IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC, Debtors.	Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered) **Re: Dkt.**

DECLARATION OF SAMANTHA INDELICATO IN SUPPORT OF CENTURY'S MOTION TO COMPEL NATIONAL CAPITAL AREA COUNCIL

STAMOULIS & WEINBLATT LLC
800 N. West Street
Third Floor
Wilmington, Delaware 19801
Telephone: 302 999 1540
Facsimile: 302 762 1688

O'MELVENY & MYERS LLP
Tancred Schiavoni (*pro hac vice*)
Times Square Tower
7 Times Square
New York, New York 10036-6537
Telephone: 212 326 2000
Facsimile: 212 326 2061

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

I, **SAMANTHA INDELICATO**, declare as follows:

1. I am an associate at the firm O'Melveny & Myers LLP. I submit this declaration based on my knowledge of the proceedings in the Boy Scouts of America bankruptcy and review of the pleadings, in support of *Century's Motion to Compel National Capital Area Council.*

2. Attached hereto as **Exhibit 1** is a true and correct copy of Century's Subpoena to the National Capital Area Council for Document Requests and Certificate of Service, dated October 8, 2021.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the National Capital Area Council's Response to Century's Subpoena to for Document Requests, dated October 18, 2021.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the September 23, 2021 Hearing Transcript.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the September 28, 2021 Hearing Transcript.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of November 2021 in New York, New York.

/s/ Samantha M. Indelicato
Samantha M. Indelicato

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC
Debtor

Case No. 20-10343 (LSS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff
v.

Adv. Proc. No. _____

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: National Capital Area Council, BSA
9190 Rockville Pike, Bethesda, MD 20814-3897

(Name of person to whom the subpoena is directed)

☒ *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Contained herein in Exhibit 1

PLACE	DATE AND TIME
Hyatt Regency Bethesda One Bethesda Metro Center, 7400 Wisconson Ave, Bethesda, MD 20814 Attn: Stamatios Stamoulis (302) 999-1540 stamoulis@swdelaw.com.	October 18, 2021 by 5:00 pm Eastern

☐ *Inspection of Premises*: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/8/2021

CLERK OF COURT

OR

_____
Signature of Clerk or Deputy Clerk

Stamatios Stamoulis
_____
Attorney's signature

The name, address, email address, and telephone number of the attorney representing *(name of party)* Century Indemnity Company, who issues or requests this subpoena, are:

Stamatios Stamoulis 800 N. West Street, Third Floor Wilmington, DE 19801 (302) 999-1540 stamoulis@swdelaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____
_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $_____ for services, for a total of $_____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

…

(g) Contempt. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT 1 (National Capital Area Council, BSA)

DEFINITIONS

For the purposes of this Subpoena and these Requests for Production, the following Definitions shall apply:

1. "Abuse" means sexual conduct or misconduct, sexual abuse or molestation, sexual exploitation, indecent assault or battery, rape, pedophilia, ephebophilia, sexually related psychological or emotional harm, humiliation, anguish, shock, sickness, disease, disability, dysfunction, or intimidation, any other sexual misconduct or injury, contacts or interactions of a sexual nature, including the use of photography, video, or digital media, or other physical abuse or bullying or harassment without regard to whether such physical abuse or bullying is of a sexual nature, between a child and an adult, between a child and another child, or between a non-consenting adult and another adult, in each instance without regard to whether such activity involved explicit force, whether such activity involved genital or other physical contact, and whether there is or was any associated physical, psychological, or emotional harm to the child or non-consenting adult.

2. "Abuse Claim" means a liquidated or unliquidated Claim against a Boy Scouts of America, Local Council and/or Chartering Organization that is attributable to, arises from, is based upon, relates to, or results from, in whole or in part, directly, indirectly, or derivatively, alleged Abuse that occurred prior to the Petition Date, including any such Claim that seeks monetary damages or other relief, under any theory of law or equity whatsoever, including vicarious liability, respondeat superior, conspiracy, fraud, including fraud in the inducement, any negligence-based or employment-based theory, including negligent hiring, selection, supervision, retention or misrepresentation, any other theory based on misrepresentation, concealment, or unfair practice, public or private nuisance, or any other theory, including any theory based on public policy or any

act or failure to act by a Boy Scouts of America, Local Council and/or Chartering Organization or any other Person for whom any of the foregoing parties is alleged to be responsible.

3. "Chapter 11 Cases" means the cases filed by the Debtors under chapter 11 of the Bankruptcy Code, jointly administered under Case No. 20-10343 (LSS).

4. "Chartered Organization" means each and every civic, faith-based, educational or business organization, governmental entity or organization, other entity or organization, or group of individual citizens, in each case presently or formerly authorized by the BSA to operate, sponsor or otherwise support one or more Scouting units.

5. "Claim Form" means any Sexual Abuse Survivor Proof of Claim Form submitted in these Chapter 11 Cases.

6. "Coalition" means the Coalition of Abused Scouts for Justice, an *ad hoc* committee composed of thousands of holders of Direct Abuse Claims that filed a notice of appearance in the Chapter 11 Cases on July 24, 2020 at Docket No. 1040.

7. "Coalition Professionals" means (a) Brown Rudnick LLP, (b) Robbins, Russell, Englert, Orseck & Untereiner LLP, (c) Monzack, Mersky and Browder, P.A., (d) Province, LLC, and (e) Parsons, Farnell & Grein, LLP.

8. "Communication" means the transmittal of information (in the form of facts, ideas, beliefs, inquiries, documents, or otherwise), including discussions, negotiations, agreements, understandings, meetings, conversations in person, telephone conversations, records of conversations or messages, telegrams, facsimile transmissions, electronic mail transmissions, letters, notes, reports, memoranda, formal statements, press releases, newspaper stories, or other form of verbal, written, mechanical, or electronic disclosure. References to Communications with business entities shall be deemed to include all officers, directors, employees, personnel, agents,

attorneys, accountants, consultants, independent contractors, or other representatives of such entities.

9. "Debtors" means Boy Scouts of America and Delaware BSA, LLC and each of their attorneys.

10. "Disclosure Statement" means any disclosure statement for a Plan of Reorganization for the Debtors, including but not limited to, the *Amended Disclosure Statement for the Modified Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* [Docket No. 6445], and any later-filed version(s) thereof.

11. "Documents" means any writings, recordings, electronic files and mails, or photographs, whether original or duplicate, as defined in Federal Rule of Evidence 1001 and Federal Rule of Civil Procedure 34(a), inclusively, including (but not limited to) all documents and information in your possession, custody, or control, and includes: all and any written, recorded, or graphic material, however produced or reproduced, minutes, summaries, memoranda, transcripts, tapes, or other voice recordings, and all other documents and tangible things, including booklets, brochures, pamphlets, circulars, notices, periodicals, papers, records, contracts, agreements, photographs, minutes, memoranda, messages, appraisals, analyses, reports, files, interoffice memoranda, or interoffice communications of any description, calculations, invoices, accounting entries, diary entries, calendars, inventory sheets, ledgers, correspondence, emails, phone recordings, instant messages, text messages, telegrams, advertisements, press releases, notes, letters, diaries, working papers, schedules, projections, graphs, charts, films, tapes, print-outs, and all other data, whether recorded by electronic or other means, and all drafts thereof. If a Document was prepared in several copies, or if additional copies were thereafter made, and if any such copies are not identical in all respects or are no longer identical by reason of subsequent

notation or modification of any kind whatsoever, including notes on the front or back, in the margins, or on any of the pages thereof, then each such non-identical copy is a separate Document and must be produced.

