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File Number:

December 1, 2021

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Chief Judge Laurie Selber Silverstein
United States Bankruptcy Court, District of Delaware
824 North Market Street, 6th Floor
Wilmington, DE 19801

Re: Boy Scouts of America, 20-10343 (LSS) (D. Del.)—Motion to Compel National Capital Area Council

Dear Judge Silverstein:

We write on Century's behalf in further support of its motion to compel the National Capital Area Council ("NCAC").

NCAC's production is missing key documents that Century requested.¹ NCAC has only today produced the minutes for the board meeting where its contribution to the Settlement Trust was approved. There are no documents reflecting any discussion or analysis of whether the contribution to the Settlement Trust was appropriate. The production is also missing a full set of NCAC's rosters that would provide the means to verify whether the proofs of claim filed correspond to actual scouts who were members of NCAC troops. And, despite having 630 claims asserted against NCAC, NCAC has produced essentially nothing on the hundreds of Abuse Claims asserted against NCAC other than completing the Bates White feedback template. This is implausible. NCAC had to evaluate the Abuse Claims to assess what it paid or even out of curiosity. NCAC was required by BSA's Youth Protection policies to generate a host of documents upon learning about these claims. NCAC simply argues that they have produced all relevant, non-privileged documents. To the extent NCAC says that there are no more responsive documents to Century's requests, the fact that NCAC refuses to withdraw any of its objections to the requests makes Century doubt whether that assertion is completely accurate.

Century requested specific documents relating to NCAC's evaluation of its settlement contribution. Notably, there are few (if any) documents in their production that show any analysis related to NCAC's settlement contribution or its review of the Abuse Claims asserted against NCAC. This afternoon NCAC produced three pages that make up the minutes for one board meeting where they discussed and approved the settlement contribution. But NCAC has not provided any source documents or other related communications that show NCAC's analysis of the contribution amount, and whether NCAC considered that amount to be appropriate. It is difficult to imagine that the NCAC board approved a multi-million dollar contribution to the

¹ The issues raised herein apply equally to Cradle of Liberty Council and Baltimore Area Council.

Settlement Trust without any substantive internal discussion about that contribution. Not one internal email, not one text between board members, not one memo. Because NCAC has refused to withdraw its objections to Century's discovery requests, Century believes that other documents relating to NCAC's evaluation of its contribution exist and have not yet been collected or produced.

More troubling, NCAC has not produced documents related to their analysis of the Abuse Claims. NCAC only points to certain spreadsheets that BSA produced for their analysis of the alleged claims. Those spreadsheets were prepared by Bates White and were provided to each of the Local Councils to complete. The Bates White spreadsheets, however, do not include any of the source documents related to the alleged abuse claims. They simply list NCAC's responses to the specific questions asked by Bates White concerning the alleged claimants. Century's requests for production seek far more information about the alleged claims than what was sought by Bates White. For example, Century's requests seek at least incident reports, investigative materials and any evidence gathered at the time of any alleged abuse event. None of these documents have been produced by NCAC.

NCAC should have at least some of these documents. In addition, there must have been documents created relating to all of the claims NCAC learned about post-petition. Upon learning about a claim asserting abuse, the Local Council is supposed to investigate and report any such claims, regardless of how long after the alleged event the Local Council learns about the abuse. That is the information Century is requesting from NCAC. It is inconceivable that upon learning of the 630 claims being asserted against it (many of which were not known to NCAC prior to the bankruptcy) NCAC investigative activities generated zero documents relating to the alleged claims. Not one internal email, not one text between board members, not one memo.

NCAC has also failed to produce a complete set of its membership rosters that relate to each of the alleged claimants. Only 3% of the alleged claims sent to NCAC for review were verified based on the NCAC membership rosters. The rosters corresponding to those found individuals were produced to the Local Council Ad Hoc Committee and NCAC has directed Century to the Ad Hoc Committee for those documents. But Century needs NCAC to produce **all** the rosters that correspond to the dates and troops related to the other 97% of the alleged claimants. Without those rosters, Century will be unable to definitively prove that those alleged claimants were not actual participants in the NCAC's scouting troops and therefore should be disqualified as claimants.

To the extent NCAC asserts that it has no responsive documents, it should withdraw its objections. But NCAC has refused to withdraw any of its objections. And because NCAC refuses to withdraw any of its objections, Century has concerns that the NCAC production is incomplete. As discussed in the motion to compel, NCAC's Response included blanket objections to the bulk of the requests based on burden. Many of the objections did not include any specific basis for the boilerplate objections. NCAC has either failed to produce any documents or to provide a basis for many of the objections for a significant number of the requests. And, even if NCAC agreed to produce certain documents, NCAC still included the same boilerplate objections. In its opposition, NCAC specifically states that it will not withdraw its objections to certain requests because "the responsive documents are subject to the joint defense agreement, are duplicative of records already received by Century, or can more readily be obtained from BSA." D.I. 7446, at 7. NCAC still



refuses to withdraw *any* objections.² NCAC should withdraw objections for at least the requests that NCAC does not believe any genuine dispute remains.

