trial. Pet.App.49a-50a. The court found that the insurance sale, including the "global resolution" of liability for Scouting-related abuse claims, was the *only* way to equitably compensate survivors and enable Scouting to emerge from bankruptcy. *Id.* at 616a-618a. Controlling precedent at the time supported that structure. *Id.* at 52a n.19. Without it, aging survivors

would have faced a "morass" of insurance-coverage litigation over "countless years." *Id.* at 616a-617a.

4. More than 85% of voting survivors supported the Plan. Pet.App.608a. The bankruptcy court approved it in a 68-page order with a 269-page opinion. The court specifically stated that "[t]he Debtors are hereby authorized and directed to enter into" the Insurance Policy Buyback "pursuant to section[] 363 … of the Bankruptcy Code[,] … free and clear of all … claims [or] interests and rights of any nature." *Id.* at 318a-319a; see 11 U.S.C. § 363(f) (describing conditions for a "free and clear" sale). The court also expressly found that the Settling Insurers were "entitled to the protections of section 363(m) … with respect to such sale." Pet.App.319a-320a. Petitioners did not argue that Section 363(m) would not apply to this sale.

Notably, the bankruptcy court found that the Plan would pay Scouting-related abuse claims *in full*. Two experts testified on the value of abuse claims and "allocation of claims to insurance policies." Pet.App.488a-489a, 498a-499a. Petitioners offered no evidence in rebuttal. *Id.* at 497a-498a. Based on the unrebutted evidence, the court found that, even excluding the insurance coverage from non-settling insurers assigned to the Trust under the Plan, the value of the Trust's assets would be "well over" the estimated value of Scouting-related abuse claims against BSA, local councils, and chartered organizations, and "quite comfortably within the aggregate range" of estimated recoveries. *Id.* at 137a, 504a-505a.

5. Petitioners—75 of the 82,209 abuse-survivor claimants in BSA's chapter 11 proceeding—appealed the confirmation order. The district court affirmed in a 155-page decision. Pet.App.94a-293a. That court agreed that this Plan was the only way to secure the "overwhelming majority of funding" for abuse claims. *Id.* at 178a. And peti-

tioners' "unsubstantiated statements by non-experts" failed to rebut the courts' factual finding that the Plan would "more likely than not" pay survivors in full. *Id.* at 128a-139a.

C. BSA has emerged from bankruptcy and the Trust is compensating survivors.

BSA emerged from bankruptcy when the Plan became effective in April 2023. Pet.App.16a. At that point, myriad transactions under the Plan were consummated. Settling Insurers took title to their policies, paid $200 million into the Trust, and placed more than $1.4 billion in escrow pending completion of appeals. *Id.* at 57a-58a. The escrowed funds will be released immediately if this Court denies the petition for a writ of certiorari. The Trust also took title to various other property including cash, real property, valuable artwork, and billions of dollars of rights under insurance policies whose coverage was not settled. *Id.* at 471a-474a, 597a-599a.

Since emergence, BSA has operated as a reorganized entity. It has delivered Scouting programs to more than one million scouts and accepted hundreds of millions of dollars in membership dues and charitable contributions. BSA has paid millions of dollars in closing costs and interest on new and restructured debt; implemented new bylaws, rules, and regulations and appointed new directors; hired a new Chief Executive Officer; obtained credit; and entered many new contracts and transactions with vendors. App., *infra*, 11a-13a ¶¶ 13, 15.

The Trustee, meanwhile, has been managing Trust assets and administering claims. The Trustee recorded deeds to real property (such as camps) contributed to the Trust, sold dozens of such properties, collected royalty payments, and auctioned dozens of pieces of artwork.

Scouting Settlement Trust Reaches 75% Milestone (Nov. 26, 2025).[3] The Trustee also hired specialized staff to process abuse claims and pursued litigation seeking insurance coverage from non-settling insurers. *Ibid.* Most importantly, the Trust is actively paying survivors: To date the Trustee has determined 49,432 abuse claims (three-quarters of the 64,313 claimants who qualify for potential awards) and distributed $295.5 million to 36,896 survivors. *Ibid.* In reliance on their entitlement to payment from the Trust, thousands of survivors executed releases of their Scouting-related abuse claims. *Ibid.*

D. Courts, including this Court, have repeatedly declined to stay the Plan.

Petitioners have repeatedly sought to stay the BSA Plan. *Every court* found a stay unwarranted. *In re Boy Scouts of America & Del. BSA, LLC*, No. 20-10343, 2023 WL 2891519 (D. Del. Apr. 11, 2023); 2023 WL 6442586 (D. Del. Oct. 3, 2023); *In re Boy Scouts of America & Del. BSA, LLC*, No. 23-1664 (3d Cir. 2023), Dkts. 27, 88, 141.

In December 2023, this Court heard oral argument in *Purdue* concerning whether the Bankruptcy Code permits nonconsensual third-party releases. This Court later held that the Code typically does not. 603 U.S. 204. Before that decision, petitioners applied to this Court to stay the BSA Plan. No. 23A741 (Feb. 5, 2024). This Court denied the application. 144 S.Ct. 883 (2024).

This Court in *Purdue* explained that, "important[ly]," it did not "have occasion … [to] pass upon a plan"—like BSA's—"that provides for the full satisfaction of claims against a third-party nondebtor." 603 U.S. at 226. And *Purdue* "[did] not address whether [the Court's] reading

[3] https://www.scoutingsettlementtrust.com/s/

of the bankruptcy code would justify unwinding reorganization plans"—like BSA's—"that have already become effective and been substantially consummated." *Ibid.*

E. The Third Circuit dismissed petitioners' appeals under 11 U.S.C. § 363(m).

Petitioners appealed and urged the court of appeals "to reverse the Confirmation Order and vacate the Plan in its entirety." Pet.App.16a. The court dismissed petitioners' appeal as "preclude[d]" by Section 363(m), which is "a constraint ... on [the court's] capacity to fashion relief" where: (1) "the appeal is from an authorization of a sale" of the debtor's assets; (2) "the purchase was made in good faith"; and (3) "the sale was not stayed." *Id.* at 17a, 32a (citation omitted). Petitioners' attack on the Plan satisfied all three. Their proposed relief would invalidate—or undermine the integral terms of the bargain for—a bankruptcy-court authorized, unstayed sale of the debtor's assets (the Insurance Policy Buyback) to good-faith purchasers (the Settling Insurers). *Id.* at 37a, 43a.[4]

Judge Rendell concurred in the result. Pet.App.78a-91a. She disagreed that Section 363(m) applies to asset sales approved through reorganization plans. But she explained that the law of every circuit precludes fatally scrambling a plan like BSA's that has been substantially consummated, in recognition of the inequity of disturbing reliance interests in transactions completed pursuant to an effective plan. *Id.* at 77a & nn.1-2. Judge Rendell

[4] By contrast, the court of appeals held that Section 363(m) did not preclude a request by separate appellants for "minor modifications" to the Plan regarding Settlement Trust administration. Pet.App.35a-36a. "[N]one" of those changes threatened to "disrupt[] the funding to the Settlement Trust or the bargain struck between BSA and the Settling Insurers." *Id.* at 62a.

observed that this doctrine of "[e]quitable mootness "is firmly rooted in our precedent," and "if ever there were a case crying out for application of the doctrine, this is it." *Id.* at 77a & n.1.

REASONS FOR DENYING THE PETITION

This case does not remotely warrant certiorari. And respectfully, the Court should deny the petition promptly, lest more survivors die waiting for compensation.

