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COMMENTARY

*BOY SCOUTS OF AMERICA SEEK POSSIBLE REFUGE IN
DELAWARE BANKRUPTCY COURTS*

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Due to the magnitude of sexual-abuse lawsuits filed by numerous Boy Scouts of America (“BSA”) adversaries, from both former and current Boy Scout members, BSA filed for Chapter 11 bankruptcy earlier this year.¹ BSA is an extremely complex organization with several different levels of business, including an array of local councils that have charters through the BSA that run the day-to-day operations of the organization. For that reason, BSA poses one of the most complex financial restructurings in history.² BSA has an estimated 275 lawsuits pending in state and federal courts asserting abuse-related claims against them.³ In addition, there are more 1,400 survivors with “to-be-brought” claims, and as a result, drove BSA to file for bankruptcy to determine survivor’s damages, as well as keep the organization running without completely dissolving it.⁴

Venue can be important for parties engaging in litigation as it can help one adversary over the other depending on the knowledge, skill and experience of the judges.⁵ The venue dictates what law applies and so, if a debtor can “forum shop,” it chooses the venue where the

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¹ Mike Baker, *Boy Scouts Seek Bankruptcy To Survive a Deluge of Sex-Abuse Claims*, N.Y. TIMES (Feb. 18, 2020), <https://www.nytimes.com/2020/02/18/us/boy-scouts-bankruptcy-sex-abuse.html?searchResultPosition=3>.

² *Id.*

³ Pamela Foohey, *The Boy Scouts Is on a Path To Upset Survivors. It Doesn’t Have To Be.*, CREDIT SLIPS: A DISCUSSION ON CREDIT, FIN., & BANKR. (Feb. 22, 2020, 12:17 PM), <https://www.creditslips.org/creditslips/2020/02/boy-scouts-is-on-a-path-to-upset-survivors-it-doesnt-have-to-be.html>.

⁴ *Id.*

⁵ Adam Levitin, *Boy Scouts of America: Venue Demerit Badge*, CREDIT SLIPS: A DISCUSSION ON CREDIT, FIN., & BANKR. (Feb. 24, 2020, 1:17 PM), <https://www.creditslips.org/creditslips/2020/02/boy-scouts-of-america-venue-demerit-badge.html>.

law applies most favorably to them.⁶ Bankruptcy venue statutes allow a debtor to file where it's incorporated, where it's principal place of business or assets are, or where a bankruptcy of an affiliate is pending.⁷ However, bankruptcy is federal law so the same law applies in all states. Therefore, filing in one state *should* be no different than filing in a different state.

BSA filed for bankruptcy in Delaware, where they bought a subsidiary one month prior to filing. In July of 2019, a nonprofit organization named, Delaware BSA, was incorporated in Delaware.⁸ The sole member of this organization is BSA, and the principal asset is "a depository account located in Delaware."⁹ This is the sole subsidiary BSA has in Delaware, being headquartered in Texas. Delaware BSA has less than \$50,000 in assets, which is comprised primarily of a bank account,¹⁰ and there are no employees located at this subsidiary.¹¹ Hence, this subsidiary's sole purpose is to hold money for the National BSA organization.¹²

This gives the BSA a favorable venue in Delaware. It's less likely that over 1,400 survivors will travel to Delaware in order to litigate this case. Because of the decades long abuse, the survivors are likely older and even possibly elderly, and they will be less likely to travel to Delaware, especially in a pandemic. Further, the expenses of traveling to Delaware will probably be paid out of pocket for most of the survivors.

To the extent that the bankruptcy code applies, federal judges can defer to state law in some situations. Because of the BSA subsidiary in Delaware, it seems that Delaware has more favorable laws towards debtors than other states; as BSA are not the first organization to file for bankruptcy in Delaware with little to no connection to the state other than random pop-up subsidiaries.¹³ For these reasons, it is likely that not only did BSA file in Delaware to make it more difficult for their adversaries to be present, but also, to achieve more favorable state law for themselves.

⁶ *Id.*

⁷ *Id.*

⁸ Pamela Foohey, *The Boy Scouts of America Filed Chapter 11 . . . in Delaware???*, CREDIT SLIPS: A DISCUSSION ON CREDIT, FIN., & BANKR. (Feb. 19, 2020, 5:19 PM), <https://www.creditslips.org/creditslips/2020/02/the-boy-scouts-of-america-filed-chapter-11-in-delaware.html>.

⁹ *Id.*

¹⁰ Levitin, *supra* note 5.

¹¹ Foohey, *supra* note 8.

¹² Levitin, *supra* note 5.

¹³ Bloomberg News, *Asbestos Claims to Be Settled*, N.Y. TIMES (June 16, 2006), <https://www.nytimes.com/2006/06/16/business/16asbestos.html?searchResultPosition=13>.