NCAC has taken the position that Century should seek any claims related material from Debtors. But Debtors are not in possession of everything Century seeks. Century is seeking not only NCAC's spreadsheet responses, but also the source documents, which could include rosters, incident reports, or any other information collected to evaluate the Abuse Claims. NCAC is in the best position to produce these documents.

Accordingly, Century requests that the Court grant its motion to compel, requiring NCAC to produce all documents in its possession that relate to these highly relevant and critical issues.

Respectfully submitted,

/s/ Tancred Schiavoni
Tancred Schiavoni

O'MELVENY & MYERS LLP

*Counsel for Century Indemnity Company,
as successor to CCI Insurance Company,
as successor to Insurance Company of
North America*

² See Exhibit A, Email from A. Adenrele to S. Stamoulis, dated November 30, 2021.

EXHIBIT A

From: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Sent: Tuesday, November 30, 2021 11:00 AM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam,

In our meet and confer discussion yesterday (November 29, 2021), you introduced three additional categories of documents. First, Century requests membership rosters that relate to the dates of certain proofs of claim but, as previously represented to Century, do not actually have the names of any claimants on them. Second, Century requests the actual incident reports related to claims made by scouts from NCAC. Third, Century is requesting minutes from a board meeting that relates to NCAC's trust contribution. Specifically, we believe you referenced documents NCACBSA_00000209 and 210 from NCAC's document production during the meet and confer as the basis of your belief that these additional board meeting minutes should exist. As you also mentioned during our meet and confer yesterday, these are the only remaining outstanding issues between Century and NCAC.

Regarding the first request, as mentioned, it is NCAC's understanding that the rosters that you are now requesting do not include the names or related information of any claimants. In any event, these are the types of documents that, to our knowledge, have already been turned over to Century. In our previous email to you on November 25, 2021, we indicated that we were told by the Ad Hoc Committee that Volume 16 of the BSA production includes actual rosters and records provided by Local Councils in connection to the feedback templates. Have you reviewed Volume 16 to determine whether the documents you seek are there? NCAC produced all of the relevant rosters to the BSA and does not have any additional rosters in its possession, custody, or control.

Regarding the second request, though it is not NCAC's obligation nor is it required by the federal rules, we can ask the Ad Hoc Committee to indicate where these records might be in their production. It is our understanding that they were already produced to Century.

Regarding the third request, we can conduct a search to determine if those minutes exist and have not been produced. If they exist, are responsive, and are not subject to any objections, we can provide them in a supplemental production.

Again, we are not withdrawing any of our objections but are continuing to meet and confer with you, in good faith, to resolve this narrow dispute.

Adey Adenrele

Direct (202) 408-6936



From: Adenrele, Adey
Sent: Thursday, November 25, 2021 9:41 AM

To: 'Stamatios Stamoulis' <stamoulis@swdelaw.com>; Van Horn, James <JVanHorn@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam,

We hope that you are enjoying your Thanksgiving. The Ad Hoc Committee tells us that it produced the formula that contains every Local Council's calculation – available at BSA_AHCLC_00058943 – as well as PowerPoints explaining the formula – available at BSA_AHCLC_00058890.

Feedback templates for NCAC were produced in Volume 16 of the BSA production on November 13 (produced to Century once the Court approved the BSA using the "Highly Confidential" designation):

- BSA-PLAN_01104535
- BSA-PLAN_01104536
- BSA-PLAN_01104537
- BSA-PLAN_01104538
- BSA-PLAN_01104539
- BSA-PLAN_01104540
- BSA-PLAN_01106599
- BSA-PLAN_01106600
- BSA-PLAN_01106617

We're told that Volume 16 of the BSA production also contains the rosters and records provided by Local Councils in connection with those feedback templates. It is our understanding that roster information is organized by claim number and Local Council name, making it easy to search once you're looking at a feedback template.

We do not have access to the BSA production or full access to the Ad Hoc Committee production, so we would recommend following up with them if you have questions about their productions.

Adey Adenrele

Direct (202) 408-6936



From: Stamatios Stamoulis <stamoulis@swdelaw.com>
Sent: Wednesday, November 24, 2021 4:03 PM
To: Van Horn, James <JVanHorn@btlaw.com>; Adenrele, Adey <Adey.Adenrele@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

How about 11AM? Does that work?