12. "Fifth Amended Plan of Reorganization" means the *Modified Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America And Delaware BSA, LLC* [Docket No. 6443], and any later-filed version(s) thereof.

13. "Firm" means each known Attorney representing holders of Abuse Claims.

14. "Hartford Settlement Agreement" means that certain settlement agreement, which remains subject to definitive documentation, by and between Hartford, the Debtors, the Ad Hoc Committee, the Coalition, the Future Claimants' Representative, and certain state court counsel to holders of Direct Abuse Claims, as such agreement is described in the term sheet appended to the *Sixth Mediators' Report* [D.I. 6210] filed on September 14, 2021, and as such agreement may be subsequently set forth in a definitive written settlement agreement that is consistent with such term sheet and executed by all of the parties thereto (and any additional parties that execute a joinder thereto). Upon its execution by all of the parties thereto, the Hartford Insurance Settlement Agreement shall be filed with the Plan Supplement and attached hereto as Exhibit I-1.

15. "Local Councils" means, collectively, the local councils of the Boy Scouts of America, including its individual members and any attorneys, representatives, consultants, advisors or anyone acting on a Local Councils' behalf.

16. "Plan of Reorganization" means a document prepared by the Debtors detailing how they will continue to operate post-confirmation and how they plan to pay creditor claims over a fixed period of time.

17. "Person" means an individual, a firm, a corporation, or other entity as the context requires.

18. "Petition Date" means February 18, 2020.

19. "POC" means any claims against the Debtors based on Abuse filed in these Chapter 11 Cases using the Sexual Abuse Survivor Proof of Claim Form.

20. "TDPs" means "Trust Distribution Procedures" and has the meaning provided in the Fifth Amended Plan of Reorganization and any Trust Distribution Procedure for a prior plan of reorganization in these Chapter 11 Cases..

21. The terms "You" or "Your" and variants thereof mean National Capital Area Council, BSA and all persons or entities acting on its behalf.

INSTRUCTIONS

For the purposes of this Subpoena and these Requests for Production, the following Definitions shall apply:

1. The preceding Definitions apply to each of the Requests. Any capitalized terms used but not defined herein shall have the meanings given to such terms in the Fifth Amended Plan of Reorganization and/or Disclosure Statement.

2. The terms used in these Requests are to be given their most expansive and inclusive interpretation unless otherwise expressly limited in a Request. The terms "all," "any," and "each" shall each be construed as encompassing any, all, each, and every. The singular form of a word shall include the plural and vice versa. The terms "and" or "or" shall be both conjunctive and disjunctive. The term "including" means "including without limitation." The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

3. These Requests shall be deemed continuing in nature. In the event you become aware of or acquire additional information relating or referring to any of the following Requests, such additional information is to be promptly produced.

4. You are required to produce all Documents and all other materials described below that is in your actual or constructive possession, custody, or control, including in the possession, custody, or control of current or former employees, officers, directors, agents, agents' representatives, consultants, contractors, vendors, or any fiduciary or other third parties, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

5. You must produce all Documents in your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by you or hardware owned and/or maintained by a third party that stores data on your behalf.

6. Documents not otherwise responsive to these Requests should be produced: (a) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (b) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (c) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

8. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, mediation privilege, or any other claimed privilege or

exemption from production, then in answer to such Request or part thereof, for each such Document, you must:

a. Identify the type, title and subject matter of the Document;

a. State the place, date, and manner of preparation of the Document;

b. Identify all authors, addressees, and recipients of the Document, including information about such persons to assess the privilege asserted; and

c. Identify the legal privilege(s) and the factual basis for the claim.

9. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege, mediation privilege, and/or work-product doctrine. In the event any Documents are produced with redactions, a log setting forth the information requested in Instruction 8 above must be provided.

10. To the extent a Document sought herein was at one time, but is no longer, in your actual or constructive possession, custody, or control, state whether it: (a) is missing or lost; (b) has been destroyed; (c) has been transferred to others; and/or (d) has been otherwise disposed of. In each instance, identify the Document, state the time period during which it was maintained, state the circumstance and date surrounding authorization for such disposition, identify each person having knowledge of the circumstances of the disposition, and identify each person who had possession, custody, or control of the Document. Documents prepared prior to, but which relate or refer to, the time period covered by these Requests are to be identified and produced.

11. If any part of the Requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for your inability to respond to the remainder and stating whatever information or knowledge you have concerning the portion to which you do not respond.

12. If you object to any of these Requests, state in writing with specificity the grounds of your objections. Any ground not stated shall be waived. If you object to a particular portion of any Request, you shall respond to any other portions of such Request as to which there is no objection and state with specificity the grounds of the objection.

13. If the identity of Documents responding to a Request is not known, then that lack of knowledge must be specifically indicated in the response. If any information requested is not in your possession, but is known or believed to be in the possession of another person or entity, then identify that person or entity and state the basis of your belief or knowledge that the requested information is in such person's or entity's possession.

MANNER OF PRODUCTION

1. All Documents produced shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("ocr") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database Load Files and Production Media Structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within Document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon (".opt")

file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

3. Electronic Documents and Data, Generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow Century, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Documents' true and original content.

4. Emails and Attachments, and Other Email Account-Related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to Microsoft ExchangeTM, Lotus NotesTM, or Novell GroupwiseTM shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehendible by Century.

5. Documents and Data Created or Stored in or by Structured Electronic Databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables Century to reasonably manage and import those Documents into a useable, coherent database. Documents must be accompanied by reasonably detailed documentation explaining the Documents' content and format including but not limited to data

dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

a. XML format file(s);

b. Microsoft SQL database(s);

c. Access database(s); and/or

d. fixed or variable length ASCII delimited files.

6. Spreadsheets, Multimedia, and Non-Standard File Types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" Electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as, but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these Requests for Production.

REQUESTS FOR PRODUCTION OF DOCUMENTS

BOARD AND COMMITTEE MINUTES ABOUT BANKRUPTCY

REQUEST FOR PRODUCTION NO. 1:

All Documents provided to Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, any Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 2:

All Documents provided to Your Council Key 3 Concerning the Chapter 11 Cases, any Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 3:

All minutes of Your Council Key 3 Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the

Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 4:

All minutes of Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganizaiton for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 5:

All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluating the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

REQUEST FOR PRODUCTION NO. 6:

All Communications among members of Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

REQUEST FOR PRODUCTION NO. 7:

All Documents (including presentations) and Communications exchanged between the Debtors and members of Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

REQUEST FOR PRODUCTION NO. 8:

All Documents (including presentations) and Communications exchanged between Alverez & Marsal and members of Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Abuse Claims and/or the Hartford Settlement Agreement.

