NOTE

THE MYTH OF THE VOTE: EXAMINING CREDITOR PROTECTIONS FOR SURVIVORS IN SEX ABUSE BANKRUPTCIES

Lisa Qian*

Much has been made of the creditor vote as a legitimizing mechanism of Chapter 11 mass tort bankruptcies. Courts and scholars alike point to survivors' overwhelming approval rates as evidence of fairness and support for bankruptcy as a forum for resolving mass tort liabilities. This Article challenges that narrative. Focusing on non-profit sex abuse bankruptcies, it demonstrates that the Bankruptcy Code's supposed protections for dissenting creditors—the best-interests test and the absolute priority rule—are functionally meaningless when the debtor is a non-profit. Liquidation analyses are riddled with unreliable assumptions, overinclusion of restricted assets, and refusal to value third-party claims and insurance policies. And because non-profits cannot be forced into liquidation and have no equity holders, the absolute priority rule offers no backstop for dissenting survivors.

Against this backdrop, this Article presents the first comprehensive dataset of voting participation and plan approval rates in sex abuse bankruptcies. It finds participation rates to be extraordinarily high, often approaching 100%, and approval rates similarly high, with most plans receiving over 90% support. Yet interviews with survivors and their attorneys reveal that these figures do not reflect satisfaction with the bankruptcy forum. Rather, high participation stems from survivors' need for voice, recognition, and solidarity with fellow victims, while high approval rates reflect resignation, fatigue, and the absence of meaningful alternatives. By contrast, the relatively few cases with lower participation rates correlate

* J.D. Candidate, Stanford Law School, Class of 2026. I am indebted to, and immensely inspired by, the attorneys and survivors who generously took the time to speak with me, including Patrick Wall, Tim Hale, Joel Walker, Matthew Conaty, Delia Lujan, and Gilion Dumas. I am also deeply grateful to George Triantis for his steadfast support of my research interests. Nora Freeman Engstrom, Deborah Hensler and Adam Zimmerman all provided extremely helpful comments in developing this note. Finally, I wish to thank Remy Dhingra, Leo Rassieur, and Alex Rivkin for their friendship and encouragement throughout.

with debtor misconduct and survivors' deep dissatisfaction with the Chapter 11 process.

The Article concludes that far from providing procedural protections, the creditor vote in non-profit mass tort bankruptcies is largely illusory. Participation and approval rates should not be misinterpreted as endorsement of either the plan or the forum. Instead, they are best understood as artifacts of survivors' trauma and lack of alternatives, revealing that the "procedural protections" courts tout are, in this context, a myth.

TABLE OF CONTENTS

INTRODUCTION

Much is riding on the plaintiff-creditor vote in a mass tort bankruptcy. Beyond the literal text of the Bankruptcy Code, which requires the votes of impaired creditors to confirm a plan, judges and scholars alike have honed in on voting as a mechanism that legitimizes the resolution of mass tort liabilities in bankruptcy. For example, Justice Kavanaugh, in his *Purdue Pharma* dissent, viewed the commanding creditor vote in favor of the reorganization plan as a key reason why its third-party releases should be upheld.[1] Similarly, Judge Silverstein, who oversaw the Boy Scouts of America bankruptcy, pointed to the plan's "overwhelming acceptance" from abuse claimants as evidencing the "fairness" of the plan's channeling injunction and releases.[2] Most recently, the Third Circuit also emphasized the Chapter 11 process's "procedural protections," including the vote of the survivors in favor of the plan's sale of assets, as reason to affirm Judge Silverstein's ruling.[3]

The vote as a legitimizing and cleansing mechanism is not limited to the recent debate over third-party releases: courts have touted vote outcomes as justifying a whole host of procedural and substantive mechanisms not available in the state court system or under Rule 23. In Dow Corning's Chapter 11 to resolve its liabilities from rupturing and leaking silicone gel breast implants, the Court conceptualized the plan's 98% acceptance rate as a referendum on the adequacy of the breast implant claimants' representation and, for that reason, dismissed an that impermissibly disparate claims had been grouped together in a single class.[4]

---

1 Harrington v. Purdue Pharma L.P., 603 U.S. 204, 243 (2024) (Kavanaugh, J., dissenting) ("So in reality, as opposed to rhetoric, the non-debtor releases in mass-tort bankruptcy plans, including this one, have been approved by all but a comparatively small group of victims and creditors."); *id.* at 254 ("As a result, the opioid victims' and creditors' support for the reorganization plan was overwhelming. Every victim and creditor had a chance to vote on the plan during the bankruptcy proceedings. And of those who voted, more than 95 percent approved of the plan.").

2 *In re* Boy Scouts of Am. & Del. BSA, LLC, 650 B.R. 87, 141 (D. Del. 2023).

3 *In re* Boy Scouts of Am. & Del. BSA LLC, 137 F.4th 126, 157 (3d Cir. 2025).

4 *In re* Dow Corning Corp., 255 B.R. 445, 531 (E.D. Mich. 2000), *aff'd and remanded*, 280 F.3d 648 (6th Cir. 2002).

In the asbestos bankruptcy era of the 1980s and 1990s, judges repeatedly emphasized bankruptcy's "numerous safeguards"—specifically, the creditor vote and its related provisions if creditors voted no—as justifying why only bankruptcy could achieve outcomes that were not available under Rule 23.[5] Scholars too have pointed to the vote as a key reason why bankruptcy can adequately approximate or even is superior to other litigation aggregation devices, like multi-district litigations or class actions.[6] Some have even gone so far as to argue that the plaintiffs' votes in favor of the plan demonstrates that they too prefer bankruptcy to state court proceedings.[7]

But a puzzling disconnect exists between how bankruptcy judges and scholars frame the vote, and how plaintiff-creditors and plaintiffs' attorneys understand and respond to the same process. Judges and scholars often cite the high percentage of plaintiff-creditors approving reorganization plans as evidence of fairness and support for the bankruptcy process. Yet plaintiffs and their lawyers almost uniformly express disdain for Chapter 11. This tension—between overwhelming approval rates and deep mistrust—is especially stark in cases involving debtors seeking to resolve sexual abuse liabilities, the focus of this paper.

Since the Diocese of Portland became the first religious institution to file for Chapter 11 in 2004 to resolve child sex abuse (CSA) claims, survivors and their attorneys have condemned bankruptcy as a tactic to evade accountability and conceal the extent of institutional cover-ups.[8] One plaintiffs' attorney described Portland's filing as an effort to "prevent a full public airing of the whole history of the cover-up of child-abuse crimes by a succession of archbishops."[9] In the two decades since, nearly 50 archdioceses, dioceses, religious orders, and non-religious nonprofits have followed Portland into bankruptcy—and the criticism has persisted.[10] In 2024, when the Diocese of San Diego filed for bankruptcy for the second time—its first attempt in 2004 dismissed for using the process to "hammer down the claims of the abused"[11] —plaintiffs' attorneys denounced the

---

5 *See, e.g.*, *In re* Joint E. & S. Dist. Asbestos Litig., 982 F.2d 721, 736 (2d Cir. 1992), *opinion modified on reh'g*, 993 F.2d 7 (2d Cir. 1993); The Supreme Court, in disproving the usage of 23(b)(1)(B) class actions in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 860 n. 34 (1999), made a similar point, noting that the usage of limited fund class actions to resolve mass tort liabilities would "significantly undermine the protections for creditors built into the Bankruptcy Code."

6 *See, e.g.*, Elizabeth Gibson, *Case Studies of Mass Tort Limited Fund Class Action Settlements & Bankruptcy Reorganizations* 19 (Federal Judicial Center 2000); Anthony J. Casey & Joshua C. Macey, *Bankruptcy by Another Name*, YALE L.J. F. 1016, 1026 (2024) (arguing that bankruptcy gives plaintiffs voice through the creditor vote).

7 Casey & Macey, *supra* note 6 at 1028 ("It is not just the debtors who prefer bankruptcy. Victims and their lawyers are often the strongest advocates of the bankruptcy system.").

8 Laurie Goodstein, *Oregon Archdiocese Files for Bankruptcy Protection*, N.Y. TIMES (Jul. 7, 2004), https://www.nytimes.com/2004/07/07/us/oregon-archdiocese-files-for-bankruptcy-protection.html.

9 *Id.*

10 *Catholic Dioceses in Bankruptcy*, INSIGHT @ DICKINSON LAW, https://insight.dickinsonlaw.psu.edu/bankruptcy/.

11 Sandi Dolbee and Mark Sauer, *Judge's Tears, Rebuke Close Case*, Union-Tribune

move as a "misuse of the bankruptcy system" and an effort to avoid "paying fair compensation to child sex abuse victims."[12]

Yet, this paper is the first to show that plaintiff-creditor participation and approval rates in CSA bankruptcies are consistently high.[13] Judges—most notably Judge Silverstein—have cited these approval rates to uphold controversial plan provisions and to defend the use of bankruptcy itself.[14] However, the appearance of broad support is deceptive.

This paper argues that high voting participation rates reflect the egregious nature of the harm suffered by survivors and the community that survivors have built to support one another, and thus are not a referendum on whether the bankruptcy process is a legitimate forum for resolving sex abuse liability.[15] Similarly, high approval rates do not reflect belief in the fairness of the reorganization plan's terms, but rather reflect survivors' resignation over the futility of and fatigue with the Chapter 11 system. And survivors' concerns are warranted: The Bankruptcy Code gives them few real options under Chapter 11 because the best-interests test and absolute priority rule—both designed to ensure dissenting creditors receive at least some minimum value—offer no protection when the debtor is a nonprofit.[16] Thus, rather than the absolute priority and best-interests test working *subsequent* to the vote to protect dissenting creditors, their ineffectiveness in non-profit cases appears to work in advance – *preemptively* pressuring survivors to vote in favor of the plan because they see no viable alternative.

The remainder of this Note proceeds as follows. Part I shows how the Code's protections for dissenting creditors break down in nonprofit bankruptcies. It demonstrates that liquidation analyses used to prove compliance with the best-interests test are riddled with errors, casting serious doubt on whether plans actually satisfy that standard. Part I also shows that the absolute priority rule—which normally demands that equity-owners recover nothing if creditors receive less than full payment—becomes meaningless when the debtor is a nonprofit, since nonprofits have no equity to forfeit. This gap leaves creditors, including abuse survivors, without the protection the rule is meant to provide.

Then, drawing on voting data filed in every resolved child sex abuse Chapter 11 case until April 2025, Part II presents the first comprehensive analysis of voting participation and plan approval in these bankruptcies. The data show exceptionally high participation and approval rates—both averaging above 90%—and significantly higher than rates in other mass tort bankruptcies.

Finally, Part III draws on interviews with survivors and the plaintiffs' attorneys who represented them in these bankruptcies to explain the high participation

---

(Nov. 2, 2007), https://www.bishop-accountability.org/news2007/11_12/2007_11_02_Dolbee_JudgesTears.htm.

12 John Lavenburg, *Diocese of San Diego to File for Bankruptcy for the Second Time*, CRUX (Jun. 17, 2024), https://cruxnow.com/church-in-the-usa/2024/06/diocese-of-san-diego-to-file-for-bankruptcy-for-the-second-time.

13 *See* Part II.A.

14 *In re* Boy Scouts of Am. & Del. BSA, LLC, 650 B.R. 87, 141 (D. Del. 2023).

15 *See* Part III.A.

16 *See* Part I.A-B.

and plan approval rates. The interviews suggest that many survivors vote to accept a plan out of exhaustion with the Chapter 11 process rather than genuine support for its terms.

Ultimately, this paper shows that participating in voting indicates survivors' desire to have voice in a Chapter 11 process that has worn them out, and not an endorsement of the reorganization plan or the legitimacy of the bankruptcy forum for resolving sex abuse liabilities.

1. THE VOTE AND ITS ASSOCIATED PROTECTIONS

When scholars and courts point to bankruptcy's protections, they are not just referring to the creditor vote to approve the plan. Rather, the vote has several other code protections linked to it that bankruptcy proponents believe provide adequate protection to claimants, and, sometimes, even more protection than what is available in the civil justice system.[17] Part I.A. explains the requirements that plans must meet, should creditors vote against the plan, including the best-interests test and the absolute priority rule. Then, Part I.B and I.C. explain how the best-interests test and absolute priority rule fail to function when the debtor is a non-profit. Finally, Part I.D. argues that the failure of these code protections in nonprofit bankruptcies eliminates a key tool creditors use to negotiate for value from debtors, effectively pressuring plaintiff-creditors to approve plans since a "no" vote carries no consequence.

