

**SCHMITT SCHNECK**  
**CASEY EVEN & WILLIAMS, P.C.**

During Bob Brown's presentation on October 29 at the 2020 Church and Ministry Law Annual Seminar, he referred to the attached additional handouts which were available for the in-person attendees but was not posted online prior to the webinar.

If you have questions, please contact Bob Brown at 602-740-1032 or [Bob@ChurchLaw.US](mailto:Bob@ChurchLaw.US).

# A Nearly \$22 Million Verdict for Sexual Abuse Not Excessive, Affirms Federal Appeals Court

Churches should understand that a single incident of child abuse can expose a church to damages far in excess of its insurance coverage.

## Categories:

### Sexual Misconduct by Clergy, Lay Employees, and Volunteers

**Key point 10-04** . A church may be liable on the basis of negligent selection for a worker's molestation of a minor if the church was negligent in the selection of the worker. Negligence means a failure to exercise reasonable care, and so negligent selection refers to a failure to exercise reasonable care in the selection of the worker. Liability based on negligent selection may be imposed upon a church for the acts of employees and volunteers.

**Key point 10-04.3** . Churches can reduce the risk of liability based on negligent selection for the sexual molestation of minors by adopting risk management policies and procedures.

A federal appeals court ruled that a \$21.7 million verdict against a teacher and private Jewish school for the teacher's sexual molestation of a student was not excessive and would not be overturned.

## Psychologist: the victim suffered from PTSD due to abuse

An adult male (the "victim") sued the teacher and school alleging that the teacher sexually abused him for several years while he was a minor student at the school. The teacher had been, at various times, the dean, director, treasurer, and president of the board of directors of the school.

The victim was a student at the school from Fall 2001 until Spring 2005. During that time, when the victim was 14 to 17 years old, the teacher sexually abused him on a frequent, sometimes weekly, basis, sometimes for hours at a time. The teacher provided the victim with alcohol and engaged in a variety of sexual activities with him at several locations including the school, motels, and the teacher's home.

For help reducing the risk of abuse in your children's and youth ministries, see these resources: [Reducing the Risk: A Child Sexual Abuse Awareness Program](#), [Youth Ministry in a #MeToo Culture](#), and [Child Sexual Abuse Response Plan](#).

The victim suffered physical, emotional, and psychological injuries as a result of the abuse. The lasting effect of that abuse was corroborated by his wife and his clinical psychologist.

The victim's psychologist, a specialist in post-traumatic stress disorder (PTSD) and childhood trauma related to physical, emotional, and sexual abuse, conducted a forensic interview of the victim, and concluded that the victim was shut off emotionally, had lost his sense of trust, had difficulty with intimacy and vulnerability, continued to suffer from PTSD, and would continue to struggle with PTSD throughout his life.

## **Trial judge ruling: the defendant “repeatedly sexually abused” the victim**

The teacher was convicted of felony child abuse, and sentenced to 20 years in prison. At a sentencing hearing, the trial judge denounced the teacher for his actions, noting that the evidence showed that he “repeatedly sexually abused” the victim over several years, and was guilty of a “colossal violation of trust. . . . He committed the worst possible crime in the worst possible way.”

The victim sued the teacher and school (the “defendants”) in a civil lawsuit, alleging that the teacher had sexually abused him and that the school’s administrators had knowledge of the abuse but failed to report the teacher to law enforcement as required by Connecticut law.

At the conclusion of trial, the jury awarded the victim \$15 million in compensatory damages, and \$5 million in punitive damages plus interest of \$1,749,041 for a total award of \$21,749,041.

The defendants appealed this verdict to a federal appeals court, arguing that it was excessive and had to be substantially reduced. The defendants asserted that the

evidence presented at trial simply did not support the jury’s exorbitant verdict in this case, which is dramatically out of step with non-economic damage awards by juries in cases involving similar claims of sexual abuse, both in Connecticut and throughout the country.

## **Past rulings guide appeals court’s decision against teacher**

The appeals court affirmed the trial court’s verdict. It observed:

In considering a damages award, a trial court must evaluate whether the jury’s award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption. A jury award may not be set aside merely because it exceeds what the court would have awarded. There are only a few decisions in Connecticut addressing the size of a jury award in cases concerning sexual abuse of a minor, but they are instructive. For example, in [one case] the court denied a motion to set aside a \$15 million jury verdict against a defendant based on claims that he sexually abused the plaintiff from the time she was six years old until she was seventeen. [In another case] the Connecticut Supreme Court upheld an award of \$7 million for three incidents of sexual assault against a minor victim. And in [a third case] the court awarded \$75,200 for economic damages; \$500,000 for non-economic damages; and \$167,800 in punitive damages based on claims that the defendant sexually molested the plaintiff several times before the plaintiff’s sixteenth birthday.

. . .

