

# Charity Bankruptcy: What are the Moral Considerations?

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The remedy of bankruptcy is not an easy choice for any entity and -especially for a nonprofit corporation – the decision is gut-wrenching. But in some cases, it may be the only way to salvage some of the organization so that it can regroup and go on or to let it close down with as little pain as possible (to everyone concerned) under the sad circumstances.

Recently, the word “bankruptcy” has become associated with two prominent organizations that provide services for children and young adults: USA Gymnastics and the Boy Scouts of America. In the former case, the group has started bankruptcy proceedings; in the latter, the move is under serious consideration.

In both cases there is the added dimension of sexual-abuse lawsuits alleging incidents over decades compounded by the unfortunately all-too-common claims that leadership covered up the abuse and bungled the recovery once the facts were exposed.

### ***What Will The USA Gymnastics Bankruptcy Accomplish?***

The revelations of sexual abuse of America’s leading gymnastic hopefuls by a single team doctor splashed over headlines around the nation in 2017. The image and reputation of USA Gymnastics, a 501(c)(3) organization, was ripped to shreds “first by revelations of sexual abuse by Dr. Larry Nasser, and then by the extraordinarily poor handling of the situation by USAG ‘leadership.’”

Major sponsors fled. There were “clumsy” executive searches – three of them – for CEOs who departed rapidly, one after the other. “Culpable board members” were kept on for too long.

The organization – which is in the middle of victim lawsuits as well as a move by the U.S. Olympic Committee to pull the group’s accreditation to manage gymnastics competitions for the nation – decided to file for Chapter 11 bankruptcy, which is a reorganization-type filing category.

Is it, in the words of Wall Street Journal reporters Rebecca Davis O'Brien and Katy Stech Ferek “a **dramatic step** for an embattled organization”? What does it accomplish? Will it help the survivors? Will it rescue the organization?

According to Kathryn Carson, recently elected chair of the board of directors, the purpose of the bankruptcy filing is to “**expedite resolution**” of victim financial claims and to take “critical first steps in rebuilding the community’s trust....”

But John Manly, a “lawyer representing more than 100 survivors awaiting compensation, said claiming that the goal of the filing was to expedite payments was “**a transparent falsehood’ and ‘laughable.’**” In fact, the filing “puts an automatic stop—perhaps permanently, depending on a judge’s ruling—to depositions and discovery in” these lawsuits.

The filing will also likely “stop or slow USOC’s” complaint that begins the process of pulling USA Gymnastic’s authority as the governing body for U.S. Olympics gymnastics competitions. A spokesman for the United States Olympics Committee expressed doubts that the delay will help the organization in the long-run: “While we fully understand that **USAG believes this restructuring** will begin to solve deficiencies we’ve identified, the filing does not impact our Section 8 complaint and that process will move forward.”

#### ***Will a Boy Scouts’ Bankruptcy Filing Help It?***

In mid-December, the Boy Scouts of America (BSA) wrote to its employees that it “plans to “**explore all options** available to ensure that the local and national programming of the Boy Scouts of America continues uninterrupted.”

Not unlike USA Gymnastics, the Boy Scouts is struggling with declining membership along with a slew of sexual-abuse lawsuits. The scouting organization was founded in 1910 and operated continuously since then, but it has “been at the center of” accusations of “**inappropriate conduct** by employees or volunteers in incidents dating as far back as the 1960s.”

A future bankruptcy filing could include a request that the suits be halted while the BSA works through a reorganization. “This, **some speculate**, would give the group some leverage in settling the suits.” It’s an approach that’s **similar to those taken by other groups** mired in sex-abuse scandals, including more than twenty Catholic dioceses and religious orders and USA Gymnastics.”

Meanwhile, a recent step taken by the Boy Scouts to help itself out during these troubled days has backfired in a big way. Someone there thought that recruiting girls to the organization might be just the ticket to beef up the membership rolls. But the Girls Scouts of America was not at all amused and sued the Boy Scouts of America for trademark infringement. That **lawsuit is still pending**.

#### ***Conclusion***

In **commenting on both** of these situations – USA Gymnastics and the Boy Scouts – Ruth McCambridge of The Nonprofit Quarterly does not pull any punches, remarking on the “now **pat and predictable statement[s] of “concern”** (about the victims) issued by both organizations.

According to BSA Chief Scout Executive Mike Surbaug, the Boy Scouts of America has “a **social and moral responsibility** to fairly compensate victims who suffered abuse ..., and we also have an

obligation to carry out our mission to serve youth, families and local communities through out programs.”

In a similar vein, according to USAG’s Kathryn Carson, Gymnastics USA owes it “to the survivors to resolve, fully and finally, claims based on the horrific acts of the past and, through this process, seek to expedite resolution and help them move forward.” She adds her hope that the bankruptcy filing will help in “rebuilding the community’s trust” and enable them to continue the important work of supporting our outstanding gymnasts at all levels, including the current and next generation of Olympic hopefuls.”

In a business setting, a bankruptcy reorganization filing decision is, first and foremost, a strategic decision to restore to the shareholder-owners as much financial value as possible. For a charitable organization, aren’t decisions like this a much more complex matter?