

CERTIFIED TRANSCRIPT

**BOY SCOUTS OF AMERICA
OFFICIAL TORT CLAIMANTS COMMITTEE TOWN HALL
JANUARY 06, 2022**



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1 Boy Scouts of America
2 Tort Claimants Committee Town Hall
3 Thursday, January 6, 2022
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5 **HUMPHREY:** Hey, everybody. Welcome. We are gonna wait for a few minutes to get
6 everybody logged in. We do not have the Q&A turned on tonight. We are just gonna give you a
7 quick update of the vote and what we're working on, and there'll be more to come. So give us a
8 few minutes to get started. Evening, everyone. We're gonna get started here in just a few
9 minutes, once I see the dial-in slow down a little bit. We do not have the Q&A on tonight. We're
10 gonna probably not go more than 20 to 30 minutes. We're gonna give you an update on the vote,
11 what that means, talk about what we've been working on this week, and then the timeline for
12 what's coming. So give us just a few more minutes.

13 If you're looking at this main slide you will see that the Omni Solutions phone number and email
14 address is there. If you are wondering how your vote was recorded with Omni, you can reach out
15 to them via email or phone and ask. So that's up there for you. Hey, Deb, I think we should go
16 ahead and get started. It's kind of flattened out a little bit.

17 Hi, everybody. John Humphrey and Doug Kennedy here, with Richard Pachulski, Jim Stang and
18 Deb Grassgreen. Really appreciate you all joining us tonight. I know there's been lots of news
19 and lots of press. And before we get started, I just wanted to thank everybody for voting,
20 regardless of whether you voted to support or reject the plan. We just really believe it's very
21 important for you guys all to express your voice on this matter.

22 We're gonna talk about what it all means in a little bit. My standard disclaimer that we're not
23 here to give you legal advice. We're here to just educate you about the process, where we are in
24 the case, what comes next, and things that you might not otherwise know if you haven't been
25 immersed in bankruptcy for the last several years. So with that, I will turn it over to my co-
26 chairman, Doug Kennedy, to say a few things and get us kicked off. Doug?

1 **KENNEDY:** Tha--excuse me. Thanks, John. Good evening, everybody. I'm gonna keep it very,
2 very brief. Like John, I just want to thank everyone who voted, whether you agreed with the
3 TCC's viewpoint and voted to reject this plan or you voted to accept it. We respect and recognize
4 and want to thank everyone who took the time to vote. John and I are survivors. The other seven
5 members of the TCC are survivors. And we know how important it is to feel like you have input
6 and some degree of control over this whole situation.

7 I also want to mention that a lot--we've received a lot of emails and had a lot of contacts from
8 people that are really saying, you know, what now? What now? What now? Like, how soon is
9 this gonna be over? And, you know, trust us, the TCC has lived this for the last two years
10 practically on a daily basis. We've been in mediation all this week and are--continue to be. So we
11 understand those feelings. But at the same time, bankruptcy has got its own sort of flow, and
12 we're--just want you guys to know that we are working and fighting so hard. We said that's what
13 we were going to do. We wanted to see this plan rejected and get back to the table, and that's
14 happened immediately, and we are fighting our asses off for everybody.

15 And the only last thing I want to say is, you know, it's a tough time of the year. It's the winter.
16 We've got Omicron now. We've got this bankruptcy hanging out there. It's tough sometimes to
17 keep your head up. I just want to remind everybody we do have some mental health resources on
18 the TCC website, so please refer to those if you feel like you need any help to get through this.
19 We're gonna continue to have these Town Hall meetings, and please check the website to keep
20 you as informed as we can. So just wanted to let you know that we are fighting hard for you now,
21 so everybody hang in there. Thanks, John.

22 **HUMPHREY:** Thanks, Doug. So, you know, we've been saying all along that there's a
23 few things we really care about in this process, you know? We care about youth protection. We
24 care about the way the trust is governed. We care about the dollars, that the local councils are
25 putting in their fair share. There's also a legal issue that I'm gonna let Rich talk about later on.
26 But what we told you all along is if this was not a slam-dunk in the favor of the plan and the Boy

1 Scouts, that we would be back to the negotiating table, and that we would come back with a
2 voice and we would have an audience. And I think that's exactly what happened. We didn't even
3 get the final count of the vote until Tuesday, and we were back in mediation on Monday.
4 So I think every moment, except some time on Wednesday, there have been mediation meetings.
5 All of those issues are on the table. And, you know, I can't really divulge whether we're making
6 progress or not making progress, but we are certainly being listened to, and we think we have the
7 pathway to get this plan improved for all survivors. So with that, you know, people get hung up
8 on the vote, you know? It was 73% in support and 27% to reject. If you back out the quick-pay
9 claims, it's 70/30 right down the line. And everybody's been so fixated on the vote, you know, us
10 included, right? But it is only one stepping-stone to how the judge views this case. And so I
11 thought I'd let Jim Stang give us sort of an overview of what the voting means, and kind of what
12 is it in context around, just one of many things. So Jim, maybe you could speak for a few
13 minutes on that, and then I'll have Rich talk about some of the issues that we're facing.