I. The decision below does not implicate any disagreement among the courts of appeals.

A. The circuit courts agree that Section 363(m) precludes petitioners' requested relief.

Section 363(m) limits the relief that an appellate court can provide on appeal of a confirmed bankruptcy plan. See *MOAC Mall*, 598 U.S. at 299 ("Sometimes, the [appellate] court's exercise of power may not accomplish all the appellant wishes …."). Petitioners concede (Pet.20-24) that most other courts of appeals would agree with the Third Circuit and reject their arguments.

Petitioners attempt to manufacture three circuit splits. None is genuine. Petitioners do not identify any other court of appeals that would have accepted their request to belatedly overturn the Insurance Policy Buyback or invalidate the releases that were an integral term of that sale.

1. Plan Sales. The Fifth and Sixth Circuits agree with the Third that Section 363(m) applies to sales authorized by a plan confirmation order. See *In re Made in Detroit, Inc.*, 414 F.3d 576, 582-583 (6th Cir. 2005);[5] *In re Field-*

[5] Petitioners' attempt (Pet.21) to claim daylight between the Third and Sixth Circuits is meritless. The Third Circuit held that Section 363(m) applies because (1) the Confirmation Order "authorized"

wood Energy LLC, 93 F.4th 817, 824 (5th Cir. 2024).[6]

Petitioners assert (Pet.20) that the Eleventh Circuit held in *Miami Center Limited Partnership* v. *Bank of New York*, 838 F.2d 1547 (1988), that it will not apply Section 363(m) when reviewing plans of reorganization. What *Miami Center* actually said is that "Section 363(m) does not apply where the debtor's assets have been sold … *by a liquidating trustee* pursuant to a *plan of liquidation*." *Id.* at 1553 (emphases added). This case involves a reorganization-plan sale—not a liquidation sale.

Regardless, the Eleventh Circuit's single-sentence statement about liquidation plans was dicta. "[A]ll parties agree[d]" in *Miami Center* that Section 363(m) was inapplicable, so its scope was not before the court. 838 F.2d at 1553. The standard for certiorari is "a real or intolerable conflict on the same matter of law or fact, not merely an inconsistency in dicta[.]" *Supreme Court Practice* 4-10 (11th ed. 2019) (cleaned up).

Moreover, *Miami Center* ultimately *upheld* the challenged sale for reasons very similar to those given by the Third Circuit here. The Eleventh Circuit explained that it, "like other circuits, has recognized the continuing viability and applicability of the mootness standard in situa-

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the sale under § 363(b); (2) Settling Insurers were good-faith purchasers; and (3) the sale was not stayed. Pet.App.37a-39a. That is fully consistent with *Made in Detroit*, where the Sixth Circuit dismissed the appeal because (1) "the Property was sold pursuant to the Committee's Plan"; (2) the purchaser was "a good-faith purchaser"; and (3) "Appellants were denied a stay pending appeal." 414 F.3d at 581.

[6] The Fifth Circuit decision cited by the concurrence below (Pet.App.81a) and the Wedoff amici (Br.23-24 n.47) "decline[d] … to rule on" whether Section 363(m) applies "to the sale of property pursuant to a plan of reorganization." *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1165 (5th Cir. 1988).

tions other than transfers by a trustee under § 363(b) or (c)." *Miami Center*, 838 F.2d at 1553. The court dismissed the appeal because the property at issue had been sold to a good-faith purchaser and the requested relief—for the property to be "revalued at a higher figure and the sale price adjusted accordingly"—would "strike at the sale." *Id.* at 1555-1556; see *id.* at 1558. While the Eleventh Circuit did not base its holding on Section 363(m), it came to the same conclusion as the Third Circuit here: an appellate court cannot disrupt the terms of a bargained-for sale.

2. Terms of Sale. The First, Fifth, and Eighth Circuits agree with the Third that Section 363(m) bars any appellate remedy that would invalidate a term integral to an un-stayed sale. See *In re Stadium Mgmt. Corp.*, 895 F.2d 845, 848-849 (1st Cir. 1990) (rejecting appellants' request to undo sublease assignment that had been "integral" to sale of debtor's real property); *In re Trism, Inc.*, 328 F.3d 1003, 1005-1008 (8th Cir. 2003) (refusing to disturb "integral" release term that had been specifically negotiated); *In re Sneed Shipbuilding, Inc.*, 916 F.3d 405, 407-410 (5th Cir. 2019) (rejecting appellate challenge to distribution that had been "non-severable and mutually dependent" to sale of debtor's asset with clear title).[7]

Petitioners contend (Pet.21-23) that the Seventh and D.C. Circuits hold that Section 363(m) does not preclude appeals over "what shall be done with the proceeds of a sale." *Trinity 83 Dev., LLC* v. *ColFin Midwest Funding,*

[7] The Second Circuit too endorsed the "integral to the sale" approach to Section 363(m) in *In re WestPoint Stevens, Inc.*, 600 F.3d 231, 249-250 (2010). See Pet.22. But the Second Circuit further held that it "lack[ed] jurisdiction to review the Sale Order," *id.* at 248, before this Court corrected that misunderstanding of § 363(m) in *MOAC Mall*, 598 U.S. at 299-301.

LLC, 917 F.3d 599, 602-603 (7th Cir. 2019) (Section 363(m) does not preclude "judicial control over … the money generated by a sale"); see *In re Hope 7 Monroe St. Ltd. P'ship*, 743 F.3d 867, 872-873 (D.C. Cir. 2014). It is unclear why petitioners think those holdings are relevant here. Petitioners did not ask the Third Circuit to do anything different with the sale proceeds from the Insurance Policy Buyback; they urged "vacat[ing] the Plan in its entirety." Pet.App.37a. Neither *Trinity* nor *Hope 7* addressed any similar request.

In fact, the Seventh and D.C. Circuits agree with the Third (and the others): terms that are "integral" to an authorized sale may *not* be disturbed on appeal per Section 363(m), unlike other issues that are subject to appellate review. In *Trinity*, the debtor appealed to recover proceeds from a property that the bankruptcy court had ordered sold. 917 F.3d at 601-603. The Seventh Circuit held that Section 363(m) did not bar that argument, distinguishing challenges "to the sale itself" (like petitioners' here) from disputes over "who was entitled to the proceeds" (as in *Trinity*). *Id.* at 602.

Hope 7 is similar. The appellant did *not* seek to reopen the bankruptcy court's sale of the estate's asset (an interest in a lawsuit); the appellant instead asked the court of appeals to reverse orders approving a creditor's proof of claim and directing distribution of proceeds to satisfy that claim. 743 F.3d at 872. The D.C. Circuit observed that Section 363(m) does not extend to claimants receiving distributions "the same protections it gives to a good faith purchaser of the estate's property." *Id.* at 873. That holding has no application here.

3. Sale Consummation. Petitioners claim a third split (Pet.23-24) over whether a sale must be consummated to qualify for Section 363(m) protection. But the premise of

petitioners' argument—that the Insurance Policy Buyback has not been completed—is wrong for reasons the court of appeals explained. Pet.App.37a. Settling Insurers took the insurance policies free and clear on the Plan's effective date, and in exchange they "transferred" $1.65 billion as the Bankruptcy Code defines that term. *Id.* at 57a-60a (citing 11 U.S.C. § 101(54)(D)); see *id.* at 316a ("the Abuse Insurance Policies shall be sold by the Debtors to the applicable Settling Insurance Companies … on the Effective Date").

The fact that some sale proceeds are currently in escrow, to be released if certiorari is denied, does not mean the *sale* was not consummated when the insurers took title to the policies. See, *e.g.*, *Osmar Sylvania, Inc.* v. *SLI, Inc.*, No. 03-cv-729, 2004 WL 2346021, at *2 (D. Del. Oct. 5, 2004), *aff'd*, *In re SLI, Inc.*, No. 04-4231, 2006 U.S. App. LEXIS 5188, at *6 (3d Cir. Mar 1, 2006); see also *In re Cont'l Airlines*, 91 F.3d 553, 561 (3d Cir. 1996) (finding plan substantially consummated where "all elements of the Plan, except distributions to the unsecured creditors, had been completed"); 11 U.S.C. § 1101(2) (defining "substantial consummation" to include "transfer of all or substantially all of the property proposed by the plan to be transferred," and requiring only "commencement of distribution under the plan"). The Third Circuit's fact-bound determination that this sale was completed does not warrant this Court's review. S. Ct. R. 10.