REQUEST FOR PRODUCTION NO. 9:

All drafts of term sheets for any Plan of Reorganization for the Debtors.

REQUEST FOR PRODUCTION NO. 10:

All Documents Concerning Communications with State Court Counsel, the Coalition, TCC, FCR and/or their counsel Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, Abuse Claims and/or the Hartford Settlement Agreement.

REQUEST FOR PRODUCTION NO. 11:

All Documents Concerning any request that You support a motion, application or inclusion of a provision a Plan of Reorganization for the Debtors that in any way called for or supported the payment of the fees for the Coalition.

REQUEST FOR PRODUCTION NO. 12:

All Documents Concerning the TDPs to be employed with any Plan of Reorganization for the Debtors, including all drafts of the TDPs.

REQUEST FOR PRODUCTION NO. 13:

All Documents and Communications that BSA exchanged with Your Local Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Abuse Claims and/or the Hartford Settlement Agreement.

ABUSE CLAIMS AND ANALYSIS OF ABUSE CLAIMS

REQUEST FOR PRODUCTION NO. 14:

All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluating and or determining the amount of Your Local Council's contribution to the Settlement Trust.

REQUEST FOR PRODUCTION NO. 15:

All Communications among members of Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the amount of Your Local Council's contribution to the Settlement Trust.

REQUEST FOR PRODUCTION NO. 16:

All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluating and or determining the amount of Your Local Council's contribution to the Settlement Trust.

REQUEST FOR PRODUCTION NO. 17:

All Documents authored or generated by Bates White Concerning the POCs, the Debtors, the Abuse Claims against the Debtors, and/or these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 18:

All Documents Concerning the methodology that was employed to allocate the aggregate contribution by all Local Councils to the Settlement Trust to individual Local Councils including

any allocation by percentage or other means of the aggregate contribution to individual Local Councils.

REQUEST FOR PRODUCTION NO. 19:

All Documents Concerning the calculation and/or determination of the amount of Your Local Council's contribution to the Settlement Trust.

CHARTERING ORGANIZATIONS

REQUEST FOR PRODUCTION NO. 20:

All Documents and Communications that BSA exchanged with any Chartered Organizations concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

AGREEMENTS WITH CHARTERING ORGANIZATION

REQUEST FOR PRODUCTION NO. 21:

All Documents and Communications relating to any agreements between or among the Local Councils, Chartered Organizations and BSA that address in any way responsibility for defending and/or indemnifying claims by persons alleging injury arising from a scouting activity asserted against a chartering organization.

REQUEST FOR PRODUCTION NO. 22:

All Documents Concerning any claim that Chartering Organizations have asserted against Your Local Council for contribution and/or indemnity for Abuse Claims asserted against Chartering Organizations.

REQUEST FOR PRODUCTION NO. 23:

All Documents Concerning any claim, assertion or allegation that Local Councils generally and Your Local Council specifically took on an obligation to defend and indemnify Chartering

Organizations for Abuse Claims or other claims through the terms of the annual charter agreements between the Chartered Organizations and Local Councils.

REQUEST FOR PRODUCTION NO. 24:

The charter agreements entered into by Your Local Council from January 1, 2014 to the petition date with the following Chartering Organizations: (1) the Methodist Church and any group associated with the Methodist Church, (2) dioceses, parishes and/or schools associated with the Catholic Church (3) the Episcopalian Church and any dioceses, parishes, school or other group associated the Episcopalian Church (4) the Lutheran Church and any diocese, parish, school or other group associated with the Lutheran Church (5) The Knights of Columbus. (6) the YMCA, and (7) the Presbyterian Church and any group associated with the Presbyterian Church.

REQUEST FOR PRODUCTION NO. 25:

All Documents and Communications Concerning the POCs filed by any of the Chartered Organizations in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 26:

All Documents and Communications analyzing, assessing, or evaluating the proofs of claim filed by any of Chartered Organizations.

CHARTER MEMBERSHIP

REQUEST FOR PRODUCTION NO. 27:

All Documents and Communications Concerning membership projections, including any Documents and Communications reflecting analysis of the impact that the disassociation of one or more Chartered Organization from the Debtors and/or Your Local Council would have on the Debtors' membership levels and revenue projections and/or Your Local Council's membership levels.

REQUEST FOR PRODUCTION NO. 25:

All Documents authored or generated by Bates White Concerning Abuse Claims asserted or alleged against Your Local Council.

REQUEST FOR PRODUCTION NO. 27:

All Documents and Communications Concerning Abuse Claims asserted on behalf of individuals that you were unable to confirm were scouts in Your Local Council.

REQUEST FOR PRODUCTION NO. 28:

The Database, electronic spreadsheet, data and/or other information that was used to determine the amount of Your Local Council's contribution to the Settlement Trust

REQUEST FOR PRODUCTION NO. 30:

All Documents and Communications that the Debtors sent to Your Local Councils with the Local Council Feedback Template and Mandatory Reporting Procedures for Proofs of Claim filed in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 31:

All Documents and Communications that Your Local Council generated in response to the request to complete the Local Council Feedback Template and Mandatory Reporting Procedures for Proofs of Claim filed in these Chapter 11 Cases.

REQUEST FOR PRODUCTION NO. 32:

All Communications between or among BSA Membership Standards Group and Your Local Councils related to the Local Council Reporting Procedures for any claims based on Abuse, including but not limited to, questions regarding the verification of Proof of Claim data.

REQUEST FOR PRODUCTION NO. 33:

All incident reports generated by Your Local Council in connection with the Proofs of Claim filed in these Chapter 11 Cass, including any and all supporting documentation attached to those incident reports.

REQUEST FOR PRODUCTION NO. 34:

All membership rosters for Your Local Council that correspond to the date of alleged abuse for the POCs that refer to Your Local Council.

REQUEST FOR PRODUCTION NO. 35:

All Documents and Communications between and/or among the Your Local Councils, the Chartered Organization Representative (COR) (or Institutional Head, where applicable), unit Committee Chair (CC) and/or unit program leader to notify them of the action being taken to remove the alleged abusers identified by the claimants in the Proof of Claim filed in these Chapter 11 cases from participation in Scouting.

LOCAL COUNSEL ASSETS

REQUEST FOR PRODUCTION NO. 36:

All Documents and Communications concerning whether assets that are donor-restricted should, or should not be, contributed to the Settlement Trust.

REQUEST FOR PRODUCTION NO. 37:

All Documents and Communications relating to Your cash and financial assets, including but not limited to bank statements, investment statements, listing of individual assets/holdings and associated market values, appraisals or other indicators of market value, records demonstrating any conditions or restrictions of use and/or encumbrances on the assets and any analysis related thereto.

INSURANCE

REQUEST FOR PRODUCTION NO. 38:

All Documents Concerning any insurance policies issued to Your Local Council by Hartford.