A. The Bankruptcy Code links several requirements for reorganization plans to the creditor vote.

Bankruptcy reorganization plans, which detail the amount of money allocated to plaintiff-creditors, must be voted on by creditors. Under Chapter 11, a debtor must first circulate a disclosure statement containing "adequate information" to allow a hypothetical creditor to make an informed judgment about the plan.[18] The court reviews and approves this statement before it is distributed. Only impaired creditors—those receiving less than the full value of their claims—may vote, and in most sexual-abuse bankruptcies, survivors' claims fall into this category. A class of impaired creditors accepts a plan if at least two-thirds in amount and more than one-half in number of the allowed claims vote in favor.[19] Most plans assign each claim a nominal one-dollar value for voting,

17 *See, e.g.*, Gibson, *supra* note 6 at 19 ("Where bankruptcy has an advantage [compared to class actions], however, is in its voting procedure . . . If claimants representing more than one-half in number of those voting and at least two-thirds in dollar amount of claims of those voting do not approve the plan, then the court must determine that the substantive, cramdown protections have been satisfied."); Casey & Macey, *supra* note 6 at 1038 (arguing that bankruptcy is preferable because of the cramdown provision: "a solvent debtor could never cramdown a class of personal injury or wrongful death torts for any amount less than what the class was willing to accept").

18 11 U.S.C. § 1125.

19 11 U.S.C. § 1126(c). Allowed claims are those which are not subject to objections,

giving every survivor an equal vote,[20] though some plans have valued survivor claims according to abuse severity.[21] Finally, survivor claims in sexual abuse bankruptcies, as tort claims, are unsecured, meaning they have no collateral backing them and must compete with other unsecured creditors for payment from the debtor's remaining assets.[22]

To confirm a plan, the Code imposes two key requirements that apply when impaired creditors object to the plan. If even a single creditor votes against the plan, it must satisfy § 1129(a)(7), the "best-interests-of-creditors" test. If an entire class rejects it, the plan must meet § 1129(b)(2), known as the absolute priority rule.

The best-interests-of-creditors test under § 1129(a)(7) requires that each creditor either accepts the plan or receives at least as much under the plan as they would in a Chapter 7 liquidation.[23] In other words, dissenting impaired creditors must recover no less in reorganization than in liquidation. The test ensures that reorganization maximizes value rather than destroys it. If a plan fails this test, it must be amended to increase recoveries or the court may dismiss or convert the case to Chapter 7.[24] In effect, the test sets a floor for creditor recoveries equal to the debtor's liquidation value.

The absolute priority rule, set forth by § 1129(b)(2), is only invoked if more than one-third of claimants in amount or more than one-half of claimants in number reject the plan, such that the class as a whole is deemed to have rejected the plan. For the plan to be confirmed in this situation, referred to as "cramdown," no claims junior to unsecured creditors can receive any payment if the unsecured creditors have received less value than the allowed amount of their claims (e.g., are impaired).[25] Thus, while equity-holders can receive value in a consensual reorganization, a plan cannot give equity-holders value over the objections of an unsecured creditor class. To be confirmed over unsecured creditors' objections, then, a plan must divert all value after secured creditors are paid to unsecured creditors. The absolute priority test too can be seen as creating a floor value for the impaired creditors in the plan: all residual value after secured creditors are paid.

---

or for which a court overrules an objection. 11 U.S.C. § 502.

20 *See, e.g.*, Report of Ballot Tabulation 2, *In re* Diocese of St. Cloud, No. 20-60337 (Bankr. D. Minn. Dec. 1, 2020), ECF No. 176 (Class 10 tort claims); Declaration of Jeffrey S. Stein of the Garden City Group, Inc. 3, 6, *In re* Catholic Diocese of Wilmington, No. 09-13560 (Bankr. D. Del. Jul. 6, 2011), ECF No. 1399; Report of Ballot Tabulation 2, *In re* Diocese of Winona-Rochester, No. 18-33707 (Bankr. D. Minn. Sep. 17, 2021), ECF No. 371.

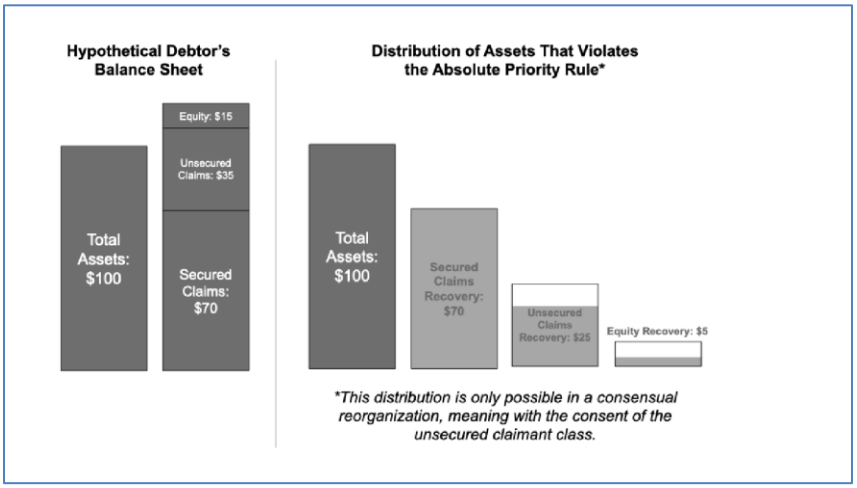
21 *See, e.g.*, Ballot Report, *In re* Roman Catholic Church of the Diocese of Tucson, No. 4:04-04721 (Bankr. D. Ariz. Jul. 8, 2005), ECF No. 733.

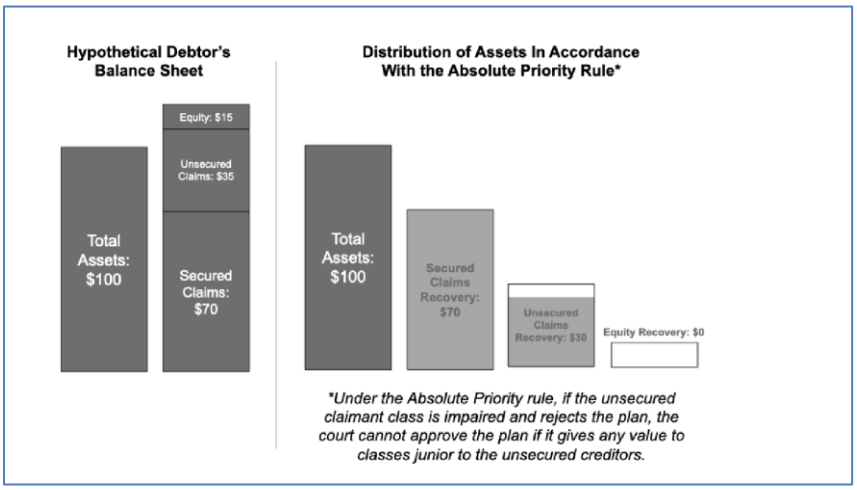
22 *In re* Dow Corning Corp., 211 B.R. 545, 598 (Bankr. E.D. Mich. 1997).

23 11 U.S.C. § 1129(a)(7).

24 11 U.S.C. § 1112(a)-(b).

25 11 U.S.C. § 1129(b)(2)(B)(ii)





Figures 1 & 2: Illustration of Absolute Priority Rule

Thus, when courts and commentators describe bankruptcy as providing stronger creditor protections, they refer not only to the vote but also to these statutory safeguards that apply if impaired creditors reject a plan.[26] Yet, as the next sections explain, both the best-interests and absolute priority tests fail to function in sex abuse bankruptcies, leaving dissenting survivors without the additional protections the Code otherwise promises.

B. Liquidation analyses do not demonstrate compliance with the best-interests test because they are riddled with errors that reflect their failure to meet

26 *See supra* note 17.

standards for valuation testimony.

To determine compliance with the best-interests test, plan proponents (normally the debtor) prepare a liquidation analysis, which is an estimate of how much money would be available to creditors if the debtor liquidated its assets. These analyses take each balance sheet asset line-item and apply an estimated recovery percentage to them.[27] Next, they subtract out bankruptcy court fees, such as accrued but unpaid bankruptcy counsel fees, the cost of hiring a Chapter 7 trustee and U.S. Trustee fees.[28] From this total, the analyses then subtract out the value of claims that have priority, such as administrative expenses.[29] The remainder is the amount available to general unsecured creditors, which includes the survivors' tort claims.[30]

There is, however, a phrase in financial modeling – "garbage in, garbage out." It means that financial models are only as good as their inputs, and inaccurate inputs mean that the results of the model are similarly unreliable. Unfortunately, liquidation analyses suffer from this problem.

For one, the liquidation analyses too often fail to justify the recovery percentages they place on each balance sheet line item. For example, the Archdiocese of Saint Paul and Minneapolis listed a 40% recovery in Chapter 7 for two asset line items: the medical benefit plan and general insurance fund.[31] That estimate implied that 60% of those assets—nearly $9 million—would be unavailable to creditors, yet the plan offered no explanation for why. Why not 80% or 20%? In fact, in prior disclosure statements, the Archdiocese had estimated significantly higher liquidation values for these two line items: the First Amended Disclosure Statement estimated a 100% recovery[32], while the original Disclosure Statement had estimated 74% and 78% recoveries, respectively, for the medical benefit plan and general insurance fund.[33] The Archdiocese never explained these drastic revisions downward in estimated liquidation value.

Or take the Diocese of Camden, which just presumed a 75% discount to liquidate its accounts receivable, i.e., money that its constituent parishes owe the Diocese.[34] With that 75% discount, the Diocese was effectively asserting that only 25% of the amount it was owed would be recoverable in a liquidation. But

---

27 *See, e.g.*, Solicitation Version of Eighth Amended Disclosure Statement, *In re* Diocese of Camden, New Jersey, No. 20-21257 (Bankr. D.N.J. Jun. 21, 2022), ECF No. 1823 at 280.

28 *Id.*

29 *Id.*

30 *Id.*

31 Second Amended Disclosure Statement, *In re* Archdiocese of St. Paul & Minneapolis, No. 15-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224, at C-1.

32 First Amended Disclosure Statement, *In re* Archdiocese of St. Paul & Minneapolis, No. 15-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 833 at C-3.

33 Disclosure Statement, *In re* Archdiocese of St. Paul & Minneapolis, No. 15-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 656 at 128.

34 Solicitation Version of Eighth Amended Disclosure Statement, *In re: The Diocese of Camden, New Jersey*, No. 20-21257 (Bankr. D.N.J. Jun. 21, 2022), ECF No. 1823 at 280.

again, there was no justification given for why this value was 75% and not 25% or 0%. Moreover, given that these were amounts that the parishes were contractually obligated to pay the Diocese, applying a 75% discount and presuming a 25% recovery on its face appears dubious. Similarly dubious is the Diocese of Rockville Centre claim that *none* of its accounts receivables would be collectable in a liquidation, which eliminated about $5 million worth of value.[35]

These examples illustrate the broader flaws that pervade liquidation analyses in sex abuse bankruptcies. Beyond the failure to justify recovery percentages, many analyses fall short of basic valuation standards. As a result, the best-interests test provides no real protection for dissenting survivors. The remainder of this section identifies several more recurring problems: debtors over-designate assets as restricted, assign no value to third-party or insurance recoveries available in liquidation, and inflate projected liquidation costs. These practices make the analyses appear engineered to favor the debtor's reorganization plan over a true liquidation scenario.

I. Liquidation analyses over-designate assets as restricted

Restricted assets are assets that have a donor-placed restriction on how they can be used.[36] So, to provide a simple example, if a donor asks that her funds only be used for education, that is a restricted asset. When an asset is "restricted," the debtor often claims that the asset cannot be used to pay creditors and applies either a zero percent recovery or simply excludes the asset from the liquidation analysis altogether.[37]

Evidence suggests that debtors over-designate assets as restricted. In the Oregon Society Province of Jesus Chapter 11 case, for example, the debtor agreed to contribute $48.1 million to the tort claimants' trust.[38] Of that amount, only $4.5 million came from unrestricted assets.[39] The debtor claimed that all remaining assets—about $96 million—were restricted for church purposes, yet still drew the balance of its commitment from those same funds.[40] This conduct suggests that the assets were not truly restricted, though the issue was never litigated.

Moreover, case law in many jurisdictions suggests that non-profits that cease operations can use charitable gifts to repay creditors, since those pre-petition debts were incurred within the scope of the organization's purpose.[41] Thus, while

35 Notice of Filing of Exhibits in Connection with the Debtor's Disclosure Statement, *In re* Roman Catholic Diocese of Rockville Centre, No. 20-12345, ECF No. 3304 at 11.

36 *Id.* at 6.