The district court did not abuse its discretion in [refusing to reduce the amount of the verdict] because the verdict is not excessive as a matter of Connecticut law. While the teacher argues that the victim lacked evidence to support the award of non-economic damages, there was ample evidence in the record of his physical, emotional, and psychological injuries. In addition to his own testimony, his wife and psychologist both testified that he had issues with intimacy, forming emotional attachments, and vulnerability with others. His wife explained that the teacher’s abuse had a significant, negative impact on their married life. . . . The victim’s psychologist, an expert in PTSD and childhood trauma, indicated that even with treatment, the sexual abuse the victim suffered as a minor would have lifelong consequences for him. The jury clearly credited the witnesses’ testimony in finding the defendants liable and awarding compensatory damages of \$15 million.

The amount of compensatory damages is undoubtedly high, but we are not persuaded that a [reduction in the size of the verdict] is warranted under Connecticut law. The award here is not

excessive when compared to the awards in the cases cited above. Here, the record indicates that the victim suffered repeated abuse for approximately three years, from the time he was fourteen until he was seventeen years old. At certain points, he was abused for hours at a time, on a weekly basis. . . .

The court noted that on a “per incident basis,” the \$15 million verdict for compensatory damages “falls within the range of non-economic damages that have been upheld by Connecticut courts in cases of sexual abuse.” It cited three additional rulings by the Connecticut Supreme Court:

- *Doe v. BSA Corp.*, 147 A.3d 104 (Conn. 2016). The Connecticut Supreme Court permitted a \$7 million award for three incidents of sexual assault involving a ten-year-old boy by a Boy Scouts leader.
- *Doe v. Thames Valley Council for Community Action, Inc.*, 797 A.2d 1146 (Conn. 2002). The Connecticut Supreme Court upheld a total award of non-economic damages of \$220,000 to minors who were sexually assaulted by their school bus driver.
- *Sciola v. Shernow*, 577 A.2d 1081 (Conn. 1990). The Connecticut Supreme Court ruled that a trial court erred in ordering a reduction of a jury verdict from \$400,000 to \$323,833 in favor of a plaintiff who claimed that her dentist sexually assaulted her while she was sedated.

The court concluded:

[The victim] testified that [the teacher] sexually abused him weekly during his sophomore year (when he was fourteen years old) and somewhat less often during his junior and senior years (but still at least every three or four weeks), and therefore he was sexually assaulted dozens of times. Based on the evidence presented at trial, we are not persuaded that the jury’s award ‘shocks the sense of justice.’ Consequently, we conclude that the district court did not abuse its discretion in denying the motion for a new trial. . . . The teacher’s challenge to the amount of the verdict fails.

### **What this means for churches**

The sexual molestation of minors remains one of the most serious legal risks facing churches today for a number of reasons, including:

- In many churches, the number of minors attending youth services and activities is substantial.
- A single incident of child molestation can cause negative publicity in the community.
- In many cases, victims of child sexual abuse will sue the church for monetary damages.
- Many churches have inadequate insurance for child molestation claims, resulting in a potentially significant uninsured risk.
- A church is exposed to a civil lawsuit by victims of child sexual abuse, usually on the basis of negligent hiring, supervision, or retention.
- Most states have extended the statute of limitations for cases of child sexual abuse, exposing a church to lawsuits for decades.

The case addressed in this article adds an additional reason why incidents of child molestation represent a significant risk for churches: the possibility of a jury awarding substantial damages to a victim far in excess of a church’s insurance coverage.

How many churches could survive an adverse verdict of \$20 million for a case of child molestation?

Admittedly, this case involved numerous acts of severe molestation over several years. But the court referenced a verdict of \$7 million in a case involving the molestation of a Boy Scout on three occasions. The

court cited two other cases involving much lower verdicts, but these were older cases involving very different facts.

The lesson of this case is clear: A single incident of child abuse can expose a church to damages far in excess of its insurance coverage. As a result, this risk constitutes an existential threat to a church that must be taken seriously. *Mirlis v. Greer*, 952 F.3d 36 (2nd Cir. 2020).

Richard R. Hammar is an attorney, CPA and author specializing in legal and tax issues for churches and clergy.