14 **STANG:** Okay. So the Bankruptcy Code has a section, for those of you that got your
15 Bankruptcy Codes for Christmas, it's Section 1129, and it sets forth section one, two, three, four,
16 of the things the court has to determine in order to confirm, which is our word for approve, a
17 reorganization plan. There are more than a dozen things the court has to find. Some of them are
18 factual, and Rich will talk about that a little bit, and some of them are purely legal. Can the plan
19 do X, Y, and Z? And Rich will talk about that.

20 One of the factors, and it is a factor that the court looks at, is the vote, and that's the vote that
21 John referenced. 73/27 counted with all claims in our class, which are the abuse survivor claims,
22 and if you netted out the people who took the expedited payment, 70/30. But there's been a lot of
23 press over the last few days about whether the plan hit 75%. And remember, these percentages
24 are always of the people voting. It is not 75% of the 82,000-plus claims. So where does the 75%
25 come from? Is there a 75% requirement? And the answer is no.

26 But people talk about it all the time, so where does it come from? One of the things this

1 reorganization plan does is it extends treatment of the claims that you all have or may have
2 against the local councils and the chartered organizations, and Rich is gonna talk more about
3 that. Not a single local council has filed bankruptcy, and nearly none of the chartered
4 organizations have filed bankruptcy. There are a few that are in bankruptcy, but it's not--it's
5 literally a handful. And if the Boy Scouts had filed the plan that dealt only with the claims
6 against the Boy Scouts, and not the claims against the local councils, and not the claims against
7 the chartered organizations, the Boy Scouts, in a case like this, needed 66% of the people voting
8 to vote yes. The pro--the formula is a little more complicated in a regular commercial case, but
9 because practically no one has a dollar amount that has been put into a judgment on their claim,
10 in this case it's 66%.

11 But the Boy Scouts didn't file a plan that just dealt with the claims against the Boy Scouts of
12 America. They dealt with a plan--they filed a plan that dealt with other entities, the councils and
13 the charters. So if this company were an asbestos company, there is a specific Bankruptcy Code
14 section which says if you want to get a plan approved for an asbestos company, 75% of the
15 people affected by the asbestos have to vote yes. Again, open your Bankruptcy Code, turn to
16 Section 524g. It's in there.

17 Now let's try to find what the voting margin is when a non-asbestos company is trying to
18 confirm a plan that gives relief to charters and locals who ha--or entities that have not filed
19 bankruptcy, non-asbestos. There is no Bankruptcy Code section with that number. But lawyers
20 are asked all the time by their clients, "What do I need to get this plan approved?" And so when
21 you're dealing in a case like this, which is not an asbestos case, lawyers look to the asbestos
22 statute for guidance. Congress said in an asbestos case you need 75%. And I don't think there
23 was anything magic about it being an asbestos case. They wanted to deal with the asbestos
24 problem, and some congressmen and senators thought 75% sounds like a good number.

25 So when a lawyer is asked in a non-asbestos case, "How many votes do I need to get this thing
26 over the top?" The answer that I give is, "Not less than 75%." And then client of course says,

1 “So I only need 75%, right?” And the answer is no. You can’t have less than--guidance. My
2 sense. My professional judgment. You really can’t demonstrate to the court that you’ve got this
3 overwhelming creditor support if you come in at under 75%. But there are courts, and these are
4 in the books, you know, in our library, which say some judges will say you need 90%. Some
5 judges might say 85. It’s not a hard and fast rule in a non-asbestos context, if you’re looking for a
6 specific number. So that’s where the 75% comes from. People use it because there’s nothing else
7 to look to in our Bankruptcy Code that will give us guidance. But please remember, it is not--if
8 they had 76.2 per--75.2%, some people might still argue that’s not enough. It is a guide and only
9 that.

10 So as I said, there are more than a dozen things the court has to determine as part of confirming
11 or approving a reorganization plan. And I’m gonna ask Rich to focus on the two that we think are
12 the most important for you to understand coming out of tonight’s meeting.