37 *See, e.g.*, *id.* at 6; Second Amended Disclosure Statement, *In re* Archdiocese of Saint Paul & Minneapolis, No. 3:15-bk-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224 at 71.

38 First Amended Disclosure Statement, *In re* Society of Jesus, Oregon Province, No. 09-30938 (Bankr. D. Or. May 27, 2011), ECF No. 1187 at 3.

39 *Id* at 4.

40 *Id*.

41 *See In re* Winsted Mem'l Hosp., 249 B.R. 588, 594 (2000) (collecting cases). In D.C., donor assets subject to charitable use limitations are to be treated as corporate assets and thus

it could be that the assets are genuinely restricted, the liquidation analyses' failure to engage with any of the ways that so-called restricted assets could be available for repaying creditors renders their analysis highly suspect.

II. Liquidation analyses give no value to third-party claims that are released in a Chapter 11 but are still available in a Chapter 7.

Another major flaw in liquidation analyses is their failure to assign value to, or even acknowledge, claims released in Chapter 11 that would exist in Chapter 7. In sex abuse bankruptcies, debtors routinely grant third-party releases to a wide range of entities: diocesan plans shield parishes, religious schools, and affiliated foundations;[42] USA Gymnastics extended releases to member gyms and the U.S. Olympic & Paralympic Committee;[43] and the Boy Scouts of America released local councils and chartering organizations.[44] Third-party releases do not exist in a liquidation, and these claims plainly carry value—third parties regularly contribute substantial sums to fund a plan in exchange for them.[45] If the debtor liquidated, those same third parties could face tort liability for enabling or concealing the abuse. Yet liquidation analyses almost never mention these

---

can be used to pay creditors. *See* McCarthy v. Bierbower (*In re* Crossroad Health Ministry, Inc.), 319 B.R. 778, 781 (Bankr. D.D.C. 2005). Delaware, by statute, allows the court to modify a restriction in a gift of institutional funds "if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund." Robertson v. Princeton Univ., 2007 N.J. Super. Unpub. LEXIS 3015, *62 (citing 12 Del. C. § 4706). And for land assets, many types of affirmative covenants could still be complied with even if the land was sold: the law, in general, disfavors restrictions on alienability, so land required to be used for recreational purposes, for example, could still be sold to a university or school and still be used in the way the donor intended. *See* Lee Anne Fennell, *Adjusting Alienability*, 122 Harv. L. Rev. 1403, 1447 (2009) (citing Jesse Dukeminier et al., PROPERTY 195-96 (6th ed. 2006)).

42 *See, e.g.*, Second Amended Disclosure Statement for the Joint Chapter 11 Plan of Reorganization, *In re* Archdiocese of Saint Paul and Minneapolis, No. 3:15-bk-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224 at 36.

43 Disclosure Statement for Third Amended Joint Chapter 11 Plan of Reorganization Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors, *In re* USA Gymnastics, No. 18-0918 (Bankr. S.D. Ind. Oct. 25, 2021), ECF No. 1656 at 68.

44 Amended Disclosure Statement for the Modified Fifth Amended Chapter 11 Plan of Reorganization, *In re* Boy Scouts of America, No. 20-10343-LSS (Bankr. D. Del. Sep. 30, 2021), ECF No. 6445 at 181.

45 *See In re* Washington Mut., Inc., 442 B.R. 314, 347 (Bankr. D. Del. 2011) (approving releases provided to third parties when they "have made a substantial contribution to the Plan by waiving claims they had asserted against numerous assets of the Debtors").

claims,[46] despite case law requiring that such recoveries be included in determining liquidation value.[47]

These omissions appear especially disingenuous when contrasted with how debtors invoke third parties to justify reducing recoveries elsewhere in liquidation analyses. For example, in the Diocese of Camden's liquidation analysis, the debtor estimated only a 33% recovery for its loans receivable (i.e., money owed to the Diocese) to parishes and other entities because "[t]he Parishes would have substantial claims and offsets against the Diocese" in a Chapter 7.[48] It is deeply inconsistent for the debtor to assume, with confidence, that parish claims would erase debts owed to the Diocese while ignoring the equally plausible claims that survivors could assert against those same parishes in liquidation.

The failure of liquidation analyses to include these third-party claims is de rigueur in sex abuse bankruptcies, but it is rarely litigated because plans only reach the confirmation stage when there is a deal in place, and thus the parties with the resources to litigate such an issue have stepped aside. But the legislative intent behind the best-interests test is not to rubber-stamp the deal that the major parties have come to; rather, the best-interests test is supposed to protect the interests of those who dissent.

One exception is the Boy Scouts Chapter 11, where some survivors actually raised a best-interests test objection to the plan's confirmation—a group of claimants from Guam, where tort victims have a direct action right against insurers, specifically argued that the liquidation analysis failed to account for the value of these claims in liquidation.[49] But Judge Silverstein overruled this objection because no one had put forth any testimony contradicting the expert the debtor put forward to testify on the liquidation analyses.[50] Yet, a logical inconsistency in the liquidation analysis—using third-party claims against the debtor to reduce liquidation value but then refusing to give any value, let alone mention, claims creditors would have against those same third-parties in liquidation—is a deficiency on the face of the liquidation analysis that should not have required expert testimony.

---

46 *See, e.g.*, Fourth Amended Disclosure Statement, *In re* Archdiocese of Milwaukee, No. 11-20059 (Bankr. E. D. Wis. Sep. 25, 2015), ECF No. 3258 at 92; Exhibit C to Second Amended Disclosure Statement, *In re* Archdiocese of Saint Paul and Minneapolis, No. 15-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224.

47 *See In re* Washington Mut., Inc., at 359–60 ("In a case where claims are being released under the chapter 11 plan but would be available for recovery in a chapter 7 case, the released claims must be considered as part of the analysis in deciding whether creditors fare at least as well under the chapter 11 plan as they would in a chapter 7 liquidation.").

48 Solicitation Version of Eighth Amended Disclosure Statement, *In re* Diocese of Camden, New Jersey, No. 20-21257 (Bankr. D.N.J. June 21, 2022), ECF No. 1823 at 62; Exhibit D to Solicitation Version of Eighth Amended Disclosure Statement, *In re* Diocese of Camden, New Jersey, No. 20-21257 (Bankr. D.N.J. June 21, 2022), ECF No. 1823 at 3.

49 Lujan Claimants' Objection to Second Modified Fifth Amended Chapter 11 Plan of Reorganization, *In re* Boy Scouts of Am., No. 20-10343 (Bankr. D. Del. Feb. 7, 2022), ECF No. 8708 at 20.

50 *In re* Boy Scouts of Am. & Del. BSA, LLC, 642 B.R. 504, 664–65 (Bankr. D. Del. 2023).

III. Liquidation analyses refuse to credit the Chapter 7 liquidation value with any insurance policy recovery, despite its substantial value.

Related to the failure to account for claims against third parties is the failure of liquidation analyses to credit the debtors' insurance policies with any value. In many sexual abuse cases, the debtor's insurance policies are a significant source of value, since the policies were often issued in an era where commercial general liability policies had per-occurrence limits, but no aggregate limits.[51] Liquidation analyses, however, typically refuse to put a value on the insurance policies, listing them as "[u]nknown," and correspondingly provide very little information on their potential value.[52] Common sense says that the value of the insurance policies is certainly not zero, given that insurers typically fund substantial portions of Chapter 11 plans, which reflects their risk assessment regarding their liability.[53]

However, debtors often justify their liquidation analyses by asserting that the insurance settlements reached under the plan are unavailable in Chapter 7, which then, of course, makes the reorganization plan look much better in comparison to liquidation.[54] Yet, while the insurance *settlements* are not available in Chapter 7, the *insurance policies* are available. A Chapter 7 trustee could then litigate the insurance policies, just as plans often have a trustee do in Chapter 11, if no settlement with insurers is reached prior to plan confirmation.

The Boy Scouts case presents one such example of the inconsistencies between how the liquidation analysis values insurance policies in a Chapter 11 and a Chapter 7. Not all coverage disputes had been resolved in the plan, and remaining insurance rights were to be transferred to the trust under the reorganization plan.[55] Yet, the liquidation analysis optimistically stated that recovery under the plan was expected to be "up to 100%"[56] (indeed, Judge Silverstein shockingly found that claimants would be paid in full).[57] Despite the fact that a Chapter 7 trustee would go after the exact same policies in the exact same manner as the trust created in the Chapter 11 plan, recovery for the policies in Chapter 7 were

---

51 *See, e.g.*, Debtors' Informational Brief 35-36, *In re* Boy Scouts of Am. and Delaware BSA, LLC, No. 20-10343-LSS (Bankr. D. Del. Feb. 18, 2020), ECF No. 4.

52 *See, e.g.*, Second Amended Disclosure Statement, *In re* Archdiocese of Saint Paul and Minneapolis, No. 3:15-bk-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224 at 71.

53 *See, e.g.*, *Insurers Agree to $800 Million Settlement in Boy Scouts Bankruptcy*, PBS (Dec. 13, 2021), https://www.pbs.org/newshour/nation/insurer-agrees-to-800-million-settlement-in-boy-scouts-bankruptcy (explaining that insurers funded $1.587 billion of the $2.6 billion plan); Marie T. Reilly, *Appendix B: Outcomes of Cases*, Insight @ Dickinson Law (Oct. 31, 2025), https://insight.dickinsonlaw.psu.edu/bankruptcy/36/ (showing that insurers often fund the majority of reorganization plans).

54 Amended Disclosure Statement, *supra* note 55, at 254 n.122.

55 Amended Disclosure Statement for the Modified Fifth Amended Chapter 11 Plan of Reorganization, *In re* Boy Scouts of Am., No. 20-10343-LSS (Bankr. D. Del. Sep. 30, 2021), ECF No. 6445 at 257.

56 *Id* at 254.

57 *In re* Boy Scouts of Am. & Del. BSA, LLC, 642 B.R. 504, 586 (Bankr D. Del. 2023).

listed as "uncertain."[58] This inconsistency is disingenuous and clearly an attempt to make the proposed plan look better under the best-interests test.

IV. Liquidation analyses overstate Chapter 7 administration fees.

Chapter 7 fees are another place where liquidation analyses are wildly inconsistent. In a Chapter 7, the case trustee's fee is codified at a schedule that decreases as the distributable assets increase: for these non-profit mass tort debtors, the fees are likely to be 3% of "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims."[59] Other costs of a Chapter 7, such as professional fees, should similarly decrease proportionally as assets increase and in general, be tied to the amount of assets to distribute.[60] Yet some liquidation analyses provide vastly inflated totals for these expenses:

The Camden Diocese's liquidation analysis listed $7 million in total Chapter 7 administrative fees despite only having $41 million of assets to distribute.[61] This represents 17% of total assets.

The Archdiocese of St. Paul-Minneapolis's liquidation analysis put the total Chapter 7 fees at $14,312,500 despite only having $28 million of assets to distribute – more than half of all assets.[62] The plan listed $3.5 million for the "Chapter 7 Trustee fees," $10 million as the "Chapter 7 Professional fees," $312,500 for the U.S. Trustee and an additional $500,000 for "shutdown costs and litigation support."[63]

These plans provided no justification for the high costs associated with liquidation. Moreover, their cost allocations appear vastly overstated when compared to the fees in the liquidation analyses of other plans:

The Diocese of Guam estimated that its liquidation value would be roughly $84 million and listed just $500,000 of liquidation costs.[64]

---

58 Amended Disclosure Statement, supra note 55, at 254 n.122.

59 11 U.S.C. §326(a).

60 For example, if the Chapter 7 trust hired lawyers to litigate insurance coverage, presumably the cost of lawyers would be less than the expected value of those insurance policies.

61 Exhibit D to Solicitation Version of Eighth Amended Disclosure Statement 3, *In re* Diocese of Camden, New Jersey, No. 20-21257 (Bankr. D.N.J. Jun. 21, 2022), ECF No. 1823.

62 Exhibit C to Second Amended Disclosure Statement for the Joint Chapter 11 Plan of Reorganization, *In re* Archdiocese of Saint Paul and Minneapolis, No. 3:15-bk-30125 (Bankr. D. Minn. Aug. 10, 2018), ECF No. 1224.

63 *Id.* Though the liquidation analysis provides no detail on what the Chapter 7 professionals fees would go towards, presumably those are the costs of engaging counsel to litigate coverage under the insurance policies. It is curious that the liquidation analysis could provide a specific number for the cost of litigating despite classifying the value of the policies as "unknown." Moreover, when allocating such a substantial portion of liquidation value to professional fees, it is inconsistent to then refuse to credit the liquidation analysis with any recoveries earned by counsel (presumably, the Chapter 7 trustee would make a rational economic decision and not pay this much to counsel if the chances of recovery were de minimis).