In any event, petitioners have shown no disagreement with the Third Circuit's observation that the text of "§ 363(m) speaks in terms of *unstayed authorizations* under § 363(b)—it does not include an inchoate requirement that a § 363(b) sale be consummated or otherwise effectuated." Pet.App.38a. Petitioners say that *In re Paige*, 685 F.3d 1160 (10th Cir. 2012), held that Sec-

tion 363(m) does not bar "review of a sale order conditioned on" judicial review. But *Paige* is very different from this case: The sale there *was* consummated when the purchasers agreed to take only a *contingent* interest in whatever ownership the debtor might have held in a disputed domain name, with that dispute yet to be resolved and with the sale price reflecting that uncertainty. 685 F.3d at 1165, 1168. It was on those unusual facts—which have no resemblance to this case—that the Tenth Circuit held the purchaser had "accepted the risk" that the Trustee might fail to establish the domain name's ownership on appeal. *Id.* at 1191.

Petitioners also invoke the Fifth Circuit's decision in *Fieldwood*, but that case held that Section 363(m) *did* preclude the appellants' challenge. 93 F.4th at 821. The court distinguished (*id.* at 824-825) an earlier precedent, *In re Energytec, Inc.*, 739 F.3d 215, 220 (5th Cir. 2013), where the sale was not "free and clear"—unlike the sales in *Fieldwood* and this case—but rather had been approved by the bankruptcy court subject to a creditor's unresolved claims to the property. *Id.* at 220-222. "*Energytec* is confined to situations in which a bankruptcy court specifically reserved an issue for later determination." *Fieldwood*, 93 F.4th at 824. That principle has no relevance here: Settling Insurers bought the policies from BSA "free and clear of all claims." Pet.App.20a. In this circumstance, the Fifth Circuit agrees with the Third that an appellate court may not disturb any term integral to that sale.

B. Every court of appeals would deny petitioners' requested remedy on equitable grounds.

On the second question presented, petitioners admit (Pet.25) that they ask this Court to overturn "[e]ach circuit['s] unanimous "adopt[ion]" of the equitable-mootness doctrine for "the last 40 years." 7 *Collier* 1129.09(3)(a).

This Court is not accustomed to doing so. And while petitioners claim (Pet.25) that some courts disagree at the margins of equitable mootness, they do not argue that any court would accept their appeal here. "If ever there were a case crying out for application of the doctrine, this is it." Pet.App.77a.

Though petitioners belittle the equitable-mootness doctrine as made up, it is standard practice for an appellate court, when considering a requested equitable remedy like vacating a bankruptcy plan, to take account of the balance of equities and the public interest. See *In re Tribune Media Co.*, 799 F.3d 272, 287 (3d Cir. 2015) (Ambro, J., concurring); *see also In re Envirodyne Indus., Inc.*, 29 F.3d 301, 304 (7th Cir. 1994) (equitable mootness "is perhaps best described as merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties"). And while petitioners observe (Pet.25-26) that some judges have criticized equitable mootness, others have explained why the consensus position is consistent with the Constitution and the Bankruptcy Code, as well as necessary to Congress's policy to achieve successful reorganizations. See, *e.g.*, *Tribune*, 799 F.3d at 284-290 (Ambro, J., concurring); *id.* at 279-280 (majority op.).

Unlike *In re Serta Simmons Bedding*, 125 F.4th 555 (5th Cir. 2024) (cited at Pet.26), where the Fifth Circuit found no justifiable reliance interests, *id.* at 588, this case involves scores of them. BSA's artwork and local councils' camp properties have been sold; hundreds of millions of dollars in Scouting dues and donations have been collected for reorganized BSA; new contracts have been entered; and innumerable other transactions have been completed—all in reliance on the Plan having become effective. Most important: the Trust so far has distributed

$295.5 million to nearly 37,000 claimants, many of whom have waited decades for compensation and closure. Attempting to unwind those many thousands of transactions now—more than two-and-a-half years after BSA emerged from bankruptcy—would be both impossible and unprecedented.

II. This case would be an extraordinarily bad candidate for further review.

This petition arises from a case that is unquestionably unique, in desperate need of prompt final resolution, and the outcome of which would not change regardless of the answers to the multiple questions presented. Granting certiorari would be both a mess for this Court and a devastating blow to survivors promised closure years ago.

A. Petitioners raise two questions that this Court has repeatedly rejected, neither of which is outcome-determinative.

As petitioners acknowledge (Pet.26), it would not make sense to review the Third Circuit's Section 363(m) holding without also taking up equitable mootness. Judge Rendell explained why, if the court of appeals had occasion to consider equitable mootness, petitioners' appeal would be barred under circuit precedent. Pet.App.77a n.1. That is supported by the panel majority's finding that the Plan has been substantially consummated for purposes of equitable mootness when analyzing the separate appeals of other parties. *Id.* at 56a-61a.

Granting the petition would thus require this Court to review two different threshold bases to dismiss petitioners' appeals. And even getting past both those issues would still leave the merits question whether the BSA Plan was valid given its provision for full satisfaction of all

claims. See Part II.D, *infra*. That independent ground would also support the judgment below.

This Court has often and recently denied petitions raising Section 363(m) issues. *SR Constr., Inc.* v. *RE Palm Springs II, LLC*, 144 S.Ct. 327 (2023); *SB Bldg. Assocs. Ltd. P'ship* v. *Atkinson*, 142 S.Ct. 1674 (2022); *Li* v. *J.C. Penney Co.*, 141 S.Ct. 2570 (2021); *KK-PB Fin., LLC* v. *160 Royal Palm, LLC*, 141 S.Ct. 553 (2020); *Bennett* v. *Jefferson County*, 586 U.S. 1209 (2019); *White* v. *Corcoran*, 583 U.S. 1056 (2018); *National Chem Holdings, LLC* v. *New Energy Corp.*, 574 U.S. 818 (2014); *ANR Co.* v. *Jubber*, 573 U.S. 917 (2014); *Sears* v. *Badami*, 572 U.S. 1117 (2014); *Parker* v. *Motors Liquidation Co.*, 565 U.S. 1113 (2012).

This Court has denied every request to review equitable mootness for the past *four decades*. *U.S. Bank Nat'l Ass'n* v. *Windstream Holdings, Inc.*, 144 S.Ct. 71 (2023); *KK-PB Fin., LLC* v. *160 Royal Palm, LLC*, 142 S.Ct. 2778 (2022); *Hargreaves* v. *Nuverra Env't Sols., Inc.*, 142 S.Ct. 337 (2021); *Tuttle* v. *Allied Nev. Gold Corp.*, 586 U.S. 1000 (2018); *Beeman* v. *BGI Creditor's Liquidating Tr.*, 577 U.S. 827 (2015); *Mitrano* v. *Tyler*, 134 S.Ct. 2679 (2014); *Law Debenture Tr. Co. of N.Y.* v. *Charter Commc'ns, Inc.*, 569 U.S. 968 (2013); *Mitrano* v. *JPMorgan Chase Bank, N.A.*, 571 U.S. 983 (2013); *Spencer Ad Hoc Equity Comm.* v. *Idearc, Inc.*, 565 U.S. 1203 (2012); *Prime Healthcare Servs. L.A., LLC* v. *Brotman Med. Ctr., Inc.*, 565 U.S. 1156 (2012); *Parker* v. *Motors Liquidation Co.*, 565 U.S. 1113 (2012); *Ad Hoc Comm. of Kenton Cnty. Bondholders* v. *Delta Air Lines, Inc.*, 558 U.S. 1007 (2009); *Ivaldy* v. *Loral Space & Commc'ns Ltd.*, 555 U.S. 1126 (2009); *Official Comm. of Unsecured Creditors* v. *Adelphia Commc'ns Corp.*, 552 U.S. 941 (2007); *Hayes* v. *Genesis Health Ventures, Inc.*, 550 U.S. 935 (2007); *Hayes* v. *Gen-*