13 **PACHULSKI:** Thank you so much, Jim. And again, this is really complicated for those of
14 us who do this every day, and so we’re gonna try to put this in perspective as to what in some
15 respects, and Jim did, what the vote means. And even if you get past the vote, what else has to
16 occur for a Boy Scout plan to be confirmed so it goes effective one day?

17 I think it was critical, just so people know it, that the no vote came in, causing the yes vote to be
18 under 75%. Jim said it’s a minimum. That’s what many of us who do this every day think. And
19 getting below it, what it really did in this case is it allowed us to effectively get back to the
20 mediation table. And as John said, we got back Monday, and we’re working as hard as possible.
21 Because the goal is to come up with something that is higher compensation, that is fair on youth
22 protection, and that has an independent trust governance. We’ve made that very, very clear, and
23 that’s what we’re fighting for.

24 But the other thing that we’re really fighting for is really a fourth aspect, which is to make the
25 plan actually confirmable. We can get all three of those things, but if we don’t comply with the
26 law, then it doesn’t get confirmed. Now, just as Jim said, there are a number--there are over a

1 dozen requirements. And there are some, if some of you end up following the confirmation
2 hearing, which starts on February 22nd, that's when it's set, and there are a number of
3 depositions that are gonna take place before then. And there is the final voting report, because
4 there are--all the votes are being audited so it's fair on January 17th. So hopefully we will have a
5 final count, which I suspect, based on history, will be effectively what is out there right now,
6 which is basically 73 to 27. But by it being under 75%, we think it helps us get to a fair
7 resolution with all the parties. No guarantee. But if you don't get above that number, there's
8 really--it's highly unlikely, if not impossible, that you can confirm a plan.
9 But just because you get over it, even if we had gotten to 90%, even if that would've happened
10 and 90% accepted it, it doesn't mean the plan is confirmed. Why is that? Because here are some
11 of the tests that have to be met. A plan has to be feasible. It means that it's--if it's supposed to be
12 a reorganization, that it's not likely to be followed by a liquidation. I won't get into that in detail,
13 but that's usually an economic analysis as to the company. The ones that--the other one that is
14 important is best interest of creditors, which is important for the survivors in particular, because
15 the debtor has to prove that the company is effectively, or the Boy Scouts are effectively, paying
16 the various creditors and the survivors at least as much as they would get if the Boy Scouts were
17 liquidating. That's one of the things we believe that is not being complied with, independent of
18 the vote. The vote could be 100%. It wouldn't matter. The Boy Scouts have to prove that.
19 The Boy Scouts also have to prove that the releases that are being granted are fair and are legal.
20 Now Jim, when we discussed it today, and we spent a huge amount of time on this release issue,
21 is--releases under the plan are being granted to, among others, the local councils and the charter
22 organizations, organizations that are basically just trying to follow the coattails of the Boy
23 Scouts, which went and filed Chapter 11. And they, the charter organizations who did not file
24 Chapter 11, who are clearly liable for so much of the abuse, are getting a pass just because the
25 Boy Scouts filed. The courts don't allow that in most cases. And it's pretty complicated analysis,
26 but even if the vote had come in positive, the court would not only have to find that the vote was

1 sufficient, but that the releases were legal. And we do not believe that under the law in the Third
2 Circuit, which is where Delaware is where the case is pending, that the releases would be legal.
3 Now, some of you may have read in the paper about Purdue and the issue of releases in that case.
4 And this is different than Purdue in many respects, and that's in a different circuit. That's in the
5 Second. But the issue of the releases is probably the most significant, or at least one of the two
6 most significant issues I've seen in my 42 years of practice. And it's an issue Congress is looking
7 at, it's an issue the courts are looking at, and it will be a major issue that this judge will be
8 looking at. And so our goal through a mediation process is not just to get higher compensation,
9 which is critical, and not just get--to get a better--an independent trust, which is critical, and not
10 just to get youth protection, which is absolutely critical, but to get a plan that's actually
11 confirmable. Because we can get all three of those things and it's not confirmable. And that is
12 what we're gonna work to do, and whe--it's 24/7 as far as I'm concerned. It's what the TCC is
13 doing, and it's what our team is doing, and what the other teams that are working with us. So we-

14 **HUMPHREY:** But the good news is, Rich, hold on just a second. The good news is there
15 are ways to accomplish all four of those things. So--and that is what we're working on.