REQUEST FOR PRODUCTION NO. 39:

All Documents concerning the retained limits and/or deductibles associated with any insurance available to Your Local Council for Abuse Claims.

REQUEST FOR PRODUCTION NO. 40:

All Documents Concerning Your Council's responsibility to fund retained limits and or deductibles associated with any insurance coverage that it by rd.

LIQUIDATION ANALYSIS

REQUEST FOR PRODUCTION NO. 41:

All Documents and Communications concerning any liquidation analysis of the Debtors, Local Councils, and/or Chartered Organizations.

REQUEST FOR PRODUCTION NO. 42:

All Documents and Communications Concerning a pre-packaged bankruptcy to resolve Abuse Claims against the Boy Scouts of America.

REQUEST FOR PRODUCTION NO. 43:

All Documents that You relied upon in deciding to support the First Hartford Settlement Agreement, the Hartford Insurance Settlement Agreement and the TCJC Settlement Agreement.

REQUEST FOR PRODUCTION NO. 44:

All Documents and Communications Concerning the consideration and/or negotiation of a pre-packaged bankruptcy to resolve Abuse Claims against the Boy Scouts of America.

REQUEST FOR PRODUCTION NO. 45:

All Documents that set out Your document retention policies and practices over the last five years, including but not limited to the period over which You retain electronic communications.

REQUEST FOR PRODUCTION NO. 46:

All Documents that memorialize any directive or instruction given by You or anyone else to Your Local Council and its staff directing them to retain documents concerning the Chapter 11 Cases.

Dated: October 8, 2021

Respectfully Submitted,

By: /s/ Stamatios Stamoulis
Stamatios Stamoulis (#4606)

STAMOULIS & WEINBLATT LLC
800 N. West Street Third Floor
Wilmington, Delaware 19801
Telephone: 302 999 1540
Facsimile: 302 762 1688

O'MELVENY & MYERS LLP
Tancred Schiavoni (pro hac vice)
Daniel Shamah (pro hac vice)
Times Square Tower
7 Times Square
New York, New York 10036-6537 Telephone: 212 326 2000
Facsimile: 212 326 2061
Email: tschiavoni@omm.com
dshamah@omm.com

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

OMM_US:80266131.1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re Boy Scouts of America and Delaware BSA, LLC, Debtor

CASE NO. : 20-10343 (LSS)
CHAPTER 11

vs

Plaintiff

Defendant

AFFIDAVIT OF SERVICE

State of Maryland }
County of Montgomery } ss.:

The undersigned, being duly sworn, deposes and says;

Deponent is not a party herein, is over 18 years of age and resides in the state of Maryland,

That on **10/08/2021** at **12:45 PM** at **9190 Rockville Pike, Bethesda, MD 20814**

deponent served a(n) **Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding), Exhibit 1**

on **National Capital Area Council, BSA**, a domestic corporation,

by delivering thereat a true copy to **Mario Perez** personally,

deponent knew said corporation so served to be the corporation witness and knew said individual to be **authorized to accept service** thereof.

Description of Person Served:
Gender: Male
Skin: White
Hair: Black
Age: 45 - 55 Yrs.
Height: 5' 10" - 6' 0"
Weight:Over 200 Lbs.

Sworn to before me this
day of October, 2021

NOTARY PUBLIC

Eric Young

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: *Boy Scouts of America and Delaware BSA, LLC* Debtors.	Chapter 11 Case No. 20-10343 (LSS)

NATIONAL CAPITAL AREA COUNCIL OF THE BOY SCOUTS OF AMERICA'S RESPONSES AND OBJECTIONS TO CENTURY INDEMNITY COMPANY'S SUBPOENA DUCES TECUM

The National Capital Area Council of the Boy Scouts of America ("NCAC") hereby responds and objects to Century Indemnity Company's Subpoena Duces Tecum (the "Subpoena") served by Century Indemnity Company ("Century") on or about October 8, 2021.

GENERAL OBJECTIONS

1. In making these responses and objections to the Requests for Production in the Subpoena (the "Requests," and individually each is a "Request"), NCAC does not in any way waive or intend to waive, but rather intends to preserve and is preserving: (a) all objections as to competence, relevance, materiality, privilege and admissibility of any responses and/or information provided; (b) all rights to object on any ground to the use of any of these objections, responses and/or information provided, in any subsequent proceedings; and (c) all rights to object on any grounds to any requests for further responses to these (or any other) document requests or discovery requests.

2. NCAC objects to any and all Requests that require NCAC to undergo the undue burden of producing certain documents that could be obtained from other sources, including the

Debtors. NCAC further objects to the Requests to the extent that they seek production of certain documents that are already available through the Debtors' data site, to which Century already has access. To the extent that NCAC is aware that the documents requested are available through the Debtors' data site, it will not endeavor to produce them.

3. NCAC's failure to object to a Request shall not be construed as an admission or representation that any responsive information exists or that, if such information exists, it is non-privileged. NCAC's failure to object to a Request on a particular ground or grounds shall not be construed as a waiver of NCAC's right to object on that or any other additional ground. NCAC reserves the right to assert additional objections to these Requests as appropriate and to supplement these objections.

4. NCAC objects to the Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the common interest or joint defense doctrine, mediation privilege, or any other applicable rule, doctrine, privilege or immunity or protection from discovery (whether based upon statute, rule, or common law). NCAC will not disclose such information, and any disclosure of information so protected is inadvertent and shall not be deemed a waiver of any such privilege, rule, doctrine, or immunity, pursuant to Federal Rule of Evidence 502 and otherwise. In particular, NCAC notes that it is party to a Joint Defense Agreement by and among NCAC, the Ad Hoc Committee of Local Councils and the National BSA and that certain documents and communications among the parties above may be privileged to the extent they are made in furtherance of such parties' common interests.

5. NCAC objects to the Requests as imposing undue burden to the extent that they seek production of certain documents that could be obtained from other sources, including the

Debtors. NCAC further objects to the Requests to the extent that they seek production of certain documents that are already available through the Debtors' data site, to which Century already has access. To the extent that NCAC is aware that the documents requested are available through the Debtors' data site, it will not endeavor to produce them.

6. A statement by NCAC that it will produce information or documents in response to a particular Request is not to be construed as an admission that any responsive information or documents now exist or previously existed, or that any responsive information or documents are within NCAC's possession, custody or control, or that, if such information exists, it is non-privileged.

7. All of NCAC's objections are continuing throughout the responses to the specific Requests set forth below, even when not further referred to in said responses. The objections set forth in the above-numbered paragraphs are incorporated in each response set forth below.

8. NCAC reserves its rights under Bankruptcy Rule 9016, including the right to require any enforcement of the Subpoena before the United States District Court for the District of Maryland (the "NCAC's District Court"). If Century believes that the responses provided herein are inadequate or incomplete, NCAC requests that Century set out in writing its basis for such assertion and that NCAC and Century meet and confer prior to Century taking any steps to seek to enforce the Subpoena before the NCAC's District Court.