From: Van Horn, James <JVanHorn@btlaw.com>
Sent: Wednesday, November 24, 2021 4:01 PM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>; Adenrele, Adey <Adey.Adenrele@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam, we're also happy to talk Monday morning, please let us know.

Thanks

James Van Horn | Partner

Barnes & Thornburg LLP

1717 Pennsylvania Avenue N.W. Suite 500, Washington, DC 20006

Direct: (202) 371-6351 | Mobile: (202) 802-1936



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From: Stamatios Stamoulis <stamoulis@swdelaw.com>

Sent: Wednesday, November 24, 2021 3:58 PM

To: Van Horn, James <JVanHorn@btlaw.com>; Adenrele, Adey <Adey.Adenrele@btlaw.com>

Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Would it be better if we did Monday morning.

Perhaps by then you may have the bates ranges for me?

From: Van Horn, James <JVanHorn@btlaw.com>

Sent: Wednesday, November 24, 2021 3:34 PM

To: Stamatios Stamoulis <stamoulis@swdelaw.com>; Adenrele, Adey <Adey.Adenrele@btlaw.com>

Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam, Adey is currently traveling and generally out of pocket, but I have some availability this afternoon. What time do you propose having a call?

James Van Horn | Partner

Barnes & Thornburg LLP

1717 Pennsylvania Avenue N.W. Suite 500, Washington, DC 20006

Direct: (202) 371-6351 | Mobile: (202) 802-1936



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From: Stamatios Stamoulis <stamoulis@swdelaw.com>

Sent: Wednesday, November 24, 2021 2:43 PM

To: Adenrele, Adey <Adey.Adenrele@btlaw.com>

Cc: Van Horn, James <JVanHorn@btlaw.com>

Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Thanks Adey.

Can you or someone from your team do a quick call today with myself and my co-counsel Tanc Schiavoni?

From: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Sent: Wednesday, November 24, 2021 8:10 AM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam,

Thank you for your email and appreciate your effort to narrow the issues ahead of the hearing. We will work on identifying the bates ranges for the documents you referenced. However, our objection was and still is that these records have either already been produced to Century or are in the possession of the Debtor and can be more readily obtained from them, given that they are a party to the bankruptcy. We will get back to you in short order. Thanks again.

Regards,

Adey Adenrele

Direct (202) 408-6936



From: Stamatios Stamoulis <stamoulis@swdelaw.com>
Sent: Tuesday, November 23, 2021 11:05 PM
To: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>; Stamatios Stamoulis <stamoulis@swdelaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Adey,

In an effort to narrow the issues in dispute before our motion to compel against NCAC is heard on the 29th, can you please (1) identify the bates ranges where the material about your local council's contribution calculation is found in the Debtor's Alvarez & Marsal production, and (2) identify the bates ranges where your local council's claims information is found in the Debtor's Bates White production.

Thank you, Stam

From: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Sent: Tuesday, November 16, 2021 8:15 AM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Stam,

Unfortunately, 12:30 pm on Wednesday will not work for us. What is your availability on Thursday? We are open between noon and 3:30 pm. Let us know. Thanks.

Adey Adenrele

Direct (202) 408-6936



From: Stamatios Stamoulis <stamoulis@swdelaw.com>
Sent: Monday, November 15, 2021 6:28 PM
To: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: RE: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

They court is having a hearing starting at 10AM. Should be done by noon. Can you do a call at 12:30?

From: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Sent: Monday, November 15, 2021 9:35 AM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: Re: [EXTERNAL]RE: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Hi Stam,

We are available Wednesday morning at 10:30 am ET. Please let us know if that works for you. Thanks.

Adey

On Nov 14, 2021, at 11:56 PM, Stamatios Stamoulis <stamoulis@swdelaw.com> wrote:

Adey,

Do you have any time this week to discuss?

Thanks, Stam

From: Adenrele, Adey <Adey.Adenrele@btlaw.com>
Sent: Tuesday, November 9, 2021 7:54 PM
To: Stamatios Stamoulis <stamoulis@swdelaw.com>
Cc: Van Horn, James <JVanHorn@btlaw.com>
Subject: In Re BSA, et al.: NCAC Response to Century Meet and Confer Letter

Mr. Stamoulis,

Please see the attached correspondence. Thank you.

Adey Adenrele | Associate
Barnes & Thornburg LLP
1717 Pennsylvania Avenue NW, Suite 500, Washington, DC 20006-4623
Direct: (202) 408-6936 | Mobile: (734) 945-5392 | Fax: (202) 289-1330

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