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## Post-Bostock CHECKLIST for 501(c)(3) entities

<u>YES</u>	<u>NO</u>	<u>?</u>	
___	___	___	We have read the White Paper, " <b>How A Church or Ministry Can Hire Only Employees Who Share the Tenets of Its Faith</b> ", published by the Church & Ministry Law Group of Schmitt Schneck Casey Even & Williams, P.C.; available at: <a href="https://mcusercontent.com/11fa4d5f82b7a5748aa4f4b2d/files/f997efa3-978b-4bfb-80cf-75930459c1d0/How_a_church_or_ministry_can_hire_only_employees_who_share_the_tenets_of_its_faith.pdf">https://mcusercontent.com/11fa4d5f82b7a5748aa4f4b2d/files/f997efa3-978b-4bfb-80cf-75930459c1d0/How a church or ministry can hire only employees who share the tenets of its faith.pdf</a>
___	___	___	We have reviewed our church's/ministry's <b>Statement of Faith, Tenets of Faith</b> , and similar documents for compliance with the principles listed in the White Paper.
___	___	___	We have reviewed our church's/ministry's Articles of Incorporation, Bylaws, Employee Handbook/Manual, Employment agreements, Volunteer agreements, and similar documents for compliance with the principles listed in the White Paper.
___	___	___	We currently have or are in the process of creating a <b>Standards of Conduct</b> , a <b>Personal Conduct</b> , a <b>Marriage, Gender, and Appropriate Behavior</b> , a <b>Statement of Beliefs Regarding Marriage, Gender, and Sexuality</b> policy statement, and/or similar policy statements.
___	___	___	In all recruitment advertisements (print and/or online), we inform applicants that a term and condition of employment is agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements.
___	___	___	On our application for employment form (print and/or online), we inform applicants that a term and condition of employment is agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements.
___	___	___	Within each Offer Letter, we inform the person to whom the offer is made that a contingency upon which the offer is made is his/her agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements.
___	___	___	In the Acceptance section of each Offer Letter, the person to whom the offer is made signs/attests that he/she understands that the offer is made contingent upon his/her agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements and agrees to do so.
___	___	___	On our application for employment form (print and/or online) for Volunteers, we inform applicants that a term and condition of volunteering at our church/ministry is agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements.
___	___	___	Within each Offer Letter to a Volunteer, we inform the person to whom the offer is made that a contingency upon which the offer is made is his/her agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements.
___	___	___	In the Acceptance section of each Offer Letter to a Volunteer, the person to whom the offer is made signs/attests that he/she understands that the offer is made contingent upon his/her agreeing to abide by our <b>Statement of Faith, Tenets of Faith</b> , and/or related policy statements and agrees to do so.

***THIS ARTICLE IS FROM BAPTIST PRESS:***

## Boy Scouts bankruptcy could leave churches liable in future sex abuse claims

NASHVILLE (BP) – Churches who chartered or have ever hosted a Boy Scouts of America (BSA) troop should seek legal counsel now in case they are named in future sex abuse claims against the BSA, a Southern Baptist legal representative told Baptist Press.

The BSA filed Chapter 11 bankruptcy and reorganization in February to establish a trust to pay sex abuse claims and to limit the BSA's liability in such cases. As such, indemnification clauses would no longer apply, and liability could fall to churches associated with specific troops named in lawsuits, attorney James "Jaime" Jordan said.

"If a church five years from now gets sued by a former Boy Scout who was molested or claims to have been molested in that church's troop, normally the church would turn to the Boy Scouts and say, 'You guys said you would hold us harmless and insure us, so do that,'" Jordan said. "And the Boy Scouts will say, 'Sorry, we went through a bankruptcy reorganization and we no longer have any responsibility to do that.'"

Churches can maintain their indemnification and gain access to the trust by filing a "placeholder" claim with the court by the Nov. 16 deadline, said Jordan, whose firm Guenther, Jordan & Price is outside general counsel to the Southern Baptist Convention Executive Committee and the SBC.

"For people who don't notify the court that they have a claim by the (deadline) of Nov. 16, there may not be any coverage," he said. "The solution would be for churches to file a claim with the court saying, 'We may in the future have a claim made against us by a Boy Scout, and so we're raising our hand now, so we won't be barred when that day comes.'" Jordan advises churches to seek individual legal counsel regarding how they should respond. "I advise churches, if they have now or have ever had a Boy Scout troop, that they should contact legal counsel to see if they need to file a prospective claim before Nov. 16," Jordan said., including churches that chartered or simply hosted a troop.

More information about the bankruptcy filing is available [here](#) with claims information available [here](#).

### **ABOUT THE AUTHOR**

- **DIANA CHANDLER** Diana Chandler is Baptist Press' senior writer. [Read All by Diana Chandler](#)

# **SCHMITT SCHNECK**

## **CASEY EVEN & WILLIAMS, P.C.**

Robert Erven Brown, Esq.  
(602) 740-1032

October 27, 2020

### **IMPORTANT NOTICE ABOUT PENDING DEADLINE IN THE BOY SCOUT BANKRUPTCY**

I just received the attached mail notice from a fellow attorney regarding the potentially devastating impact of the pending national bankruptcy case of the Boy Scouts.

As an Eagle Scout myself, I cannot tell you how distressing this subject is.....

The memo you have raises some complex legal issues including personal injury law, class actions, and bankruptcy law and that whether this increases liability exposure for churches is a problematic, to say the least.