9. NCAC objects to the Requests as improper to the extent they purport to require production of documents on or before October 18th. To the extent that NCAC agrees to produce documents, it will endeavor to do so in accordance with the timeline set forth in the Scheduling Order [D.I. 6528].

10. NCAC objects to the Requests as vague, ambiguous and unduly burdensome insofar as they do not specify or provide a range of dates for documents and other communications that they purport to require NCAC to produce. Unless otherwise indicated, NCAC will not produce documents or other communications that arose on or prior to February, 18, 2020, the date that the Debtors commenced their Bankruptcy Cases.

11. Any production made in response to any Request shall be subject to, and governed by, the terms of the Confidentiality and Protective Order [Dkt. No. 799]. For the avoidance of doubt, NCAC shall be considered a "Producing Party," and Century shall be considered a "Receiving Party," as defined therein.

12. NCAC submits these Responses and objections without waiving any objections it may have regarding the relevance, materiality, competency, or authenticity of the subject matter of any Request, document request, document or information provided, and without implying that any of the information or documents requested in fact exist or are within NCAC's knowledge, possession, custody, or control.

13. NCAC, in making its specific Responses, incorporates its general objections into each response to each individual Request as though fully set forth therein.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

Document Request No. 1: All Documents provided to Your Council Executive Board, Council Executive and/or any Special or Advisory Council Concerning the Chapter 11 Cases, any Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement Agreement and/or the Abuse.

Response to Document Request No. 1: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" documents concerning the Chapter 11 Cases, "any" Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement and/or the Abuse Claims asserted in the POCs in these Chapter 11 cases, without regard to the relevance of that information to this case. NCAC further objects to this Request as the documents requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 2: All Documents provided to Your Council Key 3 Concerning the Chapter 11 Cases, any Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

Response to Document Request No. 2: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" documents concerning the Chapter 11 Cases, "any" Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement and/or the Abuse Claims asserted in the POCs in these Chapter 11 cases, without regard to the relevance of that information to this case. NCAC

further objects to this Request as the documents requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 3: All minutes of Your Council Key 3 Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

Response to Document Request No. 3: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" minutes concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement and/or the Abuse Claims asserted in the POCs in these Chapter 11 cases, without regard to the relevance of that information to this case. NCAC further objects to this Request as the documents requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 4: All minutes of Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs,

the Hartford Settlement Agreement and/or the Abuse Claims asserted in the POCs in these Chapter 11 Cases.

Response to Document Request No. 4: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" minutes concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Hartford Settlement and/or the Abuse Claims asserted in the POCs in these Chapter 11 cases, without regard to the relevance of that information to this case. NCAC further objects to this Request as the documents requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 5: All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluation the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

Response to Document Request No. 5: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents related to this request, without regard to relevance of that information to this case. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege and attorney work product. NCAC objects to this Request as the documents requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the

documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. Subject to and without waiving the foregoing objections, NCAC will produce responsive, non-privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 6: All Communications among members of Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

Response to Document Request No. 6: NCAC objects to this Request as the communications requested have no direct or indirect relationship to any objection that Century has lodged with the Bankruptcy Court in connection with confirmation of the plan of reorganization for which this Subpoena was issued. Nor are the documents requested reasonably related to any matter that might come before the Bankruptcy Court in connection with the plan of reorganization. NCAC further objects on the grounds that producing "all" documents in response to this request would place an undue burden on NCAC. NCAC also objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product protection. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 7: All Documents (including presentations) and Communications exchanged between the Debtors and members of Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

Response to Document Request No. 7: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents (including presentations) and communications related to this request, without regard to the relevance of those communications to this case. NCAC objects to this Request as the documents requested appear to be in the

possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 7.

Document Request No. 8: All Documents (including presentations) and Communications exchanged between Alverez and Marsal and members of Your Council Executive Board, Council Executive Committee and/or Special or Advisory Council of Your Council Concerning the Chapter 11 Cases, a Plan of Reorganization, the TDPs, the Abuse Claims and/or the Hartford Settlement Agreement.

Response to Document Request No. 8: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" documents, presentations, and communications exchanged between Alverez & Marsal and members of Our Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Our Council related to this request, without regard to the relevance of those documents, presentations, and communications to this case. NCAC further objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors or Alvarez & Marsal. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 8.

Document Request No. 9: All drafts of term sheets for any Plan of Reorganization for the Debtors.

Response to Document Request No. 9: NCAC objects to this Request as overbroad and unduly burdensome because it asks NCAC for "all" drafts of term sheets for "any" Plan of Reorganization for the Debtors, without regard to relevance of those drafts to this case. NCAC further objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC

believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 9.

Document Request No. 10: All Documents Concerning Communications with State Court Counsel, the Coalition, TCC, FCR and/or their counsel Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, Abuse Claims and/or the Hartford Settlement Agreement.

Response to Document Request No. 10: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents concerning communications related to this request, without regard to relevance of those documents to this case. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product, specifically with respect to "Communications with *State Court Counsel*, the Coalition, TCC, FCR and/or *their counsel*." NCAC further objects to this Request as the documents requested appear to be in the possession, custody, and control of State Court Counsel, the Coalition, TCC, and/or FCR and can be more readily obtained from one of them. Each are parties in the Bankruptcy Case. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of State Court Counsel, the Coalition, TCC, and/or FCR. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents responsive to this Request, to the extent that they exist.

Document Request No. 11: All Documents Concerning any request that You support a motion, application, or inclusion of a provision a Plan of Reorganization for the Debtors that in any way called for or supported the payment of the fees for the Coalition.

Response to Document Request No. 11: NCAC objects to this Request as unnecessarily overbroad, as several recent versions of the plan have called for payment of the Coalition's fees. Furthermore, no version of any Plan of Reorganization for the Debtors has at any

time "called for" or requested the support of NCAC for the payment of the fees of the Coalition. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product doctrine. Subject to and without waiving the foregoing objections, NCAC will provide relevant and non-attorney client privileged documents, to the extent that they exist, that were specifically directed to NCAC and specifically sought NCAC's support of a Plan of Reorganization for the Debtors that includes payment of the Coalition's fees on or before November 5, 2021.

Document Request No. 12: All Documents Concerning the TDPs to be employed with any Plan of Reorganization for the Debtors, including all drafts of the TDPs.

Response to Document Request No. 12: NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of parties other than NCAC, including the Debtors, State Court Counsel, the Coalition, TCC, and/or FCR. To the extent that they are, NCAC objects to this Request on the basis that it is unduly burdensome and responsive documents can be more readily obtained from one of them. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors, State Court Counsel, the Coalition, TCC, and/or FCR. On these bases, NCAC objects to producing any documents in response to Request No. 12.

Document Request No. 13: All Documents and Communications that BSA exchanged with Your Local Council Concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, the Abuse Claims and/or the Hartford Settlement Agreement.