esis Health Ventures, Inc., 545 U.S. 1129 (2005); *Armstrong* v. *Segal*, 543 U.S. 1050 (2005); *U.S. Rest. Props., Inc.* v. *Convenience USA, Inc.*, 541 U.S. 1044 (2004); *Nationwide Mut. Ins. Co.* v. *Berryman Prods., Inc.*, 528 U.S. 1158 (2000); *Shelton* v. *Rosbottom*, 528 U.S. 869 (1999); *Bank of N.Y.* v. *Cont'l Airlines, Inc.*, 519 U.S. 1057 (1997); *Manges* v. *Seattle-First Nat'l Bank*, 513 U.S. 1152 (1995); *UNARCO Bloomington Factory Workers* v. *UNR Indus., Inc.*, 513 U.S. 999 (1994); *Hamilton Taft & Co.* v. *Federal Express Corp.*, 509 U.S. 905 (1993); *Miami Ctr. Ltd. P'ship* v. *Bank of N.Y.*, 488 U.S. 823 (1988).

Neither question is more worthy of review now than every other time this Court declined them.

B. This case arises from a highly unusual record that almost certainly will never recur.

Petitioners attempt to raise the questions presented in a mass-tort case that the bankruptcy court observed is "extraordinary … by any measure." Pet.App.103a. The exceptional record here—unlikely to ever recur—would frustrate this Court's review, and it severely undermines petitioners' assertion (Pet.27) that this case has "national importance."

1. Both questions presented have serious vehicle problems.

a. Section 363(m). Petitioners did not contest the bankruptcy court's finding that "the protections of section 363(m)" would apply to the Insurance Policy Buyback (Pet.App.319a-320a), with anything like the arguments they now raise. The transacting parties relied on the bankruptcy court's finding on that point. Petitioners' forfeiture alone warrants denying the petition.

Moreover, this case includes atypical facts with implications for Section 363(m). While petitioners contend

(Pet.31-32) that the Insurance Policy Buyback was not conducted pursuant to Section 363(b), the record is unusually clear on that point. Survivors voted to support the Plan knowing that it "constitute[d] a motion by the Debtors" to approve the "sale of the applicable Insurance Policies … pursuant to section[] 363." *Boy Scouts*, No. 20-10343, Dkt. 10296 at 93 (Bankr. D. Del. Sept. 6, 2022). The Confirmation Order then "authorized" BSA to "enter into [the Buyback]" "pursuant to section[] 363." Pet.App. 318a-320a. The bankruptcy court further determined that the sale was permissible under Section 363(f), which is a prerequisite for selling assets free and clear under Section 363(b). *Id.* at 319a-320a.

Those facts would complicate this Court's review of petitioners' argument that Section 363(m) does not apply to sales approved in a plan of reorganization. Even if it were necessary to request approval of a Section 363(b) sale for Section 363(m) to apply, the Insurance Policy Buyback would qualify by virtue of BSA's motion and the bankruptcy court's exhaustive Section 363 analysis.

Moreover, the Insurance Policy Buyback was not a typical Section 363(b) sale. The bankruptcy court found that, given the exceptionally complex facts here—interlocking affiliations, shared liability for abuse claims, and overlapping insurance coverage—the Insurance Policy Buyback, including the releases required by the terms of that sale, was "critical to … unlocking BSA's insurance for the benefit of" survivors. Pet.App.119a. This Court's need to engage with those extreme facts in a mass-tort action could constrain its ability to analyze how Section 363(m) applies in more typical commercial bankruptcies.

b. Equitable mootness. This case also presents an especially unsuitable record for attempting to review equitable mootness. Petitioners have not identified a sin-

gle case in the history of the Bankruptcy Code, and respondents can locate none, where a court attempted to invalidate or significantly alter the terms of an effective chapter 11 plan more than two-and-a-half years after the debtor emerged from bankruptcy. Petitioners rely on *Purdue*, but that case involved a plan that was stayed before it became effective, and thus before any party relied on it.

Rejecting equitable mootness in this case would raise a litany of extraordinarily difficult questions, including: What happens to the survivors who signed releases of their claims in exchange for payment from the Trust? What is to be done with the proceeds from the dozens of artworks and 40 real properties sold by the Trustee? How would a reversal affect creditors paid under the Plan? Would BSA remain discharged from those creditors' claims? What about the hundreds of millions in dues and donations collected after BSA's emergence? Would BSA's new board and management continue to have authority to direct BSA's affairs? What happens to BSA's restructured debt and the payments on it?

Petitioners have no answers, because no court before this one has grappled with similar questions.

2. Petitioners' asserted problems are decidedly unlikely to come to pass.

The petition argues that certiorari is necessary to prevent Section 363(m) from being used to "'end run' *Purdue*'s holding." Pet.27 (citation omitted). That grossly misdescribes the "unusual" procedural history of this case. Pet.App.52a n.19. The bankruptcy court approved the BSA Plan's releases at a time when circuit precedent supported them; the Plan was made contingent on appellate review by the Article III district court; the Plan

became effective before *Purdue*; and it was consummated notwithstanding petitioners' appeal because every court (including this Court) declined to stay it. See *ibid.*

Petitioners' concerns about future parties using Section 363(m) to evade *Purdue* are unfounded. Subsection 363(b) sales require "notice and a hearing," 11 U.S.C. § 363(b)(1), and Section 363(m) itself protects only sales in good faith. Any future court considering whether to authorize a sale will account for *Purdue* and prevent the "mischief" petitioners fear (Pet.18). See Pet.App.47a-48a ("[W]e are confident that bankruptcy and district court judges—and ultimately [circuit courts]—are eminently capable of policing the bounds of § 363(b) sales and seeing cleverly disguised transactions for what they are.").

Petitioners offer no genuine evidence that any court since *Purdue* has failed to faithfully apply it. *In re Hopeman Bros.*, 667 B.R. 101, 109 (Bankr. E.D. Va. 2025) (cited at Pet.7) did not involve nonconsensual third-party releases. It instead involved a straightforward § 363 sale of estate assets (insurance policies), and the court held that creditors could not pursue the purchasers for coverage that the debtor no longer owned. *Id.* at 104.

In re Miracle Restaurant Group., LLC, No. 24-11158, 2025 WL 1400915 (Bankr. E.D. La. May 13, 2025) (cited at Pet.7), merely approved "*temporary* injunction[s] of non-debtor actions" in "*unusual circumstances*." *Id.* at *7-8 (emphasis added). The court in that case barred creditors from trying to collect against parties in unity of interest with the debtor on the same claims for which those creditors were being paid under the plan. *Id.* at *9-10.

Petitioners' dire predictions are further undermined by the Third Circuit's emphasis on "the narrowness" of its holding. Pet.App.45a. Section 363(m) does not "immunize

from appellate review all facets of a plan whenever a § 363(b) sale is involved." *Ibid.* Indeed, Section 363(m) does not preclude review for the "vast majority" of appellants who do not seek to disturb an unstayed sale, *ibid.*, as proven by the Third Circuit's willingness to grant relief here to other appellants who did not seek to do that, *see* p. 13 n.4, *supra*. Petitioners' appeal failed because, in this particular case, they did not propose any remedy permitted by the Bankruptcy Code.