64 Third Amended Joint Disclosure Statement, *In re* Archbishop of Agana, No. 19-00010 (Bankr. D.C. Guam, Jul. 19, 2022), ECF No. 919 at 92.

The Diocese of Winona-Rochester estimated that its liquidation value would be roughly $16.5 million and listed roughly $1 million dollars of liquidation costs.[65]

V. There is no bite behind the best interests test for non-profits.

Normally, if a plan fails the best-interests test, the court may convert the case to Chapter 7, since liquidation often maximizes value when the debtor lacks viable prospects and reorganization no longer serves creditors' interests.[66] However, the Code also explicitly prohibits courts from forcing non-profit debtors into liquidation.[67] Consequently, some non-profit debtors have argued that the best-interests test should not apply to them.[68] Courts generally have rejected this position.[69] Even so, the test offers no real protection for dissenting creditors in nonprofit bankruptcies: liquidation analyses are often riddled with errors, and failure to satisfy the test carries no consequences for the debtor. The best-interests test is meant to set a recovery floor for dissenting creditors, but in nonprofit cases, that floor effectively disappears.

C. The absolute priority rule offers no protections to dissenting creditors in non-profit bankruptcies because there is no class subordinate to the unsecured creditors.

The absolute priority rule similarly does not provide any protection to dissenting creditors in non-profit bankruptcies. Invoked only if an impaired class rejects the plan, the absolute priority rule prevents any class junior to the impaired class from receiving any value if the plan is to be confirmed over the impaired class's objections (termed a "cram down").[70] In a typical Chapter 11 case, if an impaired creditor class rejects the plan, subordinated interest holders cannot retain or receive any value; ownership instead passes to the creditors. This creates a floor value for impaired creditor classes who reject the plan—reorganization value. The logic is simple: when creditors absorb losses, equity—having assumed the risk of failure—cannot recover ahead of them. But when applied to

65 Joint Disclosure Statement for Corrected Third Amended Joint Chapter 11 Plan of Reorganization, *In re* Diocese of Winona-Rochester, No. 18-33707 (Bankr. D. Minn. July 13, 2021), ECF No. 317 at 87.

66 11 U.S.C. § 1112(b).

67 11 U.S.C. § 1112(c).

68 Amended Disclosure Statement for the Modified Fifth Amended Chapter 11 Plan of Reorganization, *In re* Boy Scouts of Am., No. 20-10343-LSS (Bankr. D. Del. Sep. 30, 2021), ECF No. 6445 at 251.

69 *See, e.g.*, *In re* Boy Scouts of Am. & Del. BSA, LLC, supra note 171 at 662; Memorandum Decision Denying Confirmation of Eighth Amended Plan, *In re* Diocese of Camden, New Jersey, No. 20-21257 (Bankr. D. Del. Aug. 29, 2023), ECF No. 3336 at 33.

70 11 U.S.C. § 1129(b)(2)(B)(ii); Gary L. Kaplan, *Understanding the Rules of Bankruptcy Cramdown*, LAW360 (Sep. 4, 2013), https://www.law360.com/articles/468678/understanding-the-rules-of-bankruptcy-cramdown.

nonprofit bankruptcies, this logic breaks down. The Code was drafted for corporations, yet nonprofits do not have interest holders subordinated to the tort creditors. Even if they did, the Code's prohibition on forcing nonprofits into liquidation prevents creditors from compelling the debtor to surrender its assets. As a result, the absolute priority rule, like the best-interests test, offers dissenting creditors no real protection in nonprofit bankruptcies.

The first problem with the absolute priority rule is determining which class, if any, is subordinated to the tort claimants' class in a non-profit. In corporate reorganizations, the absolute priority rule means that equity holders cannot receive any value if any impaired creditor class rejects the plan, since equity is subordinated to debt in a corporation. But there is no such thing as "equity value" in a non-profit.[71] Some bankruptcy participants have argued that the non-profit debtor's continued control over the non-profit is equivalent to equity and thus should be barred under the absolute priority rule. Such arguments have been made in the context of economic non-profits, such as housing associations, hospitals and utility cooperatives, where arguably the members of the non-profit do derive an economic benefit from the non-profit. But courts have mostly rejected such arguments, reasoning that whatever economic benefits non-profits generate are not equivalent to equity value.[72]

Even the few courts that have accepted the analogy to control have accepted the analogy in the context of economic non-profits.[73] The key difference here is that every sex-abuse debtor is a mission-driven non-profit, where any argument that members derive an economic benefit is a severe stretch in comparison to a housing association or an electricity cooperative.[74]

Another possibility is to analogize equity value in a corporation to the nonprofit debtor's own residual claim on assets after paying creditors. If courts were willing to make this analogy, it means that, in theory, a plan cannot be approved over the tort claimants' rejection if the non-profit itself is allowed to keep any value. This, in turn, means that the non-profit's continued operations with any of its assets is equivalent to subordinated classes receiving value and would thus be barred under the absolute priority rule. Thus, one might think that the absolute

---

71 Amelia Rawls, Comment, *Applying the Absolute Priority Rule to Nonprofit Enterprises in Bankruptcy*, 118 Yale L.J. 1231, 1233 n.13 (2009) (collecting cases); Pamela Foohey, *Chapter 11 Reorganization and the Fair and Equitable Standard: How the Absolute Priority Rule Applies to All Nonprofit Entities*, 86 ST. JOHN'S L. REV. 32, 67 (2012) ("The absolute priority rule, as written expressly and specifically into the Bankruptcy Code's fair and equitable standard, normally does not apply to nonprofits because nonprofits do not have 'interest' holders with characteristics equivalent to for-profit's equity holders").

72 Rawls, *supra* note 71 at 1233, n.14 (collecting cases); *see also In re* Whittaker Memorial Hosp. Ass'n, Inc., 149 B.R. 812 (Bankr. E.D. Va. 1993); *In re* Independence Village, Inc., 52 B.R. 715, 726, 13 Bankr. Ct. Dec. (CRR) 637, 13 Collier Bankr. Cas. 2d (MB) 476 (Bankr. E.D. Mich. 1985).

73 *In re* Eastern Maine Elec. Co-op., Inc., 125 B.R. 329, 339 (Bankr. D. Me. 1991).

74 Andrew M. Troop, Joseph Zujkowski & Megan Cummins, *Reorganizing with Value but Without Profit (or Equity): Select Confirmation Issues for Nonprofit Entities*, 19 NORTON J. LAW & BANKR. PRACTICE 147, 150-51 (2010).

priority rule could be satisfied if the non-profit was forced to liquidate, similar to the logic behind the enforcement of the best-interests test.

But herein lies the second problem. Again, the Code is explicit that non-profits cannot be forced to liquidate. Thus, even if there was a class "junior" to the tort claimants' class, there is no way to guarantee that either this subordinated class receives nothing or is forced to relinquish its claim over all the debtor's assets and cease operating. Moreover, at least one court has already rejected such an argument, finding that, "the Absolute Priority Rule does not, by its terms, prohibit a debtor entity from retaining its own assets."[75]

Thus, it's no surprise that some courts have effectively concluded that the absolute priority rule does not apply to non-profit bankruptcies. Indeed, the Ninth Circuit has said as much: the debtor's "nonprofit status puts creditors in an unusually disadvantaged negotiating position because they are not able to assert the Bankruptcy Code's absolute priority rule to block unacceptable plans."[76]

D. The failure of both of these tests to protect dissenting creditors in non-profit bankruptcies incentivizes the debtor to underfund the Chapter 11 plan.

This section has demonstrated that key statutory protections intended to protect dissenting creditors—namely, the best-interests test and the absolute priority rule—are functionally meaningless in sex abuse bankruptcies. Again, while both of these requirements are supposed to require plans to give some amount of minimum value to dissenting creditors, both tests are inapplicable to non-profits because the Code forbids forcing non-profits from relinquishing their claim on assets so that creditors can recover more. Thus, Chapter 11's procedural protections for dissenting creditors in non-profit bankruptcies are illusory.

This analysis also shows how the failure of statutory protections for dissenting creditors distorts the debtor's incentives to maximize the estate's value for creditors. One way to think of the best interests test and the absolute priority rule is that both create a conceptual, flexible floor for value in reorganization plans. They take as a given that (1) no debtor should be able to reorganize per Chapter 11 if liquidation, per Chapter 7, is more value maximizing, and (2) impaired classes of creditors should get the maximum available value if they dissent from the plan. Or put another way, the tests work to force the plan to give more value to creditors if they dissent. Anticipating this, plan proponents craft plans that would pass muster under both tests before soliciting votes on the plan, meaning that the tests actually work proactively. Thus, while we think of both tests temporally as coming *after* a vote and applying only to dissenting creditors or classes, they actually tend to work *proactively* to provide minimum value for *all impaired creditors*, regardless of whether those creditors vote to accept or reject a plan.

But the fact that both tests do no work in non-profit bankruptcies suggests that debtors can get away with plans that undercompensate creditors since there is no meaningful check on low-ball offers. Moreover, the manipulation of asset

75 *In re* General Teamsters, 225 B.R. 719, 737 (Bankr. N.D. Cal. 1998).

76 *In re* Henry Mayo Newhall Mem'l Hosp., 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002).

values that goes into the liquidation analyses to make the Chapter 11 recoveries look much better than Chapter 7 liquidation-based recoveries suggests that debtors know they can get away with under-compensation too, as does the fact that the debtors invariably know they cannot be forced to liquidate.

Plaintiffs' attorneys often decry bankruptcy as an attempt to hide the debtor's role in facilitating and covering up the abuse, and to shield the debtors' often substantial assets from being used to satisfy the survivors' claims.[77] Most often, they point to pre-bankruptcy asset transfers as evidencing this improper motive. But this section's analysis demonstrates that the code *itself* is also to blame for the under-compensation for plaintiffs in non-profit bankruptcies.

In this context, the only real leverage that survivors have is the ability to block class acceptance through voting against the plan. But even this leverage is limited. If the absolute priority rule is inoperative—as it is in non-profit cases—then even a rejecting class may find its dissent ignored. Plan proponents face no obligation to materially improve the deal, and courts can still cram the plan down. Of course, a cramdown might be unpalatable to most judges when considering the devastating harm suffered by tort claimants in sex abuse bankruptcies. But given that debtors are statutorily allowed to impose plans over a dissenting creditor class without meaningful concessions, the absolute priority rule—intended as a shield to protect dissenting creditor classes—has become a sword for debtors. Indeed, as Pamela Foohey has said, "Stripped of the ability to demand that debtors treat them 'fair and equitable' via the absolute priority rule, unsecured creditors lose one of their only and perhaps most valuable bargaining chips."[78] Thus, even though no sex abuse bankruptcy plan has yet been crammed down over a survivor class's objection, the absolute priority rule still matters—its inapplicability deprives survivors of one of their few meaningful sources of bargaining power.[79]

These statutory failures to protect dissenting creditors leads to several predictions about voting behavior. First, if rejecting the plan has no real effect, survivors may conclude there is no point in voting at all—suggesting that non-

77 Ron Donoho, *An Unholy Dispute*, DAILY JOURNAL (Oct. 2, 2007), https://www.dailyjournal.com/articles/319280-an-unholy-dispute (quoting one plaintiffs' attorney involved in the Diocese of San Diego bankruptcy, "The diocese didn't want to be honest about how much it's worth. They have provided us with scant and misleading information."); Lisa Rathke, *Facing More Clergy Abuse Lawsuits, Vermont's Catholic Church Files for Bankruptcy*, RELIGION NEWS SERVICE (Oct. 3, 2024) https://religionnews.com/2024/10/03/facing-more-clergy-abuse-lawsuits-vermonts-catholic-church-files-for-bankruptcy/ (noting that a plaintiffs' attorney had described the Diocese of Burlington's filing as "more reflective of moral bankruptcy than actual financial bankruptcy, particularly in light of the estimated $500 million of assets it has attempted to hide from survivors of its sexual abuse").

78 Pamela Foohey, *Chapter 11 Reorganization and the Fair and Equitable Standard: How the Absolute Priority Rule Applies to All Nonprofit Entities*, 86 ST. JOHN'S L. REV. 32, 51 (2012).

79 Although no plan has been crammed down, plaintiffs' attorneys have accused debtors of attempting to do as much. *See, e.g.*, Brian Roewe, *Archdiocese, Creditors Clash Over Bankruptcy Assets*, NCR ONLINE (May 27, 2016), https://www.ncronline.org/archdiocese-creditors-clash-over-bankruptcy-assets.

voting, rather than rejection, may be the clearest expression of dissent from a plan. Second, given that plan confirmation does not require survivor approval, and that debtors have strong incentives to minimize payouts, participation and approval rates should not necessarily be interpreted as a genuine referendum on the plan's fairness, especially in terms of claim recovery value. The next sections put these theories to the test.