Response to Document Request No. 13: NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC further objects on the grounds that producing documents in response to this Request would place an undue burden on NCAC. NCAC believes

the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 13.

Document Request No. 14: All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluating and/or determining the amount of Your Local Council's contribution to the Settlement Trust.

Response to Document Request No. 14: NCAC objects to the extent this Request calls for production of documents subject to the attorney-client privilege and work product protection. NCAC further objects to this Request as the documents appear to be in the possession, custody, and control of the Ad Hoc Committee of Local Councils ("AHCLC") and can be more readily obtained from AHCLC. The AHCLC is a party in the Bankruptcy Case. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of AHCLC. NCAC further objects on the grounds that producing documents in response to this Request would place an undue burden on NCAC. Moreover, NCAC has submitted substantial data concerning its assets, asset restrictions, and similar data to assist the active parties in the Bankruptcy Case to assess NCAC's proposed contribution to the Settlement Trust. Upon information and belief, those documents have been available to Century. Responding further, the AHCLC originally provided the amount that NCAC was expected to contribute to the Settlement Trust on June 18, 2021. Subject to and without waiving the foregoing objections, NCAC will produce responsive, non-privileged, and non-duplicative documents generated between June 18, 2021 and November 5, 2021, to the extent that they exist.

Document Request No. 15: All Communications among members of Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council Concerning the amount of Your Local Council's contribution to the Settlement Trust.

Response to Document Request No. 15: NCAC objects to the extent this Request calls for production of communications subject to the attorney-client privilege or work product protection. NCAC further objects to this Request on the grounds that producing documents in response to this request would place an undue burden on NCAC. Moreover, NCAC has submitted substantial data concerning its assets, asset restrictions, and similar data to assist the active parties in the Bankruptcy Case to assess NCAC's proposed contribution to the Settlement Trust. Upon information and belief, those documents have been available to Century. Responding further, the AHCLC originally provided the amount that NCAC was expected to contribute to the Settlement Trust on June 18, 2021. Subject to and without waiving the foregoing objections, NCAC will produce responsive, non-privileged documents generated between June 18, 2021 and November 5, 2021, to the extent that they exist.

Document Request No. 16: All Documents that Your Council Executive Board, Council Executive Committee and/or any Special or Advisory Council of Your Council reviewed and/or relied upon in evaluating and/or determining the amount of Your Local Council's contribution to the Settlement Trust.

Response to Document Request No. 16: NCAC objects to this Request as it is duplicative of Request No. 14.

Document Request No. 17: All Documents authored or generated by Bates White Concerning the POCs, the Debtors, the Abuse Claims against the Debtors, and/or these Chapter 11 Cases.

Response to Document Request No. 17: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents related to this request, without regard to relevance of that information to this case. NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors or Bates White. NCAC believes the documents responsive to this Request it possesses are duplicative of documents in the possession of the

Debtors. On these bases, NCAC objects to producing any documents in response to Request No.17.

Document Request No. 18: All Documents Concerning the methodology that was employed to allocate the aggregate contribution by all Local Councils to the Settlement Trust to individual Local Councils including any allocation by percentage or other means of the aggregate contribution to individual Local Councils.

Response to Document Request No. 18: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents related to this request, without regard to relevance of that information to this case. NCAC further objects to this Request as vague and ambiguous as to the Court's use of the term "the methodology", which is not a defined term, and whose plain meaning is subject to multiple interpretations. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product protection. NCAC further objects to this Request as the documents appear to be in the possession, custody, and control of AHLCL and can be more readily obtained from AHCLC. The AHCLC is a party in the Bankruptcy Case. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of AHCLC. On these bases, NCAC objects to producing any documents in response to Request No. 18.

Document Request No. 19: All Documents Concerning the calculation and/or determination of the amount of Your Local Council's contribution to the Settlement Trust.

Response to Document Request No. 19: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents related to this request, without regard to relevance of that information to this case. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege and work product protection. NCAC further objects to this Request as the documents appear to be in the possession, custody, and control of AHCLC and can be more readily obtained from AHCLC. The AHCLC is

a party in the Bankruptcy Case. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of AHCLC. On these bases, NCAC objects to producing any documents in response to Request No. 19.

Document Request No. 20: All Documents and Communications that BSA exchanged with any Chartered Organizations concerning the Chapter 11 Cases, a Plan of Reorganization for the Debtors, the Fifth Amended Plan of Reorganization, the TDPs, and/or the Hartford Settlement Agreement.

Response to Document Request No. 20: NCAC objects to this Request insofar as it calls for NCAC to produce documents between NCAC and Chartered Organizations. NCAC is not NCAC and is not a Chartered Organization, nor are documents between NCAC and a Chartered Organization within NCAC's possession, custody, or control. NCAC therefore objects on the basis that this Request demands documents outside the scope of permissible discovery from a third party. NCAC further objects on the basis that producing "all" documents in response to this Request would impose an undue burden on NCAC. On these bases, NCAC objects to producing any documents in response to Request No. 20.

Document Request No. 21: All Documents and Communications relating to any agreements between or among the Local Councils, Chartered Organizations and BSA that address in any way responsibility for defending and/or indemnifying claims by persons alleging injury arising from a scouting activity asserted against a chartering organization.

Response to Document Request No. 21: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents and communications relating to "any" agreements, without regard to relevance of that information to this case. NCAC further objects to the extent this Request calls for production of documents and communications subject to the attorney-client privilege or work product protection specifically pertaining to documents or communications that "address in any way responsibility for defending and/or indemnifying claims by persons alleging injury arising from a scouting activity asserted against a chartering

organization. NCAC believes that any documents responsive to this Request it possesses, if any, to which the Debtors are a party are duplicative of documents in the possession of the Debtors. Subject to and without waiving the foregoing objections, NCAC will produce any non-duplicative agreements between NCAC and a Chartered Organization to which the Debtors are not also a party between June 18, 2020 and November 5, 2021.

Document Request No. 22: All Documents Concerning any claim that Chartering Organizations have asserted against Your Local Council for contribution and/or indemnity for Abuse Claims asserted against Chartering Organizations.

Response to Document Request No. 22: NCAC objects to this Request on the grounds that it is overly broad and vague. NCAC further states that producing "all Documents" in response to this Request imposes an undue burden on NCAC and not proportional to the needs of the Bankruptcy Case and NCAC therefore objects on these additional grounds. In response to this Request, NCAC states that it has not received any specific written demand from any Chartered Organization seeking contribution and/or indemnity for Abuse Claims. As a result, NCAC does not have documents responsive to this Request.

Document Request No. 23: All Documents Concerning any claim, assertion, or allegation that Local Councils generally and Your Local Council specifically took on an obligation to defend and indemnify Chartering Organizations for Abuse Claims or other claims through the terms of the annual charter agreements between the Chartered Organizations and Local Councils.