C. Further review at this late stage would be grossly inequitable.

1. Petitioners are set to be paid by the Plan on the same terms as other survivors. Yet they seek to block all payments to survivors under the Plan, based on hope of greater recovery for themselves through a race to the courthouse. There is no scenario where a "better deal" for survivors could materialize if this case were remanded. BSA emerged from bankruptcy with over $400 million in restructured debt, and all Scouting-related insurance policies have been either sold for maximum value or else transferred to the trust. BSA could not reconstruct a new global settlement that would pay survivors anything approaching the Trust distributions.

Granting further review would only cause extraordinary harm to the tens of thousands of non-appealing claimants. Nearly 50% of the 82,209 claimants are over 60 years old, and hundreds have died during petitioners' appeal without receiving compensation or closure. Survivors' Br. in Opp. 20. Many survivors have described the claims process as grueling; some have tragically committed suicide while preparing their claims. *Id.* at 19-20. Granting certiorari now and throwing the whole Plan into doubt—after coming so close to a resolution—would be a devastating re-traumatization.

For that exceptional reason, this Court should exercise its discretion *not* to call for the views of the Solicitor General on the petition. *Contra* Pet.30. A CVSG would further delay survivors' payments by multiple months at minimum. When the U.S. Trustee's counsel was asked at argument what "ramifications" the ruling in *Purdue* would have on pending cases, the Deputy Solicitor General replied that a "final and nonappealable" bankruptcy plan such as for "the Boy Scouts" should "stick[]" even if the Court rejected nonconsensual third-party releases. Oral Arg. Tr.53:12-54:4, *Purdue*, No. 23-124 (2023).

Granting certiorari would also require this Court to consider never-before-seen appellate remedies. On petitioners' view of this case, the Trustee's distribution of $295.5 million to nearly 37,000 claimants was funded by the ill-gotten gains of illegal releases. Do petitioners really expect the Trustee to demand that abuse survivors return those funds while some new plan is negotiated? If not, claimants would end up by no fault of their own in two tiers: (1) Those who received claim determinations and payments under this full-payment Plan, and (2) those whose claims would be determined in the future, which almost certainly will provide survivors with "virtually no recovery." Pet.App.177a. The Plan was crafted precisely to avoid that kind of disparate treatment.

Finally, fatally scrambling the Plan now could risk the loss of a venerable American institution. "So deep and profound has been the impact of Scouting on [modern] American life … that it is hard to imagine the United States without Boy Scouts." Malone, *Four Percent* 6. Granting certiorari could call Scouting's future into serious question for donors and families, risking catastrophe and depriving the rising generation of the chance to learn

and live the Scout Oath and Law. The Plan is what makes it possible for that vital work to continue.

D. This case is not like *Purdue*.

Petitioners contend throughout (*e.g.*, Pet.2) that this Court should prevent "eva[sion]" of *Purdue*. But this case is materially different for multiple reasons. As *Purdue* explained, "[a]s important as the question[s]" the Court decided there are the "ones [it] d[id] not." 603 U.S. at 226.

Purdue expressly left open whether its "reading of the bankruptcy code" to generally prohibit nonconsensual third-party releases would apply to "a plan," like BSA's, "that provides for the full satisfaction of claims against a third-party nondebtor." 603 U.S. at 226. While petitioners (Pet. 16 & n.12) and the Joy amici (Br.5-10) now attempt to deny that survivors will receive full payment, their assertions do not clearly undermine the bankruptcy court's factual finding, based on unrebutted expert testimony, that the value of the Trust's assets—which has not changed since confirmation—will fully compensate all claimants in light of historical settlement values and litigation outcomes. Pet.App.503a-506a; see *id.* at 139a (district court finding "no clear error" in bankruptcy court's "finding" of "likely" "payment in full").

Notably, neither petitioners nor amici argue that survivors will receive fewer dollars from the Trust than survivors expected when they voted overwhelmingly to accept the Plan. At bottom, the complaint of petitioners and amici is that the Trust's assets are insufficient to fund payments that far exceed the claim values promised under the Plan, which was designed to replicate abuse-claim values that comport with BSA's settlement history in the tort system. Any post-trial and post-emergence statements about the administration of the Trust are outside the rec-

ord, devoid of context, and facially inconsistent with the unrebutted evidence that was thoroughly examined below and that proved the Trust capable of fully satisfying Scouting-related abuse claims.

This Court in *Purdue* also specifically reserved whether its holding "would justify unwinding reorganization plans that have already become effective and been substantially consummated." 603 U.S. at 226. BSA described those important distinctions when petitioners asked this Court to stay the BSA Plan while it deliberated *Purdue*. This Court denied that request following the *Purdue* oral argument and conference vote. In the two-and-a-half years since, the Plan has only become further consummated, and parties' reliance on it has further deepened. There is even less reason to take up the Plan now.

III. The decision below is correct.

A. Section 363(m) limits appellate relief to encourage purchasers to transact with chapter 11 debtors, thereby facilitating debtors' ability to maximize their estates for creditors' benefit. 3 *Collier* 363.11. An appellate court may not "affect the validity" of "a sale or lease of [the debtor's] property" if (1) the appeal is from "an authorization under subsection (b) or (c) of this section of a sale"; (2) the purchase was made "in good faith"; and (3) the sale was not "stayed pending appeal." 11 U.S.C. § 363(m).

Each Section 363(m) requirement was satisfied here. Petitioners appealed the Confirmation Order, which expressly "authorized" the sale of BSA's insurance policies "free and clear of all … claims … pursuant to section[] 363," Pet.App.316a, specifically "Section 363(b)," *id.* at 522a-523a. The other two requirements are not even contested. The petition does not dispute the lower courts' finding that "[t]he Settling Insurance Companies are each

good faith purchasers for value within the meaning of section 363(m)." Pet.App.312a; see *id.* at 40a-41a (court of appeals "agree[ing] with that determination"). And as discussed (pp. 12-13, *supra*), every court declined to stay the Insurance Policy Buyback. That petitioners unsuccessfully *requested* a stay is insufficient. See *Fieldwood*, 93 F.4th at 824. The consequence of those stay denials was apparent from the Confirmation Order's holding that "the protections of section 363(m)" would apply to the Insurance Policy Buyback. Pet.App.320a.

Because Section 363(m)'s conditions are met, the court of appeals could not "affect the validity of" the Insurance Policy Buyback. 11 U.S.C. § 363(m). Yet petitioners asked that court to invalidate the Plan—including the Insurance Policy Buyback—in its entirety. Pet.App.37a. That is "the very result § 363(m) prohibits." *Ibid.* Nor was it possible to "excis[e] the [Plan's] release provision," contra Wedoff.Amici.25, because "the releases form a portion of the consideration for the Insurance Policy Buyback," Pet.App.42a. If the releases were invalidated on appeal, then "the Settling Insurers would receive less than they bargained for" and would have paid an inflated price for a considerably less valuable asset. *Ibid.* Section 363(m) prohibited petitioners' attempt to "fundamentally undermine [the] bargain." *Id.* at 43a.

B. Petitioners' and Amici's attacks on the court of appeals' holding lack merit.

1. Petitioners embrace (Pet.31) Judge Rendell's position that debtor-asset "sales accomplished under plans do not fall within §363(m)'s ambit." But the statutory text offers protection when the appeal is from "an" order "authoriz[ing]" a "subsection (b)" sale—that is, the sale of estate property after notice and a hearing. 11 U.S.C. § 363(b), (m). Nothing in subsection (b) (or anywhere else)

suggests that the "authorization" for a sale cannot be provided in a confirmation order.