II. SEX ABUSE BANKRUPTCY VOTING DATA

This paper is the first to present comprehensive voting participation data in sex abuse bankruptcies. Part A presents the data and describes my methodology for determining the voting participation rate, while Part B describes initial trends in the data. Overall, the exceedingly high participation rate of survivors in sex abuse bankruptcies compared to tort claimants in other mass tort bankruptcies suggests that participation in sex abuse bankruptcies is specific to the nature of the harm suffered rather than a referendum on the fairness of the plan.

A. Data sources and methodology

This paper studies voting participation rates in two sets of sex abuse bankruptcies: first, diocese and religious order Chapter 11s, and second, other sex abuse debtors that have filed and emerged since 2018, as followed by the Westlaw Practical Law Bankruptcy & Restructuring's Mass Tort Tracker.[80] The list of diocese and other religious order debtors that have emerged from bankruptcy comes from Professor Marie Reilly's excellent database on Catholic dioceses in bankruptcy. The Westlaw Mass Tort Tracker adds four debtors to this list—Boy Scouts of America, USA Gymnastics, The Weinstein Company, and Madison Square Boys & Girls Club—for a total of 29 cases studied. With the exception of the Weinstein Company bankruptcy, all cases primarily involved child sex abuse liabilities.

Table 1: Sexual Abuse Mass Tort Debtors that Have Emerged from Bankruptcy

Debtor	Date Filed
Archdiocese of Portland	7/6/2004
Diocese of Tucson	9/20/2004
Diocese Spokane	12/6/2004
Diocese Davenport	10/10/2006
Diocese of San Diego[81]	2/27/2007

80 This analysis reflects information available as April 2026. After completion, several more dioceses emerged from bankruptcy, and their voting data is not reflected here.

81 The Diocese of San Diego's first filing was dismissed, so it is not included in the later tables with voting data.

Diocese Fairbanks	3/1/2008
Oregon Province Society of Jesus	2/17/2009
Diocese of Wilmington	10/18/2009
Archdiocese of Milwaukee	1/4/2011
Christian Brothers of Institute of New York	4/28/2011
Diocese of Gallup	11/12/2013
Diocese of Stockton	1/15/2014
Diocese of Helena	1/31/2014
Archdiocese of St. Paul and Minneapolis	1/16/2015
Diocese of Duluth	12/7/2015
Diocese of New Ulm	3/3/2017
Diocese of Great Falls- Billings	3/31/2017
Crosier Fathers and Brothers	6/1/2017
The Weinstein Company	3/19/2018
Diocese of Winona-Rochester	11/30/2018
Roman Catholic Church of the Archdiocese of Santa Fe	12/3/2018
USA Gymnastics	12/5/2018
Archbishop of Agana, Guam	1/16/2019
Boy Scouts of America	2/18/2020
Diocese of Harrisburg	2/19/2020
Diocese of St. Cloud	6/15/2020
Roman Catholic Diocese of Rockville Centre	9/30/2020
Diocese of Camden	10/1/2020
Madison Square Boys & Girls Club	6/29/2022

The data on voting comes from filings within the bankruptcy case. In particular, this information is compiled by vendor tasked with overseeing the vote process. An employee with the claims administrator (usually the same vendor that maintains the public bankruptcy docket website) typically files a declaration certifying the vote total with the bankruptcy court.[82] The total number of claims filed is normally reported in the disclosure statement, though sometimes the disclosure omits that information. In those cases, the total number of claims is sometimes reported on by the media based on interviews with plaintiffs' attorneys involved in the case.

The claims administrator's ballot report includes the number of ballots accepting and rejecting the plan, as well as the number of ballots that were returned to the claims administrator but not counted because they were defective. Some of these uncounted but returned ballots were on account of invalid claims—claims filed after the bar date or votes filed on behalf of individuals with no valid claim. These ballots were excluded from the voting participation rate. Others

82 *See, e.g.*, Declaration of Emily Young of Epiq Corporate Restructuring, LLC Regarding the Solicitation and Tabulation of Ballots Cast, *In re* Roman Catholic Diocese of Rockville Centre, New York, No. 20-12345 (Bankr. S.D.N.Y. Dec. 1, 2024), ECF No. 3445.

were duplicate ballots or were superseded by later-submitted ballots that were counted in the final vote tally. These earlier ballots were excluded from the participation rate to avoid double-counting survivors who ultimately had a valid vote included into the totals accepting or rejecting the plan.

In contrast, some ballots were submitted on behalf of valid claims but were not counted due to errors; these ballots were still included in the voting participation rate. The two primary reasons for exclusion were administrative issues—such as a missing signature—or a failure to indicate a vote to either accept or reject the plan. Accordingly, participation reflects three categories: ballots accepting the plan, ballots rejecting the plan, and uncounted ballots submitted on behalf of valid claimants. This total is then compared against the total number of valid claims filed in the bankruptcy to determine the voting participation rate.

One final note on voting participation rates: because the voting solicitation procedure is different in every case, there are nuances that must be considered when comparing voting data between cases. For example, in some cases, attorneys could vote on behalf of their clients, which reduces the friction in gathering a large number of votes.[83] In other cases, votes were solicited more than once, which then allowed claimants who did not vote in the first round to vote in the second round, or to change their vote from the first round.[84] Regardless, I made every effort to exclude duplicate ballots or ballots submitted on behalf of invalid claims, such that the total number of ballots returned is an accurate reflection of the number of claimants who actually participated by voting.

Table 2: Voting Data on Sexual Abuse Mass Tort Bankruptcies

Debtor	Tort Class	Ballots accepting	Ballots rejecting	Ballots not counted[85]	Total ballots received	Final claim count	Voter participation rate		Acceptances as % of total claims
							Ballots received	Counted ballots	
Diocese of Spokane	Class 7 Tort Claims	162	0	21	183	176	100%[86]	92%	92%

83 *See, e.g.*, Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, *In re* Boy Scouts of Am., No. 20-10343-LSS (Bankr. D. Del. Sep. 30, 2021), ECF No. 6438 at 3.

84 *See, e.g.*, Order (I) Approving Disclosure Statement, *In re* Roman Catholic Diocese of Rockville Centre, No. 20-12345 (Bankr. S.D.N.Y. Nov. 6, 2024), ECF No. 3376 at 8 (second voting solicitation); Order (I) Approving Disclosure Statement, *In re* Roman Catholic Diocese of Rockville Centre, No. 20-12345 (Bankr. S.D.N.Y. Nov. 6, 2024), ECF No. 2918 at 8 (first voting solicitation).

85 Defined as ballots returned on behalf of valid claims, which were not duplicates, but which were not counted because they were missing a signature or did not indicate a vote accepting or rejecting the plan.

86 There appeared to be a slight discrepancy between the final claim count and the total number of ballots received – more ballots were returned than there were claims. This case also did not provide a breakdown re how many ballots not counted were duplicates or were submitted on behalf of invalid claims. Thus, the voting participation rate in this case is just presumed to be 100%.

Diocese of Wilmington	Class 3A Survivor Claims	150	1	0	151	147	100%[87]	100%[88]	100%[89]
Diocese of Tucson	Class 10 Tort Claims	65	12	1	78	77	100%[90]	100%	84%
USA Gymnastics	Class 6 Abuse Claims	476	0	29	505	510	99%	93%	93%
Crosier Fathers and Brothers Province	Class 8 Tort Claims	66	0	1	67	68	99%	97%	97%
Diocese of Great Falls - Billings	Class 3 Tort Claims	83	1	0	84	86	98%	98%	97%
Diocese of Duluth	Class 3 Claims - Tort Claims Other Than Unknown Tort Claims	116	2	0	118	125	94%	94%	93%
Diocese of Helena	Total	355	4	3	362	388	93%	93%	91%
	Class 4: Tort Claims Ursuline	213	2	3	218				
	Class 4: Tort Claims Diocesan	142	2	0	144				
Diocese of Winona-Rochester	Class 3 (Tort Claims Other Than Impaired Unknown Tort Claims)	130	1	5	136	147	93%	89%	88%

87 Again, given that more ballots were received than claims filed, but no ballots went uncounted in the final totals, a voting rate of 100% is presumed.

88 *See supra* notes 86-87.

89 *See supra* notes 86-87.

90 *See supra* notes 86-87.

Roman Catholic Church of the Archdiocese of Santa Fe	Class 3 Tort Claims	365	4	3	372	404	92%	91%	90%
Diocese of New Ulm	Class 1: Known Survivor Claims	85	0	0	85	93	91%	91%	91%
Diocese of Davenport	Class 7 Tort Claims	141	1		142	156	91%	91%	90%
Diocese of Fairbanks	Class 10 Claims - Tort Claims	256	2	6	262	288	91%	90%	89%
Archbishop of Agana	Class 3 (Tort Claims Other than Unknown Tort Claims)	152	1	76	229	259	88%	59%	59%
Archdiocese of St. Paul-Minneapolis	Class 6: Tort Claims Other Than Future Claims	398	2	0	400	453	88%	88%	88%
Diocese of Gallup	Class 9: Tort Claims	46	0	4	50	57	88%	81%	81%
The Weinstein Company	Class 4 Sexual Misconduct Claims	39	8	1	48	55	87%	85%	71%
Society of Jesus, Oregon Province	Class 3 Current Sexual Abuse Claims	512	2	3	517	609	85%	84%	84%
Diocese of Camden	Class 5 Abuse Claims Other Than Unknown Abuse Claims	270	6	16	292	345	85%	80%	78%
Madison Square Boys &	Class 4 Abuse Claims	122	4	1	127	151	84%	83%	81%

Girls Club									
Diocese of Harrisburg	Class 4: Known Survivor Claims	44	1	0	45	54	83%	83%	81%
Diocese of Stockton	Total	22	2	0	24	29	83%	83%	76%
	Class 12 (Tort Claims A)	4	0	0	4				
	Class 13 (Tort Claims B)	17	2	0	19				
	Class 14 (Tort Claims C)	1	0	0	1				
Christian Brothers Institute of New York	Class 4 Sexual Abuse Claimants	315	0	1	316	426	74%	74%	74%
Boy Scouts of America	Class 8 Direct Abuse Claims	48,463	8,073	3,888[91]	60,424	83,807	72%	67%	58%
Roman Catholic Diocese of Rockville Centre	Class 4 Abuse Claims	472	6	6	484	750	65%	64%	63%
Archdiocese of Milwaukee	Class 8: Abuse Survivor Plan Pool Claims	242	16	42	300	571	53%	45%	42%
Roman Catholic	Total tort claims					173			

91 A total of 20,102 ballots were returned but excluded from the final count of votes accepting or rejecting the plan. 13,539 of these excluded ballots were superseded by later ballots or duplicate votes. 506 of these were filed on behalf of late claims or by individuals with no valid claim on file. Thus, a remaining 6,057 ballots were returned by holders of valid claims but were excluded either for administrative reasons (i.e., failure to sign the ballot or failure to comply with master ballot solicitation procedures) or because the claimant returned the ballot but did not indicate a vote to accept or reject the plan. Because there was an opportunity for claimants to vote again after the vote failed to pass the 75% threshold that the debtor had set for itself, many claimants from these 6,057 ballots were for the same claimant. After removing ballots not counted on behalf of the same claimant, a total of 3,888 claimants voted but did not have their votes counted. Of this 3,888, 3,350 of the claimants' votes were not counted because they abstained from voting.

Bishop of Portland	Class 6: Settled Known Tort Claims					146			
	Class 7: Unresolved Known Tort Claims	3	5		8	27	30%	30%	11%
Diocese of St. Cloud	Class 10 Claims - Tort Claims	84	2	1	87	Unknown			

Additionally, for the sake of comparison, I also present voting data on several non-sexual abuse mass tort bankruptcies: the three opioid debtors' votes – Purdue Pharma, Endo and Mallinckrodt – and PG&E's bankruptcy to address its wildfire liabilities. Though Purdue Pharma's plan was not confirmed, given the Supreme Court's recent decision, its data is still instructive when comparing voting participation rates across types of mass tort liabilities.

Table 3: Comparison with Participation Rates and Approval Rates in Non-Sexual Abuse Bankruptcies

Debtor	Tort claimants' class	Ballots accepting	Ballots rejecting	Ballots not counted	Total ballots received	Final claim count	Voter participation rate
Endo	Class 7(A) PI Opioid Claims	35,106	475	19,008	54,589	90,000	61%
Mallinckrodt	Total	20,288	639	274	21,201	37,067[92]	57%
	Class 9(b) PI Opioid Claims	16,719	527	240	17,486	33,913	52%
	Class 9(c)	3,569	112	34	3,715	3,154	

92 There was no bar date in the Mallinckrodt case (a bar date was only set for the trust confirmed in the plan), so these claim counts come from the number of claims that the trust has received so far, as a proxy for the claims that would have been filed in the bankruptcy.