Response to Document Request No. 23: NCAC objects to this Request in that producing "all Documents" in response to this Request imposes an undue burden on NCAC and the Request is not proportional to the needs of the Bankruptcy Case. NCAC further states that from and since approximately 2014, the agreement between NCAC and Chartered Organizations contains provisions that may require NCAC to defend and/or indemnify Chartered Organizations in particular circumstances. NCAC states that it will produce exemplars of such agreements on or prior to November 5, 2021 that are in its possession, custody, and control and responsive to

Request No. 24. However, in response to this Request, NCAC states that it has not received any specific written demand from any Chartered Organization for Abuse Claims. As a result, NCAC does not have documents responsive to this Request.

Document Request No. 24: The charter agreements entered into by Your Local Council from January 1, 2014 to the petition date with the following Chartering Organizations: (1) the Methodist Church and any group associated with the Methodist Church, (2) dioceses, parishes and/or schools associated with the Catholic Church (3) the Episcopalian Church and any dioceses, parishes, school or other group associated the Episcopalian Church (4) the Lutheran Church and any diocese, parish, school or other group associated with the Lutheran Church (5) The Knights of Columbus. (6) the YMCA, and (7) the Presbyterian Church and any group associated with the Presbyterian Church.

Response to Document Request No. 24: NCAC further states that it is unduly burdensome to produce "all" such agreements and such agreements are duplicative of one another and are otherwise not proportional to the needs of the Bankruptcy Case. NCAC will not produce other or further documents in response to this Request. Subject to and without waiving the foregoing objections, NCAC incorporates its response to Request No. 23 and states that it will provide an exemplar of its agreement with Chartered Organizations from and since January 1, 2014 on or before November 5, 2021 to the extent it exists and is within NCAC's possession, custody, or control.

Document Request No. 25: All Documents and Communications Concerning the POCs filed by any of the Chartered Organizations in these Chapter 11 Cases.

Response to Document Request No. 25: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents and communications, without regard to relevance of that information to this case. NCAC objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request, if any, it possesses are duplicative of documents in the possession of the Debtors. NCAC

further objects on the grounds that producing "all" documents in response to this request would place an undue burden on NCAC and are not otherwise proportional to the needs of the Bankruptcy Case. Subject to and without waiving the foregoing objections, NCAC will produce any responsive, non-duplicative documents in its possession, custody or control, to the extent that they exist.

Document Request No. 26: All Documents and Communications analyzing, assessing, or evaluating the proofs of claim filed by any of Chartered Organizations.

Response to Document Request No. 26: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents and communications analyzing, assessing, or evaluating the proofs of claim filed by "any" of the Chartered Organizations, without regard to relevance of that information to this case. NCAC objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC further objects on the grounds that producing "all" documents in response to this request would place an undue burden on NCAC and are not otherwise proportional to the needs of the Bankruptcy Case. Subject to and without waiving the foregoing objections, NCAC will produce any responsive, non-duplicative, non-attorney client privileged documents in its possession, custody or control, to the extent that they exist.

Document Request No. 27: All Documents and Communications Concerning membership projections, including any Documents and Communications reflecting analysis of the impact that the disassociation of one or more Chartered Organizations from the Debtors and/or Your Local Council would have on the Debtors' membership levels and revenue projections and/or Your Local Council's membership levels.

Response to Document Request No. 27: NCAC objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC further objects on the grounds that

producing "all" documents in response to this Request would place an undue burden on NCAC and this Request is not otherwise proportional to the needs of the Bankruptcy Case. Subject to and without waiving the foregoing objections, NCAC will produce any non-privileged and non-duplicative documents in its possession that were not generated by the Debtors on or before November 5, 2021, to the extent that they exist.

Document Request No. 25:[1] All Documents authored or generated by Bates White Concerning Abuse Claims asserted or alleged against Your Local Council.

Response to Document Request No. 25: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents related to this request, without regard to the proportionality to the needs of the Bankruptcy case. NCAC further objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors or Bates White and can be more readily obtained from the Debtors or Bates White. NCAC believes the documents responsive to this Request it possesses are duplicative of documents in the possession of the Debtors. Subject to and without waiving the foregoing objections, NCAC will produce any responsive, non-duplicative documents in its possession, custody or control, to the extent that they exist.

Document Request No. 27:[2] All Documents and Communications Concerning Abuse Claims asserted on behalf of individuals that you were unable to confirm were scouts in Your Local Council.

Response to Document Request No. 27: NCAC objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC further objects to this Request as overbroad

[1] The Subpoena contains two separate Requests labeled "Request for Production No. 25." NCAC's responses do not correct this oversight but instead track the same Request number order.

[2] The Subpoena contains two separate Requests labeled "Request for Production No. 27." NCAC's responses do not correct this oversight but instead track the same Request number order.

and unduly burdensome because it seeks "all" documents related to Abuse Claims from individuals not confirmed to be scouts in NCAC and is not proportional to the needs of the Bankruptcy Case. NCAC therefore objects on these additional grounds. Subject to and without waiving the foregoing objections, NCAC will produce responsive documents that are not duplicative of documents in the possession of the Debtors, to the extent that they exist.

Document Request No. 28: The Database, electronic spreadsheet, data and/or other information that was used to determine the amount of Your Local Council's contribution to the Settlement Trust.

Response to Document Request No. 28: NCAC objects to this Request as the documents appear to be in the possession, custody, and control of AHCLC and can be more readily obtained from AHCLC. The AHCLC is a party in the Bankruptcy Case. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of AHCLC. On this basis, NCAC objects to producing any documents in response to Request No. 28.

Document Request No. 30:[3] All Documents and Communications that the Debtors sent to Your Local Councils with the Local Council Feedback Template and Mandatory Reporting Procedures for Proofs of Claim filed in these Chapter 11 Cases.

Response to Document Request No. 30: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents and communications related to this request, without regard to relevance of that information to this case. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product protection. NCAC further objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses,

[3] The Subpoena does not contain a "Request for Production No. 29."

if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 30.

Document Request No. 31: All Documents and Communications that Your Local Council generated in response to the request to complete the Local Council Feedback Template and Mandatory Reporting Procedures for Proofs of Claim filed in these Chapter 11 Cases.

Response to Document Request No. 31: NCAC objects to producing "all Documents" in response to this Request on the grounds that it imposes an undue burden on NCAC and is not proportional to the needs of the Bankruptcy Case. NCAC further objects to the extent this Request calls for production of documents subject to the attorney-client privilege or work product protection. NCAC further objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC states that production of the Local Council Feedback Template and Mandatory Reporting Procedures that NCAC prepared for and provided to the Debtors provides a sufficient response to this Request and that such documents are obtainable from, and should be obtained from, the Debtors. Subject to and without waiving the foregoing objections, NCAC will produce responsive documents that are not duplicative of documents in the possession of the Debtors, to the extent that they exist.

Document Request No. 32: All Communications between or among BSA Membership Standards Group and Your Local Councils related to the Local Council Reporting Procedures for any claims based on Abuse, including but not limited to, questions regarding the verification of Proof of Claim data.