Our fear is that this bankruptcy action may result in increased exposure to liability for churches who chartered Boy Scout troops because their indemnification provisions and/or general liability insurance coverage may be eliminated or significantly reduced in the Boy Scout bankruptcy, even if they don't face a direct claim.

If your church is facing a sex abuse claim arising from a Boy Scout troop, then I highly recommend that you consult your attorneys and possibly consider getting in the loop with the Methodists!

Blessings,  
Bob Brown



**IF YOUR CHURCH HAS EVER CHARTERED / HOSTED A  
BOY SCOUT TROOP, YOU NEED TO READ THE FOLLOWING  
NOW.  
VERY IMPORTANT INFORMATION WITH A NOVEMBER 16, 2020  
DEADLINE.**

October 12, 2020

As you are likely aware, the Boy Scouts of America (the “BSA”) is going through a bankruptcy process stemming from a multitude of sexual abuse claims filed against the organization. I participated in a meeting with Chancellors across the country last Friday to learn about the potential ramifications the BSA bankruptcy may have on churches that serve as “Chartering Organizations” for Troops.

Despite growing up in Scouting myself, I did not realize that churches are responsible for much more than just giving a Troop some space to meet. The “Annual Charter Agreement” each church signs suggests that the church is effectively responsible for conducting the Scouting program in its entirety, including the selection and screening of adult volunteers. As such, a local church that serves as a Chartering Organization could clearly be on the hook for a sexual abuse claim. An example charter agreement is attached.

If a sexual abuse claim arises, a Plaintiff is likely going to sue the national BSA organization, the local Council of the BSA, the local Troop and the Chartering Organization (like a local church). You are likely familiar with the idea that bankruptcy can eliminate the debts of a debtor. Bankruptcy can also extinguish judgements and future claims against the debtor – particularly if the future claim is based on an act that happened before the bankruptcy proceeding.

Accordingly, if the BSA goes through the bankruptcy process and extinguishes liabilities related to sexual abuse claims, a Chartering Organization (like a local church) may be the last entity standing with potential liability. The fear is that Chartering Organizations may lose any right to indemnification from the BSA because of the bankruptcy.

The way to try and avoid this outcome is to file a Proof of Claim with the Bankruptcy Court. This puts the Bankruptcy Trustee on notice of a potential claim and allows the Trustee to decide whether the claim will be honored. This needs to be done on or before **5 p.m. EST (4 p.m. Central) Nov. 16, 2020.**

I would highly recommend that your church consult with a bankruptcy lawyer as soon as possible if the church currently charters a Troop or has ever chartered a Troop in the past. If you have a particular lawyer with whom you wish to consult, please do so. If you do not have counsel readily available, you may wish to contact the Bradley Firm in Tampa, Florida. Mark Hanley of the firm serves as Chancellor of the Florida Conference, and his partner Ed Rice is a bankruptcy specialist. The Bradley firm is running point on this for United Methodist churches in Florida and may be able to assist us as well. If you would like to coordinate with them, please let Clifton Howard know and we will reach out to them to see how to proceed.

As was noted by bankruptcy experts in the meeting, a group who brings 1,000 claims to the Trustee may have more leverage to ensure claims are honored post-bankruptcy than a group who just brings one claim. To that end, UMC Chancellors across the country are considering coordinating efforts to try and maximize the leverage of Chartering Organizations. The United Methodists may try to work together to submit Proofs of Claims together in bulk amongst themselves, as well as with the Mormons, the Baptists,

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and other groups or denominations that represent multiple Chartering Organizations. Unfortunately, we are just getting started thinking about a coordinated response, and claims are due quickly. If something comes together, I will let you know.

According to attorneys for the BSA, most of the sexual abuse cases coming up now are related to actions that happened 30+ years ago. It may not matter if the abuse happened in the 1970s, and it may not matter if you think your church has nothing to do with a Troop other than allowing them to use space for meetings. Even if you are currently unaware of any potential claims against the Troop your church charters, you have probably seen commercials from law firms actively seeking clients who have not yet brought up their claims. With all the media attention, a claim could easily pop up tomorrow.

Please consider discussing your situation with a bankruptcy attorney as soon as possible if your church has ever chartered or hosted a Troop and determine what your options may be to preserve a claim against the BSA.

I am not a bankruptcy attorney, and this letter effectively exhausts my knowledge on the subject. If you or your counsel would like to review some additional documentation on the BSA bankruptcy filing, I have forwarded Clifton some materials provided by the Bradley Firm he can share with you at your request.

Again, please note the deadline for filing a Proof of Claims form is November 16, 2020 at 5pm EST (4 p.m. Central).

Yours very truly,

**Wilson Woods**  
Chancellor, Central Texas Conference of the  
United Methodist Church