Petitioners observe that other Code provisions enumerate differences between plan sales and sales outside a plan. Pet.32 (citing 11 U.S.C. 1145(a)(1) and (3)). That only *reinforces* the Third Circuit's holding; Congress chose not to draw any similar distinction in Sections 363(b) or (m). See *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 698 (2022) ("[O]ur usual presumption [is] that differences in language … convey differences in meaning."). Similarly irrelevant (Pet.31; Wedoff.Amici.21-22) is the permission in Section 363(*l*) for sales under both subsections (b) or (c) and chapter 11 plans to preempt so-called "ipso facto" provisions that are generally unenforceable in bankruptcy. Section 363(*l*) shows that sales can occur either under subsection (b) or (c) alone, *or* through a plan that authorizes a sale consistent with subsection (b). Section 363(*l*) nowhere says or suggests that a plan cannot authorize a sale under subsection (b)—as here.

2. Petitioners next argue (Pet.32-33) that the "release[s]" in the Plan can be eliminated just for them. That request was a non-starter even without Section 363(m): the Code prohibits disparate treatment of petitioners and similar claimants. 11 U.S.C. § 1123(a)(4) ("[A] plan shall … provide the same treatment for each claim or interest of a particular class ….").

Moreover, petitioners ignore the court of appeals' explanation that the Plan's releases were part of the consideration for the Insurance Policy Buyback. Pet.App.119a. Only releases from Scouting-related abuse claims could have induced local councils and chartered organizations to surrender their coverage rights. And only the ability to buy back the insurance policies "free and clear" of local councils' and chartered organizations' interests could

have induced the Settling Insurers to pay full value for the policies. *Ibid.* Just as Section 363(m) would bar an appellate court from changing the purchase price of a sold asset, it does not permit an order to belatedly "excise" the bargained-for releases that were an integral term of these unstayed insurance sales.

3. The Wedoff amici assert (Br.10, 28-20) that the Plan used Section 363 to "circumvent the Code's procedural safeguards" and "bypass[] the requirements for plan confirmation" in 11 U.S.C. § 1129. And the Joy amici assert generally (Br.10-13) that the Plan was a bad deal for survivors—notwithstanding that 95% of Joy-represented voting survivors cast their ballots to accept the Plan.

Those arguments are meritless. The bankruptcy court, district court, and court of appeals all comprehensively examined whether all aspects of the Plan—including the Insurance Policy Buyback—satisfied the stringent requirements of Section 1129. Any suggestion that the Insurance Policy Buyback received less scrutiny because it was approved by the Plan is refuted by the Code: As the Third Circuit observed, "[t]o approve a sale under § 363(b), courts require only that the debtor exact its sound business judgment in good faith," whereas to confirm a plan, "the debtor must carry its burden of satisfying § 1129(a)'s sixteen statutory requirements" and secure a majority vote of creditors. Pet.App.50a n.18. The Insurance Policy Buyback was thus subject to *greater* scrutiny under a *more exacting* standard than would apply to a sale outside a plan. *Ibid.*

4. Finally, Petitioners (Pet.32-33) and the Wedoff amici (Br.11-18) argue that the Plan's releases were later found impermissible in *Purdue*. They are wrong about that for the reasons explained in Part II.D, *supra*. But

regardless, petitioners' argument disregards Congress's "policy of … finality" that is a core reason for Section 363(m). Pet.App.33a. Congress determined that legal rulings subsequent to authorized, unstayed asset sales in bankruptcy *should not* disrupt those sales.

The Insurance Policy Buyback was the central transaction that funded most of the multi-billion-dollar Settlement Trust for survivors. Congress's interest in the finality of that long-since-consummated transaction—and survivors' deep and pressing reliance interest in promptly receiving what was promised to them—both strongly support the Third Circuit's holding.

CONCLUSION

The petition for a writ of certiorari should be denied.

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December 4, 2025

APPENDIX

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11 U.S.C. § 363
Use, sale, or lease of property

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use

property of the estate in the ordinary course of business without notice or a hearing.

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(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the

aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

***

(l) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or

gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

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36 U.S.C. § 30901
Organization

(a) Federal charter.--Boy Scouts of America (in this chapter, the "corporation") is a body corporate and politic of the District of Columbia.

(b) Domicile.--The domicile of the corporation is the District of Columbia.

(c) Perpetual existence.--Except as otherwise provided, the corporation has perpetual existence.

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36 U.S.C. § 30902
Purposes

The purposes of the corporation are to promote, through organization, and cooperation with other agencies, the ability of boys to do things for themselves and others, to

train them in scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods that were in common use by boy scouts on June 15, 1916.

Nos. 23-1664, 23-1665, 23-1666, 23-1667, 23-1668, 23-1669, 23-1670, 23-1671, 23-1672, 23-1673, 23-1674, 23-1675, 23-1676, 23-1677, 23-1678, 23-1780
(Consolidated)

IN THE

United States Court of Appeals
for the Third Circuit

IN RE: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,

Reorganized Debtors.

NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH PA, *ET AL.*; DUMAS & VAUGHN CLAIMANTS; LUJAN CLAIMANTS,

Appellants,

v.

BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE NO. 22-CV-01237
(HON. RICHARD G. ANDREWS)

DECLARATION OF BRIAN WHITTMAN IN SUPPORT OF THE APPELLEES' MOTION TO DISMISS APPEALS AS MOOT

I, Brian Whittman, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, hereby declare as follows:

1. I am a Managing Director in the Commercial Restructuring practice of Alvarez & Marsal North America, LLC ("A&M"), which serves as restructuring advisor to Boy Scouts of America and Delaware BSA, LLC (together, the "Debtors" or "BSA"), the non-profit corporations that were debtors and debtors in possession in the jointly administered chapter 11 cases (the "Chapter 11 Cases") before the Hon. Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and are appellees in the ongoing Third Circuit appeal of the Confirmation Order and Affirmation Order. I submit this declaration (this "Declaration") in support of the Appellees' motion to dismiss the appeals as moot.[1] I am over twenty-one (21) years of age and fully competent to make this Declaration.

2. A&M was engaged by BSA through BSA's then-counsel Sidley Austin LLP in October 2018 to assist with financial matters related to the exploration of strategic alternatives. I joined the A&M team working on BSA matter in August 2019 and shortly thereafter assumed the leadership of the restructuring team. In this capacity, I have familiarized myself with a range of matters concerning BSA's finances, BSA's projected financial perfor-

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Appellees' Motion to Dismiss Appeals as Moot*, filed concurrently with this Declaration, or the *Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) For Boy Scouts of America and Delaware BSA, LLC* (the "Plan"), as applicable.

mance, and obligations under the Plan, including the matters described herein.

3. Except as otherwise stated in this Declaration, all facts set forth herein are based on my personal knowledge, materials provided by, or my discussions with, members of BSA's executive and management team or information obtained from my personal review of relevant documents. Additionally, the views asserted in this Declaration are based upon my experience and knowledge of BSA's nonprofit operations, financial condition, and liquidity. If called upon to testify, I could and would testify to each of the facts set forth herein based on my personal knowledge, discussions, and review of documents. I am not being compensated specifically for this testimony other than through payments received by A&M as a professional retained by BSA.

I. Consummation of the Plan

4. The global resolution embodied in the Plan is a carefully calibrated compromise among the often-competing interests of BSA, approximately 250 Local Councils, and thousands of Chartered Organizations; insurance companies that issued policies covering Scouting-related abuse claims; and more than 82,200 abuse claimants. The Plan contemplates and enacts a single integrated transaction, any part of which, if unwound, would destroy the intricate global resolution embodied in the Plan. Each component of the Plan is inextricably tied to the numerous other intricate settlements in the Plan.