16 **PACHULSKI:** Yes, correct. We believe there's a pathway. John is 100% correct. There's
17 a pathway. We have discussed it internally how to do it. We're going to work with all the parties
18 through how to get there. There's no guarantee, but I think everybody is going to, I hope, going
19 to act in good faith to get there, so that we don't go down a path that at the end of the day the
20 court says, "I'm not gonna confirm the plan," even though it may have given us everything we
21 wanted. We don't want to end up in that position where millions and millions of dollars are spent
22 and wasted.

23 **HUMPHREY:** Yep. Thanks, Rich. Jim, did you have a thought on that?

24 **STANG:** Just two things. Seems like a couple of meetings ago I and Rich and maybe John
25 Lucas said to all of you, "If the vote comes in short," which it has, "we're gonna be back at the
26 negotiating table." And John allu--talked about this. And there were people who said, "That's not

1 what's gonna happen. Everyone's gonna go into their respective corners." I always use the
2 analogy; it's like dropping mercury on the floor. Everyone's gonna scatter, and we will never be
3 able to put this together. Well, folks, Monday morning Rich and I, and Deb, and John, and John,
4 and Doug, we were all back at the table. And we all knew that was going to happen, because
5 that's how life works, right? You know, in the really important stuff you always come back and
6 you talk about it. So, you know, that turned out to be right. Now, God willing, we'll get you a
7 settlement that we can make a recommendation on.

8 Rich said something about liquidation, and I didn't want people to come away with the
9 impression that the committee is advocating for the liquidation of the Boy Scouts. What Rich
10 was talking about, and he was clear, but I just, you know, sometimes try to anticipate how people
11 can be misunderstood, there's a floor of how much this plan of reorganization has to generate for
12 creditors. And that floor, that measure, is what would creditors get if the Boy Scouts were put
13 through a liquidation proceeding. We want that and more. We are entitled to that and more. So
14 please, do not come away tonight with the impression that the TCC is calling for the liquidation
15 of the Boy Scouts. The Boy Scouts, and the insurers, and whoever else is trying to get this deal
16 done, need to pay more than what you'd get if the Boy Scouts went through a liquidation. That's
17 our measure. That's our floor. It is not our objective to liquidate the Boy Scouts. So John, I just
18 wanted to add that.

19 **HUMPHREY:** Yeah, I appreciate that, Jim. And, you know, what you guys have taught
20 me over the last couple of years is that a non-profit in the United States cannot be forced into
21 liquidation. They can only choose to go there. So, you know, our tone has been conciliatory
22 tonight. We've--you've heard the harsh tones before. You've seen the videos where Doug and I
23 dug in on this. And we are not gloating in the way the vote came out. We are excited that, you
24 know, I've witnessed the mediation this week, and I can tell you that we're really being listened
25 to, and that people are having really substantive and deep conversations to get around some of
26 these really complex issues. And so I think we're making progress, but, you know, time will tell.

1 And there's no guarantees of anything.

2 But we just wanted to come on and spend about 30 minutes, give you an update, tell you what
3 was to come. The final vote audit is finished on the 17th of January. There are tens of
4 depositions, I think almost 50 that are going on that are supposed to be done before the end of
5 January on both sides, so that's just gonna be a massive amount of work. There's a status
6 conference with the judge, where all the attorneys get together with the judge, on Monday, kinda
7 like so she can see where are we. And then as Rich said, February 22nd is the beginning of the
8 confirmation hearing. So a lot of ground to cover. Doug, any last thoughts before we sort of wrap
9 things up?

10 **KENNEDY:** It--yeah, it's probably just worth reminding everybody that we'll post the date and
11 time of our next meeting, but that's probably going to be subject to change to whether or not
12 there's any developments. So the best we can do really is just ask you to continue to check the
13 tcbsa.com website on a regular basis. And as soon as we know that there's going to be a
14 meeting, we'll put up a new notice, and try and give you as much time as possible.

15 **HUMPHREY:** Yeah, and as we end, we've got the tcbsa.com that Doug just talked
16 about, tccquestions@pszjlaw.com. If you have questions you can submit them. We are
17 addressing and answering all those that come in. And then if you want to know how your vote
18 got recorded, you can either call Omni and give them your claim number, or send them an email
19 at bsaballots@omniagnt, no E in that, A-G-N-T.com. So with that, thank you so much for voting.
20 Thanks for joining us tonight. Keep your fingers crossed. We think we can make some real
21 progress with the other side, so hopefully we'll have something to report. Have a great evening,
22 everybody. Good night.

23 **STANG:** Good night, folks.

24 **KENNEDY:** Night, everyone.

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