	NAS PI Opioid Claims						
Purdue Pharma	Total	62,433	2,683	2,098	67,214	137,041	49%
	Class 10(a) NAS PI Claims	4,237	83	23	4,343	6,553	66%
	Class 10(b) Non-NAS PI Claims	58,196	2,600	2,075	62,871	130,488	48%
PG&E	Class 5A Fire Victim Claims	44,931	6,109	1,022	52,062	70,000	74%

B. Initial trends in the voting participation and plan acceptance data

Voting participation rates in sex abuse bankruptcies, in general, were quite high. Several cases saw 100% or near-100% voter participation, including large cases involving many hundreds of survivors—where one would typically expect lower turnout due to coordination and communication challenges. Of the 29 cases studied, just five cases had a participation rate below 75%. One of those cases, the Diocese of Portland, is an anomaly because most survivors did not get to vote as they settled their claims in bankruptcy and were deemed unimpaired. Thus, only the Diocese of Rockville Centre, Archdiocese of Milwaukee, Christian Brothers Institute and Boy Scouts of America had sub-75% voting participation rates.

But even a sub-75% voting participation rate as the "low end" for sexual abuse bankruptcies is extremely high relative to other mass tort debtors. For example, in PG&E's bankruptcy, which addressed wildfire claims, approximately 74% of claimants sent ballots back. And this rate is far above participation in the opioid bankruptcies: in *Purdue Pharma*, only approximately 50% of personal injury claimants sent ballots back, a point that the U.S. Trustee emphasized in its oral argument as counting against third-party releases.[93] In the Endo and

93 Transcript of Oral Argument at 56, Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024) (No. 23-124).

Mallinckrodt opioid-related bankruptcies, slightly more personal injury claimants voted, at roughly 60% in each, which is still below the rates in the sexual abuse bankruptcy cases. Thus, it appears that sexual abuse bankruptcies categorically have a higher voting participation rate than other types of mass tort bankruptcies.

Not all survivors who returned ballots had their votes counted in determining whether the class accepted the plan. While in most cases the number of uncounted but valid ballots was de minimis, a few cases show notable exceptions. In the Archbishop of Agana's case, seventy-six survivors' votes were excluded because they were submitted via a bankruptcy court filing from their attorney, which was not an acceptable method of voting per the solicitation procedures. Without those seventy-six votes, only 59% of eligible claimants were recorded as voting. This appears to have been an isolated error by a single firm.

More troubling are the cases where a meaningful percentage of claimants returned ballots but abstained from voting on the plan. In the Boy Scouts Case, 3,888 ballots,[94] out of roughly 60,000 which were returned, were excluded, mostly because they did not indicate a vote to accept nor a vote to reject the plan. While on a relative basis this was just 5% of total claims filed, it is a staggering number on an absolute basis. Similarly, roughly 8% of ballots returned in the Archdiocese of Milwaukee case were excluded because they did not indicate a vote to either accept or reject the plan. It is counterintuitive that survivors who had already gone through the effort of filing a claim would then return a ballot but decline to cast a vote. Notably, the cases where a relatively high proportion of returned ballots abstained from voting appears to correlate with cases that also show lower overall voting participation—an association explored further in the next section.

Of the votes that were counted, plan approval rates in general were extremely high. Just four cases had an approval rate below 90%, and again, one of those cases is the Diocese of Portland, where most survivors were deemed unimpaired and thus did not vote. But even the lowest approval rate, 83% in The Weinstein Company's Chapter 11, was far above the two-thirds necessary to approve the plan. Among child sex abuse bankruptcies, the lowest approval rate was similar, at 84%, in the Diocese of Tucson's case. But most approval rates were in the high-90s, with nine even reaching a 100% acceptance rate. These plan approval rates are in line with non-sexual abuse bankruptcies, where plans typically were also passed with 90–100% of votes cast.

Table 4: Comparison of Voting Participation and Acceptance Rates to Average Settlements[95]

94 See BSA Excluded Votes spreadsheet.

95 Average settlement values for clergy cases come from Professor Marie Reilly's database, while non-clergy cases were calculated by final tort claimants' trust funding, divided by the number of claims filed. Professor Reilly's excellent database can be found here:

Debtor	Average per claimant settlement	Voting participation rate	Plan approval rate
Diocese of Spokane	$320,000	100%	100%
Diocese of Wilmington	$522,970	100%	99%
Diocese Tucson	$493,300	100%	84%
USA Gymnastics	$745,098	99%	100%
Crosier Fathers and Brothers Province	$593,020	99%	100%
Diocese of Great Falls - Billings	$232,560	98%	99%
Diocese of Duluth	$253,400	94%	98%
Diocese of Helena	$54,123	93%	99%
Diocese of Winona-Rochester	N/A – insurance policies transferred to trust	93%	99%
Roman Catholic Church of the Archdiocese of Santa Fe	$326,980	92%	99%
Diocese of New Ulm	$336,633	91%	100%
Diocese of Davenport	$228,390	91%	99%
Diocese of Fairbanks	$33,790	91%	99%
Archbishop of Agana	N/A – insurance policies transferred to trust	88%	99%
Archdiocese of St. Paul-Minneapolis	$467,300	88%	100%
Diocese of Gallup	$308,877	88%	100%
The Weinstein Company	$309,090	87%	83%
Society of Jesus, Oregon Province	$310,460	85%	100%
Diocese of Camden	N/A – insurance policies transferred to trust	85%	98%
Madison Square Boys & Girls Club		84%	97%
Diocese of Harrisburg	$308,219	83%	98%
Diocese of Stockton	$535,714	83%	92%
Christian Brothers Institute of New York	$41,000	74%	86%

https://catholicproject.catholic.edu/catholic-church-finances/bankruptcy-information/.

Boy Scouts of America	$29,353	72%	100%
Diocese of Rockville Centre	$780,000	65%	99%
Archdiocese of Milwaukee	$60,000	53%	94%
Archdiocese of Portland	$430,000	30%	38%
Diocese of St. Cloud	$137,255	Unknown	98%
Diocese of San Diego	$1,375,690	N/A	N/A

Another counterintuitive finding from these voting results is that there is not a clear correlation between approval rate or voting rate with the average settlement per claim. Bankruptcies with relatively low average claim payments, such as the Diocese of Helena and the Diocese of Fairbanks, where claimants received, on average, roughly $54,000 and $34,000, respectively, still had high plan approval rates, at 99% each. These average settlements are more than ten times lower than what survivors in other bankruptcies received, and yet their approval rate was higher than some of those cases, such as the Diocese of Stockton where claimants received, on average, $536,000 but the plan approval rate was just 92%. Voting participation rates for the Diocese of Helena and the Diocese of Fairbanks were similarly high, at 93% and 91%—again, higher than the participation rates of many bankruptcies that yielded larger average per claim settlements. Similarly, on the other side of the spectrum, the Diocese of Rockville Centre had one of the lowest participation rates among the clergy cases, at 65%, but its settlement, on a dollar basis, was on the high end, at roughly $430,000 per claim.[96]

The Boy Scouts Chapter 11 merits additional discussion. It is an anomaly among sexual abuse bankruptcies given its sheer size—nearly 84,000 survivors filed claims before the bar date. This is more than 100 times larger than the next largest case, the Diocese of Rockville Centre, which had 750 sexual abuse claims filed in its Chapter 11. In such a large case, one might expect that coordination and communication challenges between the claims administrator (who sent out the vote solicitation package), the plaintiffs' attorneys and the survivors would depress voting participation rates. But that was not the case; the participation rate was in line with other CSA bankruptcies, on the low end, certainly, but still in line.

One possible explanation for the high participation rate despite the large number of claims is the usage of master ballots. More common in the largest

96 $323 million / 750 claimants. *Chapter 11 Resources*, THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, https://www.drvc.org/chapter-11-resources/ (last visited May 16, 2025); Annex 2–5 to Disclosure Statement for Modified Plan of Reorganization Proposed by the Roman Catholic Diocese of Rockville Centre, *In re* Roman Catholic Diocese of Rockville Centre, New York, No. 20-12345 (Bankr. S.D.N.Y. Nov. 6, 2024), ECF No. 3375. Professor Marie Reilly reports a much higher number, but that does not appear to be correct.

mass tort bankruptcies, including many of the non-sexual abuse bankruptcies, master ballots allow the plaintiffs' firms representing the survivors to mediate the voting solicitation process. The solicitation procedure in Boy Scouts allowed firms to opt into having the solicitation agent contact them directly and send a master ballot, in lieu of serving a solicitation package on each individual claim holder.[97] However, votes counted via master ballots were less than 20% of all counted ballots.[98] Thus, attorney voting via master ballots does not appear to have been the predominant force behind the relatively high participation rates in the Boy Scouts case, and rather, it appears that individual survivors were still motivated to vote, despite the size of the case and any associated, perceived dilution of survivor voice.

This relatively high participation rate is also despite the Boy Scouts' low average per-claim settlement, of roughly $29,000, which was low relative to other child sex abuse bankruptcies and relative to BSA's insurance coverage, which included $500,000 per occurrence limits with no aggregate limits for the years when abuse was most rampant. So, the participation rate and high plan approval rate (of 86%) suggests that voting was not a referendum on the adequacy or fairness of claim recoveries.

The lack of correlation between participation rate and settlement size appears to be unique to sex abuse bankruptcies. In contrast, the non-sex abuse bankruptcies' average settlements were much lower, and this coincided with lower voting participation rates. For example, the average per personal injury claim recovery in the opioid bankruptcies was low— with claims receiving on average an estimated $390 in *Endo*,[99] approximately $1,877 in *Mallinckrodt*[100] and between $16,000-$48,000 in *Purdue Pharma*,[101] but only for the most severe injuries. The Mallinckrodt and Purdue Pharma settlement sizes are similar to the lowest diocese settlement amounts, yet their participation rates were 57% and 49%, respectively, whereas the dioceses' participation rates were much higher.

---

97 Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, *In re* Boy Scouts of Am., No. 20-10343-LSS (Bankr. D. Del. Sep. 30, 2021).

98 10,085 votes were submitted via master ballots, out of 56,536 total master ballot votes. See BSA Votes Excluded spreadsheet.

99 Endo Opioid Personal Injury Trust and Endo NAS Personal Injury Trust, https://endopitrust.com/ (last visited May 16, 2025).

100 Mallinckrodt filed for a second bankruptcy to reduce the amount owed to opioid claimants and emerged with a new plan that committed $700 million to opioid claims. Dietrich Knauth, *Court OKs Mallinckrodt Restructuring, $1 Billion Cut to Opioid Settlement*, REUTERS (Oct. 10, 2023), https://www.reuters.com/business/healthcare-pharmaceuticals/mallinckrodt-gets-approval-restructuring-1-billion-cut-opioid-settlement-2023-10-10/. Of this total, personal injury and NAS personal injury claimants share was 9.925%. *General FAQs*, MALLINCKRODT OPIOID PERSONAL INJURY TRUST, https://mnkpitrust.com/faqs/ (last visited May 16, 2024). Thus, PI claimants were entitled to $69,475,000.

101 Maia Anderson, *Individuals Who Sued Purdue Pharma Could Get Up to 48k in Bankruptcy Deal*, BECKER'S HOSPITAL REVIEW (Mar. 17, 2021), https://www.beckershospitalreview.com/uncategorized/individuals-who-sued-purdue-pharma-could-get-up-to-48k-in-bankruptcy-deal/.

By contrast, average claim values were much higher in the PG&E bankruptcy, at approximately $200,000 per claim, and claimant voting participation was higher, at 74%. Thus, the unusually high voting participation in sex abuse bankruptcies cannot be explained by settlement sizes alone; instead, the voting data suggests that something distinctive about these cases drives survivor engagement in the voting process.

III. INTERPRETING SEX ABUSE BANKRUPTCY VOTING DATA

Part I of this paper explained how the Bankruptcy Code fails to protect dissenting creditors in non-profit bankruptcies, and in fact, incentivizes the underfunding of Chapter 11 plans, providing statutory support for survivors and plaintiffs' attorneys arguments against bankruptcy. Yet, Part II demonstrated that voting participation rates in sex abuse bankruptcies are still high, both on an absolute basis and relative basis, when compared to other kinds of mass tort debtors. This section reconciles these seemingly contradictory findings by drawing on interviews with plaintiffs' attorneys and survivors involved in clergy bankruptcies and the Boy Scouts Chapter 11 case. Ultimately, this paper posits that voting participation rates are high because of the devastating nature of the harm suffered—voting often offers survivors their only real opportunity to have their voices heard regarding the horrific abuse they suffered, and many do not want to cause harm to their fellow survivors. High plan acceptance rates, in turn, reflect a sense of resignation and belief that there are no alternatives. Thus, neither voting participation nor plan acceptance rates should be interpreted as signaling support for the overall fairness of the plan or the bankruptcy system itself.