5. As outlined below, since April 19, 2023 (the "Effective Date"), in reliance on the Plan, numerous parties engaged in transactions consistent with the Plan, including transferring cash and property to the Settlement Trust,

selling insurance policies back to issuing Settling Insurance Companies, restructuring BSA's funded debt, and engaging in day-to-day transactions with a counterparty they believe to no longer be a chapter 11 debtor. Attempting to unwind these transactions would be mechanically impossible. The transactions consummating the Plan that have already occurred include, but are not limited to, those described below.

A. The Settlement Trust and DST Were Established

6. The Settlement Trust and the DST (a Delaware statutory trust) were established on the Effective Date under the Plan. Both the Settlement Trust Agreement and the DST Agreement provide that these trusts were expressly formed to "implement the Plan" and accordingly defer to the terms of the Plan throughout. Both the Settlement Trust Agreement and the DST Agreement include a provision that provides the agreements are dependent upon, and subordinate to, the terms of the Plan and Confirmation Order, specifying that:

> The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and the Confirmation Order and therefore, this Trust Agreement incorporates the provisions of the Plan and the Confirmation Order (which may amend or supplement the Plan). To the extent that there is conflict between the provisions of this Trust Agreement, the TDP, the provisions of the Plan or the Confirmation Order, each document shall have controlling effect in the following order: (1) the Confirmation Order; (2) the Plan; (3) this Trust Agreement; and (4) the TDP.

Ex. 1 Settlement Trust Agreement, Article 1.11; *see also* Ex. 2 DST Agreement, Article 1.9 (including substantially the same provision with immaterial changes that apply to the DST). BSA's formation of both the Settlement Trust and the DST on the Effective Date necessarily relied upon these provisions and the continuing effectiveness of the Plan. The appointment of Hon. Barbara J. Houser (Ret.) as the Settlement Trustee similarly relied on the Plan and Confirmation Order.

7. For six months, both the Settlement Trust and the DST have been operating independently pursuant to the Plan. They are fully operational. In addition to the hundreds of millions of dollars of cash and other assets to which the Settlement Trust gained title on the Effective Date, both the Settlement Trust and DST receive ongoing distributions pursuant to the Plan and Confirmation Order. The Settlement Trust receives ongoing cash distributions including, but not limited to, royalty payments on account of contributed oil and gas interest and the proceeds of Local Council real property sales. The DST receives monthly contributions from Local Councils to fund the Pension Plan and payments on the DST Note.

8. With the assistance of staff and paid professionals, the Settlement Trust invests and manages the hundreds of millions of dollars of cash and other assets to which it gained title on and after the Effective Date.

B. Plan Distributions Have Commenced.

9. Relying on the consummated Plan, since the Effective Date, BSA has paid $5.8 million to approximately 820 holders of non-abuse claims, including: $0.4 million to approximately 60 holders of general administrative expense claimants; $2.0 million to Hartford for its administrative

expense claim; $1.2 million to cure defaults asserted by approximately 120 counterparties to assumed contracts; and $2.3 million to holders of approximately 640 convenience claims. On October 19, 2023, BSA transferred $6.25 million to the Core Value Cash Pool for the benefit of the general unsecured creditors and expects that its disbursing agent will soon make payments to 120 holders of allowed claims.

C. Transactions Worth Hundreds of Millions of Dollars Have Taken Place in Reliance on the Plan.

10. All of the assets to be transferred at or near the Effective Date have been transferred under the Plan, including Local Councils' contributions to the Settlement Trust of $439 million of cash[2] and Settling Insurance Companies' contributions of $189.9 million to the Settlement Trust and $1,466.1 million into escrow accounts that have collectively accumulated an additional $40.6 million of interest since the Effective Date. Moreover, BSA transferred to the Settlement Trust the $80,000,000 BSA Settlement Trust Note, the Artwork valued at $59,000,000, the Oil and Gas Interests valued at $7,600,000, and millions of pages of privileged and confidential documents.[3] BSA expended significant time, money, and resources to execute and record such transfers, including negotiating

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[2] Notably, certain Local Councils sold camps and other real property to generate the cash necessary to make their contributions to the Settlement Trust.

[3] Many such documents are subject to attorney-client, work-product, common-interest, joint-defense or other privileges, which irrevocably transferred to and vested in the Settlement Trustee as of the Effective Date.

special warranty deeds to convey the Oil and Gas Interests. In addition to their cash contributions, Local Councils are in the process of selling 97 separate parcels of real property for the benefit of the Settlement Trust with an appraised value of $80 million. The Settlement Trust has also collected $2.8 million in royalty payments from the Oil and Gas Interests.

11. The DST also issued the DST Note to the Settlement Trust as of the Effective Date; and collects, manages and invests cash contributed by Local Councils on a monthly basis to an account owned by the DST in order to fund payments (a) to BSA's pension plan or (b) toward principal and interest on the DST Note, as determined in accordance with the DST Note Mechanics and the DST Agreement. The DST has collected approximately $8.0 million from Local Councils to fund the Pension Plan and payments on the DST Note. Pension plan contributions from DST collections total approximately $6.9 million to date.

12. Additionally, the United Methodists made their $2.0 million contribution to the Settlement Trust on October 16, 2023. I am informed by the United Methodists that these efforts involved, among other things, extensive outreach to the organization's 54 annual conferences and regional bodies representing more than 18,000 congregations, and the United Methodists are making significant progress toward generating the balance of their $30 million contribution.

13. Under the Plan, BSA also restructured approximately $262 million of funded debt issued by JPM, including tax-exempt bonds, and has paid $1.3 million of closing costs and approximately $4.8 million of interest. BSA also entered into revised lender-borrower and related

intercreditor agreements implemented under the Plan. The amendments to BSA's tax-exempt bonds required deliberation and approval of the Fayette County, West Virginia County Commission, which required numerous commission meetings. There is no assurance that the County Commission would approve such amendments a second time if the Plan is unwound. Additionally, BSA received and allocated the $42.8 million of proceeds from the Foundation Loan Agreement and has incurred approximately $1.2 million in interest on such loans to date.

D. Settled Insurance Policies Have Been Sold.

14. Since the Effective Date, BSA and Local Councils have sold approximately 1,050 primary and excess Abuse Insurance Policies to the Settling Insurance Companies—Hartford, Chubb, Zurich, and Clarendon—in exchange for an aggregate contribution to the Settlement Trust of $1,656,000,000. As noted above, to date, Settling Insurance Companies have contributed the entire purchase price for Settled Insurance Policies including $189.9 million to the Settlement Trust and an additional $1,466.1 million held in escrow.

E. Parties Have Relied on the Plan When Transacting with BSA Following the Effective Date.

15. BSA and Local Councils have been soliciting and receiving donations, obtaining credit, entering into new contracts, and transacting with vendors since the Effective Date. BSA has also generated at least $48 million in committed charitable donations from approximately 50 different donors, each of whom made such commitments after BSA had emerged from bankruptcy, when the donations would solely benefit Scouting rather than fund restructuring costs or bankruptcy distributions. BSA is

implementing the robust supplemental youth protection measures outlined in the Plan, including the appointment of a new Youth Protection Executive and the formation of a Youth Protection Committee that includes survivor representation. Moreover, as of the Effective Date, BSA implemented new bylaws and rules and regulations. Since BSA's emergence from bankruptcy, 26 board members have resigned, retired, or were otherwise not put up for re-election, and BSA elected eleven new board members on October 13, 2023. These changes to board membership were made with the understanding that the board had fully carried out its duties in bankruptcy and that new board members would direct a reorganized entity.

II. Appellants' Requested Relief Would Significantly Harm Third Parties

16. The Plan is a single integrated transaction, any part of which, if unwound, would destroy the intricate global resolution embodied in the Plan. Tens of thousands of claimants, and numerous third parties have relied on the Plan's effectiveness including survivors, non-abuse claimants, the Settlement Trust, lenders, donors, board members, and vendors.