Parts A and B discuss why participation and plan acceptance rates are high, respectively. Given that voting is not a source of protection for survivors, Part C looks to other possibilities and lays out levers that could be pulled to improve the bankruptcy forum's resolution of sex abuse liabilities.

A. High voting participation rates is driven by survivors' need for voice, recognition and community, and is not an endorsement of the bankruptcy forum for resolving sex abuse liabilities.

All interviewees believed that it was important for survivors to vote, and attorneys made significant efforts to ensure that as many of them did as possible. Said Gilion Dumas, who represented 67 clients in the Boy Scouts case, "I tracked every one of them down."[102]

Delia Lujan, who represented 69 clients in the Boy Scouts case and almost 50 in the Archbishop of Agana's bankruptcy, explained that her preference was for in-person meetings with each client to explain the plan and her

102 Interview with Gilion Dumas, Partner, Dumas & Vaughn (May 2, 2025).

recommendation, which was possible because most of her clients were located where her office was, in Guam.[103]

Patrick Wall, a former clergy-member who has spent the past twenty years serving as an expert in clergy abuse cases and a non-attorney advocate with law firms specializing in representing survivors, similarly described contacting each client as a bespoke, painstaking process.

"What's unique in the sex abuse world is that every client has a unique style of how they want to communicate," Wall said. "So it's in their file. If they haven't told their spouse or their family when you send the letter, well the genie's out of the bottle. So sometimes it's texts, sometimes it's letters. You might call them or use a private email. But there is direct outreach to every single person."[104]

As to why voting was so important, Tim Hale, a Santa Barbara-based attorney who has spent the past twenty-plus years representing victims of sexual abuse, both in numerous bankruptcy cases and in state court actions, characterized the vote as survivors' "one chance . . . to really have their voice heard."[105] Whereas he viewed the litigation process as serving a healing function—the process of learning to speak about the abuse without the shame associated with it—bankruptcy, in his experience, rarely allowed survivors to speak about their experience in court.[106] Thus, voting was survivors' only opportunity to communicate their feelings to the court. This need to be heard was especially acute in clergy cases, where survivors often grew up in devout Catholic families and internalized Catholic values; the deep sense of betrayal they experienced made the act of voting one of the only ways they could express some voice regarding an institution so central to their upbringing.[107]

In the rare cases where survivors were allowed to speak, voting was viewed as an extension of that participation. The Diocese of Wilmington Chapter 11 was one of those cases where survivor voices were not just allowed to testify, but also where bankruptcy was able to somewhat approximate trial by allowing survivors to confront high-ranking officials of the church who had participated in the coverup of the abuse.[108] One portion of the Bankruptcy Code that was adopted for this purpose was the Section 341 meeting of the creditors, which is overseen by the U.S. Trustee's office.[109] Normally used for creditors to ask question about the debtor's property, liabilities and financial condition, it was adapted in the Diocese's case to allow survivors to confront church leadership.

---

103 Interview with Delia Lujan, Partner, Lujan & Wolff (May 1, 2025).

104 Interview with Patrick Wall, Advoc., Grant & Eisenhofer (May 1, 2025).

105 Interview with Tim Hale, Partner, Nye Stirling Hale Miller & Sweet LLP (May 1, 2025).

106 *Id.*

107 *Id.*

108 Interview with Matt Conaty, Managing Dir., William Blair (May 2, 2025).

109 *What is a 341(a) Meeting of Creditors?*, UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA (Dec. 13, 2025 at 14:12 PT), https://www.canb.uscourts.gov/faq/general-bankruptcy/what-341a-meeting-creditors.

Matt Conaty, who chaired the Tort Claimants Committee in the Diocese of Wilmington case, remembered, vividly, one such confrontation.[110]

"Don't you remember me coming up the stairs?" asked one survivor to the vicar-general, the highest-ranking member of a diocese after the bishop, who was forced to respond to questions at the Section 341 meeting, under the penalty of perjury, on behalf of the Diocese.[111] The vicar general had also lived in the same house as an abuser.[112]

The survivor added, "I'm a father now. I know when somebody comes into my house."[113]

Recounted Conaty, "The survivor was basically saying, what did you do about it? What did you know? Which, you know, you did nothing."[114]

Conaty, who later attended law school, where he studied bankruptcy with Judge Christopher Sontchi, who oversaw the Diocese of Wilmington case, explained that this was an example of how survivors did their best within the constraints of a Bankruptcy Code that was not written with these kinds of liabilities in mind.[115]

"This survivor hit [the vicar general] right between the eyes," he said.[116] Opportunities like these contributed to the Diocese of Wilmington's 100% voting participation rate.

Strongly related to voice is community. Conaty also attributed the high voting rate to the relatively small geographic area covered by the Diocese of Wilmington compared to other debtors, and the bankruptcy's temporal relationship to the passage of the Child Victims Act.[117] Conaty was a leading advocate for Delaware's Child Victims Act, which passed in 2007, and through that process, had developed strong relationships with other survivors, which he then drew on in his work for the TCC to keep them abreast of plan negotiation developments and ultimately to encourage them to vote.[118] Patrick Wall similarly emphasized community: "This is a unique group of people that also see themselves in a very specific collective where they do not want to hurt other survivors."[119]

Community also helps explain why the USA Gymnastics voting participation rate was near 100%. Survivors routinely spoke about their fellow Nassar victims as their "sisters."[120] Said one of them, who also filed a claim in USA

---

110 Conaty Interview, *supra* note 108.

111 *Id.*

112 *Id.*

113 *Id.*

114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.*

118 *About*, CHILD VICTIMS VOICE, https://childvictimsvoice.com/about/ (last visited Dec. 19, 2025).

119 Wall Interview, *supra* note 104.

120 *See, e.g.,* Jennifer Gerson, *'Sister Survivors' of Larry Nassar Abuse Reflect on Olympics*, THE 19TH (Aug. 6, 2021 at 14:09 PT), https://19thnews.org/2021/08/larry-nassar-survivors-olympics/.

Gymnastics' bankruptcy, "I knew in my heart that the sisters that had already come forwarded needed support and that the more of us who came out in support of what they were saying would only help their cause."[121]

For survivors who chose not to vote, Hale and others mainly attributed that to frustration with the overall bankruptcy process: "I think a lot of people feel monetized by the bankruptcy process and they [don't] want to participate any further. I think there's almost a feeling of helplessness . . . powerlessness. There's just not much opportunity for their voice to truly be heard in the bankruptcy process."[122] Another attorney described some non-participants as thinking, "I'll never agree to anything that the diocese suggests. I'll never agree with them no matter what."[123]

Finally, while there was always some proportion of clients who simply could no longer be contacted or who might have passed away, voting also requires survivors, in a way, to deal with the abuse underlying their claims, something that some did not want to do or were not ready to do.

Thus, in the vast majority of sex abuse bankruptcies, where voting participation rates were remarkably high, survivor engagement appears to have been driven less by the utility of the bankruptcy process or the terms of the plan and more by the nature of the harm itself. The need to be heard, to stand in solidarity with fellow survivors, and to reclaim a sense of agency were powerful motivators to vote, all of which were tied to the abuse suffered rather than the outcome of the bankruptcy case. Attorneys conceptualized voting as the closest available proxy for the voice and recognition survivors might have found in the civil justice system, and thus, should not be mistaken as an endorsement of the bankruptcy process. This is reflected in the relatively consistent voting participation rates across cases, regardless of settlement size. Moreover, even the decision not to vote was often shaped by the trauma of the abuse, rather than by the terms of the reorganization plan.

B. Cases with low participation rates, however, do reflect dissatisfaction with the debtor's behavior during the Chapter 11 process.

Participation rates in the two sex abuse bankruptcies with the lowest voting participation, however, do appear to have been a referendum on how the Chapter 11 process played out. Patrick Wall, the former clergy-member who has served as an expert in clergy abuse cases for the last twenty years, identified the two clergy cases with the lowest voting participation rates, the Archdiocese of Milwaukee and Diocese of Rockville Centre, as cases where the "greatest fraud" was perpetrated. By this, he meant both that the debtor engaged in egregious asset transfers prior to filing for bankruptcy and underhanded tactics during bankruptcy that belied any stated apology for the abuse.

---

121 *Id.*

122 Hale Interview, *supra* note 105.

123 Interview with Anonymous Attorney I (May 8, 2025).

In the Archdiocese of Milwaukee case, documents released during the Chapter 11 showed that Archbishop Timothy Dolan had sought Vatican approval to transfer nearly $57 million in cemetery funds from the archdiocese's accounts to a separate trust in 2007.[124] In his letter, he wrote, "By transferring these assets to the Trust, they will be protected by any legal claim and liability."[125] Then, during the Chapter 11, the debtor filed an adversary complaint against the Official Committee of Unsecured Creditors to prevent the Committee from accessing these funds to contribute to the Chapter 11 plan, claiming that the Religious Freedom Restoration Act and Free Exercise Clause protected these funds from being used to satisfy claims.[126] It took nearly four years to resolve this issue from the time when the debtor filed the complaint in 2011 to the Seventh Circuit's ultimate ruling in 2015, rejecting the debtor's religious freedom arguments.[127] The final plan, confirmed six months later, settled the litigation for $8 million, the largest non-insurance contribution to the trust established to pay claims, which was funded with a total of $21 million, but still just a fraction of the amount that had been transferred out of the archdiocese. The length of this case—at nearly 5 years—is also the longest-lasting sex abuse case and bankruptcy and professional fees incurred over this period drained substantial assets from the estate. In fact, professional fees *were greater than the amount of money survivors received* at $23 million compared to a $21 million settlement.[128]

Professional fees and delay were also a source of frustration for survivors in the Diocese of Rockville Centre's case, where *more than $100 million dollars* in legal fees were accrued prior to any settlement was agreed upon by the debtor and the survivors' committee.[129] Also frustrating survivors were the debtor's negotiating tactics. For example, the Diocese began soliciting votes for its plan, with a settlement of $200 million that the Diocese claimed was its "best and final offer," without reaching an agreement with the Official Committee of survivors. This initial plan, which was less than half of the $450 million that the Committee had wanted to fund the plan, was shot down by survivors, who overwhelmingly voted to reject the plan.[130] After this vote, the Diocese threatened to dismiss the

---

124 Annysa Johnson & Ellen Gabler, *Then-Archbishop Timothy Dolan Tried to Protect Money from Claims, Records Show*, MILWAUKEE J. SENTINEL (Jul. 2, 2013), https://archive.jsonline.com/news/religion/Cardinal-Dolan-sought-to-protect-money-from-claims-struggled-with-Vatican-to-defrock-abusers-b9943953z1-213832541.html.

125 *SNAP Calling for Federal Investigation into Dolan's Transfer of Money*, FOX6 NOW MILWAUKEE (Jul. 1, 2013 at 22:18 CT), https://www.fox6now.com/news/snap-calling-for-federal-investigation-into-dolans-transfer-of-money.

126 *In re* Archdiocese of Milwaukee, 485 B.R. 385, 388 (Bankr. E.D. Wis. 2013), *rev'd*, 496 B.R. 905 (E.D. Wis. 2013), *rev'd & remanded sub nom.* Listecki v. Off. Comm. of Unsecured Creditors, 780 F.3d 731 (7th Cir. 2015).

127 Listecki v. Off. Comm. of Unsecured Creditors, 780 F.3d 731, 749 (7th Cir. 2015).

128 Marie Reilly, *Catholic Dioceses in Bankruptcy*, 49 SETON HALL L. REV 871, 923 app. B (2019).

129 Bart Jones, *Rockville Centre Diocese at Crossroads in Bankruptcy Case Linked to Abuse Survivors' Lawsuits*, NEWSDAY (Apr. 29, 2024), https://www.newsday.com/long-island/religion/diocese-of-rockville-centre-bankruptcy-priest-abuse-nfsn39l5.

130 86.5% of abuse claimants rejected this plan. *See* Declaration of Stephenie Kjontvedt

Chapter 11 case and send all individual claims back to the state court system, where earlier filed cases would have a significant advantage over claims that had yet to be filed via their own civil suit. Only after this, when civil trials were set to begin again, did the Diocese of Rockville Centre come back and cough up $120 million dollars *more* for a final settlement of $320 million, contradicting any previous statement about a "best and final offer."