17. Abuse survivors, a largely aged population who have waited decades to obtain closure, would be disproportionally harmed by reversal of the Confirmation Order. Because survivors are paid in full under the Plan, forcing the Plan supporters back to the drawing board would not increase recoveries. Indeed, reversing the Plan now threatens to force BSA into liquidation. This would result in cascading chapter 11 filings by non-profit organizations nationwide, diminishing the value of BSA's estate and survivor recoveries to virtually nothing as compared

to the full-payment Plan. Moreover, a liquidation would end Scouting as it currently exists.

III. Claimant-Appellants' Requested Relief on Appeal Would Be Fatal to the Plan

18. Claimant-appellants seek to unwind the Plan which represents the only path to substantial recoveries for abuse survivors and continuation of BSA's charitable mission. Reversal would potentially destroy BSA's ability to regain its footing under the Plan. Survivors would return to the tort system, where most would not recover even a fraction of the compensation afforded by the Plan. Rights under settled Abuse Insurance Policies would be subject to complex and costly litigation that would further delay and diminish recoveries. Survivors would bear the expense and delay associated with litigating 82,200 claims against Local Councils, Chartered Organizations, and "deep-pocketed" insurers that are well-prepared for coverage battles. Survivors would also be forced into a race to the courthouse that would diminish recoveries and cause many defendants currently protected under the Plan to file their own bankruptcies.

19. Insurer-appellants' relief, too, would be fatal to the Plan. The Plan is a single integrated transaction comprised of numerous inter-related settlements. Without the precise formulation of insurance-related provisions in the Plan, BSA would have been unable to garner the overwhelming support needed to confirm the Plan. Plan supporters opposed insurer-appellants' desired changes at confirmation because they serve only to promote the denial of insurance coverage. Insurer-appellants' changes would undermine the Settlement Trust's efforts to

maximize the value of insurance contributions for the benefit of survivors.

20. Similarly, Allianz's proposed revisions to the Plan's judgment-reduction provision to allow Non-Settling Insurance Companies to recover on contribution claims from the Settlement Trust would be fatal to the Plan. Allianz's proposed revisions to the Plan's judgment-reduction provision would fundamentally alter the economics of the Settlement Trust and thereby negate the heavily negotiated global resolution between the Debtors and the various survivor representatives. For example, Allianz seeks to preserve an affirmative-recovery claim against the Settlement Trust in the event that its contribution claims are unavailing. This modification would place the Settlement Trust in the untenable position of having to reserve for potential Allianz claims.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 27, 2023
Chicago, Illinois

ALVAREZ & MARSAL NORTH AMERICA, LLC

/s/ Brian Whittman

Brian Whittman
Managing Director

Nos. 23-1664, 23-1665, 23-1666, 23-1667, 23-1668, 23-1669, 23-1670, 23-1671, 23-1672, 23-1673, 23-1674, 23-1675, 23-1676, 23-1677, 23-1678, 23-1780
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE
NO. 22-CV-01237
(THE HON. RICHARD G. ANDREWS)

SUPPLEMENTAL DECLARATION OF BRIAN WHITTMAN IN SUPPORT OF THE APPELLEES' MOTION TO DISMISS APPEALS AS MOOT AND CONSOLIDATED REPLY

I, Brian Whittman, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, hereby declare as follows:

1. I am a Managing Director in the Commercial Restructuring practice of Alvarez & Marsal North America, LLC ("A&M"), which serves as restructuring advisor to Boy Scouts of America and Delaware BSA, LLC (together, "BSA"), the non-profit corporations that were debtors and debtors in possession in the jointly administered chapter 11 cases before the Hon. Laurie Selber Silverstein of the United States Bankruptcy Court for the District of Delaware, and are appellees in the above-captioned appeals. I submit this supplemental declaration in further support of *Appellees' Motion to Dismiss Appeals as Moot*, Case No. 23-1664, D.I. 124, and in support of *Appellees' Consolidated Reply in Support of Motion to Dismiss Appeals as Moot*,[1] filed concurrently herewith. On October 27, 2023, I submitted a declaration in support of the motion to dismiss, which is incorporated by reference herein. Case No. 23-1664, D.I. 125.

2. Except as otherwise stated herein, all facts set forth herein are based on my personal knowledge, materials provided by, or my discussions with, members of BSA's executive and management team or information obtained from my personal review of relevant documents. Additionally, the views asserted herein are based upon my experience and knowledge of BSA's non-profit operations,

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the consolidated reply or the *Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) For Boy Scouts of America and Delaware BSA, LLC* (the "Plan"), as applicable.

financial condition, and liquidity. If called upon to testify, I could and would testify to each of the facts set forth herein based on my personal knowledge, discussions, and review of documents. I am not being compensated specifically for this testimony other than through payments received by A&M as a professional retained by BSA.

3. Since the Effective Date, BSA has paid more than $9.8 million to approximately 891 holders of non-abuse claims, including: $400,000 to approximately 60 holders of general administrative expense claims; $2.0 million to Hartford for its administrative expense claim; $1.2 million to cure defaults asserted by approximately 120 counterparties to assumed contracts; approximately $3.7 million to 64 general unsecured creditors (with an additional $300,000 to be disbursed to 7 additional general unsecured claimants shortly); and $2.3 million to holders of approximately 640 convenience claims. Distributions to non-abuse general unsecured creditors that did not elect convenience-class treatment commenced on November 9, 2023.

4. Claimant-appellants' assert that excising from the Plan the third-party releases in favor of Local Councils and Chartered Organizations would be "limited" relief that would not unravel the Plan. But this argument ignores that without such releases, which are the cornerstone of the Plan and its incorporated settlements, the Local Councils and Chartered Organizations would not have agreed to the sale or assignment of their insurance rights. And without the contribution of such insurance rights to the Settlement Trust, no global resolution of Scouting-related abuse claims would be possible.

5. Since the submission of my prior declaration on October 27, 2023: (a) the Settlement Trust has collected

approximately $400,000 of additional royalty payments on account of the Oil and Gas Interests, which payments now total $3.2 million since the Effective Date; (b) the DST has collected approximately $2.6 million of additional payments from Local Councils to fund the Pension Plan and payments on the DST Note, which payments now total $10.6 million since the Effective Date; and (c) BSA has paid approximately $900,000 of additional interest on restructured funded debt issued by JPM, which payments now total approximately $5.7 million since the Effective Date. The Settlement Trust has recorded deeds in 58 counties evidencing its ownership of the oil and gas properties. BSA has also devoted substantial resources to and is in the advanced stages of a major marketing and brand relaunch predicated on its emergence from bankruptcy.

6. Since the Effective Date, BSA has received approximately $24 million in membership and joining fees paid by Scouts in exchange for Scouting programming. There are currently approximately 1,000,000 young men and women participating in Scouting. BSA offers distinctive, comprehensive programming and the same opportunities for rank advancement to youth nationwide. In addition to membership fees, since the Effective Date, BSA has collected from Local Councils approximately $7.2 million in national service fees, charter renewal fees, and information services fees.

7. As of the date hereof, BSA has also generated at least $49 million in committed charitable donations from approximately 150 different donors, each of whom made such commitments after BSA emerged from bankruptcy, when donations would solely benefit Scouting rather than fund restructuring costs or bankruptcy distributions. In contrast, during its more than three years in bankruptcy,

BSA received less than $12 million in committed charitable donations. Just as a for-profit corporation relies on outside investors, BSA is relying on donors to facilitate its charitable post-emergence operations.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: December 1, 2023
Chicago, Illinois

ALVAREZ & MARSAL
NORTH AMERICA, LLC

/s/ Brian Whittman
Brian Whittman
Managing Director