The Committee offered several reasons for why the $200 million that the Diocese offered was too low. First, the Diocese had failed to provide information about the parishes' finances, and survivors believed that these parishes had to contribute sufficient assets to "earn" their third-party release. Moreover, the debtor's argument that $200 million was a great offer because it was the most ever offered in a bankruptcy case rang hollow when compared to how much such claims could get in civil jury trials—or in mass settlements outside of bankruptcy.[131] All of this happened with the backdrop of the Archdiocese of Los Angeles announcing a settlement of roughly $660,000 per survivor outside of bankruptcy in the months before the Rockville Centre settlement deal.

Second, the Rockville Centre case also involved suspect asset transfers. One was the sale of the Fidelis Care insurance company, the health insurer that was owned by the Catholic bishops of the New York's eight dioceses in 2018, just months before the New York Child Victims Act (CVA) passed.[132] The CVA opened a revival window where child sex abuse claims that were previously barred by the statute of limitations could now be asserted in court and in the time since, six of New York's eight dioceses have filed for bankruptcy. The sale of Fidelis netted $3.75 billion for the Catholic bishops, most of which was then transferred to the Mother Cabrini Health Foundation, where its assets were unavailable to satisfy judgments or claims against any of the dioceses in New York.[133] As Patrick Wall noted, survivors were horrified by all of this.[134]

Thus, both of these cases—which had markedly lower voting participation than the next lowest tier of cases[135]—involved aggressive debtor behavior that survivors perceived as attempts to underpay their claims and avoid taking accountability for the harms the debtor facilitated. Yet both of these cases still had high plan acceptance rates, at 99% for the Diocese of Rockville Centre and 94%

6, *In re* Roman Catholic Diocese of Rockville Centre, New York, No. 20-12345 (Bankr. S.D.N.Y. Apr. 17, 2024), ECF No. 3057.

131 The judge himself speculated that these claims could earn multi-million-dollar judgments outside of bankruptcy.

132 Sean Mikey, *The Catholic Church Made $3.7 Billion from the Sale of Fidelis Care*, WGRZ (Aug. 23, 2024 at 10:58 ET), https://www.wgrz.com/article/news/investigations/2-investigates/ny-catholic-bishops-could-tap-into-billions-for-global-sex-abuse-settlement/71-47b97540-d9b0-456a-9d5d-17a7af018ec7.

133 Brendan J. Lyons, *Attorneys in Albany Diocese Bankruptcy Case Seek Records on Fidelis Sale*, TIMES UNION (Jul. 27, 2023), https://www.bishop-accountability.org/2023/07/attorneys-in-albany-diocese-bankruptcy-case-seek-records-on-fidelis-sale/.

134 Wall Interview, *supra* note 104.

135 The Archdiocese of Milwaukee's voting participation rate was 53%, while the Diocese of Rockville Centre's rate was 65%, both of which are significantly lower than the next two lowest cases, Boy Scouts and Christian Brothers Institute, at 72% and 74% respectively.

for the Archdiocese of Milwaukee. It appears then, that low participation rates, rather than plan acceptance rates, represent a referendum on how the Chapter 11 process resolved the sex abuse liabilities.

Gilion Dumas, whose clients dissented from the Boy Scouts plan, agreed with this conclusion: "The vote of people who didn't participate almost should be counted as people who didn't like [the plan]."[136] She has fielded numerous calls from Boy Scouts survivors who explain that they did not vote on the plan because they did not like it, without realizing that they could have voted to reject the plan.[137] Moreover, the large percentage of ballots in the Boy Scouts case that were returned but which abstained from voting further is further evidence that the final count of votes, which do not include abstaining ballots, fails to capture dissent of the abstaining survivors.

In sex abuse bankruptcies, then, where the norm is extremely high participation rates, a sub 80% participation rate should give cause for concern, since that participation rate likely reflects survivors' immense dissatisfaction with the debtor's behavior and the Chapter 11 process writ large. Plan acceptance rates, simply put, do not tell the full story.

C. High plan approval rates similarly should not be viewed as an endorsement of the bankruptcy system and instead reflect fatigue and a view that there are no alternatives to the plan.

No one interviewed thought that high plan acceptance rates should be viewed as an endorsement of the bankruptcy system. Rather, one universal theme in my discussions with attorneys and survivors was "fatigue."

For many survivors, the bankruptcy case is filed several years after their civil suits commenced. Thus, by the time plan confirmation comes around, years have gone by. Explained Delia Lujan: "Most of my clients' lawsuits were filed in 2017–2018. Then, years later, the bankruptcy cases were filed. And then, a year or two later or more, you get a bankruptcy plan sent for solicitation."[138] She felt that the bankruptcy filing, in some ways, "prey[ed] upon people" since debtors take advantage of Chapter 11 to halt state court cases, draw out proceedings, and then, given many of the survivors' ages, many think "Oh, better to get something rather than nothing."[139]

Patrick Wall, who has seen about a dozen of sex abuse bankruptcy voting processes play out, agreed: "Because most bankruptcies go several years and then prior to the bankruptcy, [survivors] were already in civil litigation for several years, there is just, what I would call, a factor whereby people get beaten down by the legal process."[140] He added that age is also a factor: "If [survivors] start out the process in their sixties and now they're in their seventies, they want

136 Dumas Interview, *supra* note 102.
137 *Id.*
138 Lujan Interview, *supra* note 103.
139 *Id.*
140 Wall Interview, *supra* note 104.

to get this thing done."[141] Thus, "In some sense, as long as [the plan] is not completely objectionable, they're going to accept whatever compromise can be worked out by the bankruptcy court."[142] Tim Hale made a similar point: "it's better than nothing."[143] Supporting their assessment is the fact that votes are solicited normally only at the very end of the bankruptcy case. It certainly cannot be said, then, that plan approval rates, obtained years after a filing, are a referendum on the legitimacy of bankruptcy as a method to resolve sex abuse liabilities.

Notably, no attorney thought that the bankruptcy code provided any protection to them should survivors dissent from the plan. Lujan's clients attempted to raise a best-interests argument at the Boy Scouts confirmation hearing, asserting that it was inappropriate for the liquidation analysis to fail to give value to the claims her clients would have outside of bankruptcy, particularly their direct-action rights against Boy Scouts' insurers.[144] But Judge Silverstein flatly rejected the argument because no testimony had been given to contradict the debtor's expert who had prepared the liquidation analysis.[145]

Lujan also recognized that there was nothing stopping a Court from forcing a plan on survivors, even if all of them voted against the plan: "Let's say that you want to wait things out and you think it's best for your clients to wait things out. You might end up in a worse situation if the court actually forces a plan on you."[146]

Gilion Dumas, whose clients also contested the Boy Scouts' plan confirmation, noted that Judge Silverstein seemingly wanted to overrule every objection to the plan, so "I don't know if it would have made a difference if every single person had objected on best interests grounds."[147]

More evidence that plan acceptance rates are divorced from the outcome of the case comes from the limited variation in the plan approval rates. They were universally high, with only three cases dipping below 90% (with the exclusion of the Portland case for reasons discussed previously) and only one clergy case dipping below 90%. Yet these cases differed dramatically in how much they were able to litigate transfers out of the estate and insurance coverage. For example, the USA Gymnastics Chapter 11 saw the insurance policies aggressively litigated, with several favorable rulings that were affirmed by the Seventh Circuit, and in fact, the final plan was essentially written by the TCC.[148] Similarly, Matt

---

141 *Id.*

142 *Id.*

143 Hale Interview, *supra* note 105.

144 Lujan Claimants' Objection to Second Modified Fifth Amended Chapter 11 Plan of Reorganization at 20, *In re* Boy Scouts of Am., 642 B.R. 504 (2022) (No. 20-10343).

145 *In re* Boy Scouts of Am. & Del. BSA, LLC, 642 B.R. 504, 664–65 (Bankr. D. Del. 2022).

146 Lujan Interview, *supra* note 103.

147 Dumas Interview, *supra* note 102.

148 Disclosure Statement for Third Amended Joint Chapter 11 Plan of Reorganization Proposed by USA Gymnastics and the Additional Tort Claimants Committee of Sexual Abuse Survivors, *In re* USA Gymnastics, No. 18-0918 (Bankr. S.D. Ind. Oct. 25, 2021), ECF No. 1656

Conaty described litigation over a pooled investment account, which the Diocese of Wilmington claimed as a third-party entity, as a "pivotal point in the case," when the court largely ruled in favor of including the account assets in the estate.[149] Yet cases with much smaller settlements and with no significant litigation over asset availability also had essentially 100% acceptance rates of those whose votes were counted.

This analysis supports the view that, in non-profit bankruptcies, where statutory protections for dissenting creditors are nonexistent and thus, there is no mechanism to compel the debtor to increase funding for survivors, many vote in favor simply because no viable alternative exists. In short, the lack of statutory protections and delays inherent in the bankruptcy process complicate the notion that voting serves as meaningful protection—and the reality of what the vote achieves falls far short of the theoretical role it is often assumed to play.

D. What survivors actually want from Chapter 11

Those interviewed were unanimous in their dissatisfaction with the bankruptcy system as a vehicle for resolving sex abuse claims. "We're taking a square peg and trying to put it in a round hole," said Patrick Wall.[150] Matt Conaty, who chaired the Tort Claimants' Committee in the Diocese of Wilmington bankruptcy, echoed this sentiment, noting that bankruptcy is "never everything you want it to be."[151] He added bluntly, "I really wanted a jury trial."[152]

What, then, would make the process more meaningful—or at least less alienating—for survivors? Conaty emphasized that the abuse and the institutional cover-up must remain central to the bankruptcy case, even if the bankruptcy is a poor forum for such goals.[153] Like Tim Hale, he believes survivors need more opportunities to speak and be heard. "In the depositions of my case, I was able to be a witness to the truth," he said.[154] "It's ugly, but it's also how you give back the shame that survivors take on, which is not ours. It's how we fight back."[155] To that end, Conaty and others believe that more judges should allow survivor testimony and that regional U.S. Trustee offices should facilitate Section 341 meetings that, like the one in the Wilmington case, give survivors the chance to confront clergy leadership directly.

Dismissal is another option that many plaintiffs' attorneys believe should be on the table earlier in the process—but courts rarely entertain it unless negotiations between the debtor and the Tort Claimants' Committee have completely broken down. However, this is when fatigue for the survivors has set in, and thus when they are most likely to not want the dismissal of the case.

---

149 Conaty Interview, *supra* note 108.
150 Wall Interview, *supra* note 104.
151 Conaty Interview, *supra* note 108.
152 *Id.*
153 *Id.*
154 *Id.*
155 *Id.*

Several attorneys also pointed to the emerging practice of lifting the automatic stay to allow cases that were already trial-ready before the Chapter 11 filing to proceed.[156] Judges have allowed these trials to move forward to serve as bellwethers for the rest of the claims in the bankruptcy case, but they also are a means to restore some measure of accountability that bankruptcy otherwise fails to provide.

The safeguards that meaningfully serve survivors, then, are not found in Bankruptcy Code's voting process and its related provisions, but in efforts to make bankruptcy proceedings approximate the structure and accountability of civil litigation.

CONCLUSION

This paper reveals a widespread misconception among courts and proponents of mass tort bankruptcies. Many view the creditor vote and its related provisions for dissenting creditors as a key advantage of Chapter 11 when comparing bankruptcy to alternatives for resolving mass tort liabilities. But this paper has shown that dissenting creditors are not protected by the bankruptcy code because the best interests test and absolute priority rule are functionally useless in non-profit bankruptcies. Instead of protecting dissenting creditors, these tests actually *incentivize* debtors to undercompensate survivors. Thus, high voting participation and plan approval rates cannot be taken as referendums on the plan's fairness or the bankruptcy forum's legitimacy in resolving mass tort liabilities. Rather, high participation rates reflect survivors' need for voice given the horrific abuse they have suffered and the community they have formed with other survivors, while high acceptance rates often reflect a sense of fatigue and futility with the Chapter 11 process. The view that the vote offers "greater procedural protections" compared to state court alternatives, then, is simply a myth when it comes to sex abuse bankruptcies.

156 *Bankruptcy Court Approves Motion to Lift the Automatic Stay So That Two Alleged Abuse Cases Could Go to Trial,* ARCHDIOCESE OF SAN FRANCISCO (Apr. 15, 2025), https://sfarch.org/read-statement-following-bankruptcy-court-approved-motion-to-lift-the-automatic-stay-so-that-two-alleged-abuse-cases-could-go-to-trial/.