Response to Document Request No. 32: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" communications related to this request, without regard to the proportionality of the needs of the Bankruptcy case. NCAC further objects to this Request as the communications requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the

communications responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. NCAC therefore directs Century to the Debtors for production of any documents in response to this Request. Subject to and without waiving the foregoing objections, NCAC will produce responsive documents that are not duplicative of documents in the possession of the Debtors, to the extent that they exist.

Document Request No. 33: All incident reports generated by Your Local Council in connection with the Proofs of Claim filed in these Chapter 11 Cases, including any and all supporting documentation attached to those incident reports.

Response to Document Request No. 33: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" incident reports related to this Request, without regard to relevance of that information or its proportionality to the needs of the Bankruptcy Case. NCAC objects to this Request on the grounds that it is overly broad and vague. Responding further, NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. Subject to and without waiving the foregoing objections, NCAC will produce responsive documents that are not duplicative of documents in the possession of the Debtors, to the extent that they exist.

Document Request No. 34: All membership rosters for Your Local Council that correspond to the date of alleged abuse for the POCs that refer to Your Local Council.

Response to Document Request No. 34: NCAC objects to this Request as being vague and overbroad. On its face, this Request seeks "all" rosters for any date on which there is an allegation of abuse. Furthermore, producing documents in response to this Request would impose an undue burden on NCAC and are not otherwise proportional to the needs of the Bankruptcy Case. NCAC further states that it has produced relevant rosters to the Debtors.

Responding further, NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. On these bases, NCAC objects to producing any documents in response to Request No. 34.

Document Request No. 35: All Documents and Communications between and/or among the *[sic]* Your Local Councils, the Chartered Organization Representative (COR) (or Institutional Head, where applicable), unit Committee Chair (CC) and/or unit program leader to notify them of the action being taken to remove the alleged abusers identified by the claimants in the Proof of Claim filed in these Chapter 11 cases from participation in Scouting.

Response to Document Request No. 35: NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. Subject to and without waiving its general objections, NCAC will produce all non-privileged and non-duplicative documents responsive to this Request on or before November 5, 2021, to the extent that they exist.

Document Request No. 36: All Documents and Communications concerning whether assets that are donor-restricted should, or should not be, contributed to the Settlement Trust.

Response to Document Request No. 36: NCAC objects to this Request on the grounds that it is overly broad and vague. NCAC further states that producing "all" Documents in response to this Request imposes an undue burden on NCAC and is not otherwise proportional to the needs of the Bankruptcy Case. Responding further, NCAC objects to this Request as the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this

Request it possesses, if any, are duplicative of documents in the possession of the Debtors. NCAC further objects to the extent this Request calls for production of documents and communications subject to the attorney-client privilege or work product protection. Responding further, NCAC states that the AHCLC originally provided the amount that NCAC was expected to contribute to the Settlement Trust on June 18, 2021. Subject to and without waiving its foregoing objections, NCAC will produce non-privileged and non-duplicative documents responsive to this Request, to the extent that they exist.

Document Request No. 37: All Documents and Communications relating to Your cash and financial assets, including but not limited to bank statements, investment statements, listing of individual assets/holdings and associated market values, appraisals or other indicators of market value, records demonstrating any conditions or restrictions of use and/or encumbrances on the assets and any analysis related thereto.

Response to Document Request No. 37: NCAC objects to this Request on the grounds that NCAC has submitted substantial data concerning its assets, asset restrictions, and similar data to assist the active parties in the Bankruptcy Case to assess NCAC's proposed contribution to the Settlement Trust. Upon information and belief, those documents have been available to Century. NCAC further understands that Century has access to the PeopleSoft system that is maintained by the Debtors, which contains NCAC's financial records. On these bases, NCAC objects to producing any documents in response to Request No. 37. However, NCAC is prepared to meet and confer with Century to determine what additional documents, if any, it can produce in addition to those that are currently in the data room that would not impose an undue burden on NCAC and would otherwise be proportional to the Bankruptcy Case.

Document Request No. 38: All Documents Concerning any insurance policies issued to Your Local Council by Hartford.

Response to Document Request No. 38: NCAC objects to this Request to the extent that it calls for production of documents that are or may also be in the possession of the

Debtors. NCAC states that from and since 1978, NCAC has been an additional insured on insurance policies issued to the Debtors. On that basis, any documents responsive to this Request from and since 1978 will also be in the possession of the Debtors and it is unduly burdensome to demand that NCAC produce such documents on a duplicative basis. NCAC has also conducted, and continues to conduct, a good faith search for additional insurance policies issued to it. In connection with such search, all documents that NCAC has identified that would be responsive to this Request, NCAC has shared with the Debtors or their representatives, including the firm KCIC. NCAC directs Century to the Debtors and/or KCIC for any such documents.

Document Request No. 39: All Documents concerning the retained limits and/or deductibles associated with any insurance available to Your Local Council for Abuse Claims.

Response to Document Request No. 39: NCAC directs Century to its response to Document Request No. 38 and incorporates it in full as if fully restated herein. NCAC further states that its practice has been to look to the Debtors' insurance counsel for analysis of insurance policies and, as a result NCAC does not have any Documents responsive to this Request that are not already in the possession of the Debtors.

Document Request No. 40: All Documents Concerning Your Council's responsibility to fund retained limits and or deductibles associated with any insurance coverage that it by rd *[SIC]*.

Response to Document Request No. 40: NCAC objects to this Request as vague and ambiguous because it is not clear what is the Court's interpretation of "deductibles associated with any insurance coverage that it by rd [sic]." To the extent the NCAC understands this Request, NCAC directs Century to its response to Document Request No. 38 and incorporates it in full as if fully restated herein.

Document Request No. 41: All Documents and Communications concerning any liquidation analysis of the Debtors, Local Councils, and/or Chartered Organizations.

Response to Document Request No. 41: NCAC objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. Responding further NCAC states that it has not undertaken any independent liquidation analysis for the Debtors and on such basis contends that it does not have documents responsive to this Request.

Document Request No. 42: All Documents and Communications Concerning a pre-packaged bankruptcy to resolve Abuse Claims against the Boy Scouts of America.

Response to Document Request No. 42: NCAC objects to this Request as overbroad and unduly burdensome because it seeks "all" documents and communications related to this Request, without regard to the proportionality to the needs of the Bankruptcy Case. NCAC further objects to this Request as certain of the documents requested appear to be in the possession, custody, and control of the Debtors and can be more readily obtained from the Debtors. NCAC believes the documents responsive to this Request it possesses, if any, are duplicative of documents in the possession of the Debtors. Responding further NCAC states that the only documents in its possession, custody, or control that are responsive to this Request were provided to it by the Debtors and NCAC directs Century to the Debtors for these documents and will not produce such documents on a duplicative basis.

Document Request No. 43: All Documents that You relied upon in deciding to support the First Hartford Settlement Agreement, the Hartford Insurance Settlement Agreement and the TCJC Settlement Agreement.

Response to Document Request No. 43: NCAC objects to this Request insofar as it is not a party to any of the First Hartford Settlement Agreement, the Hartford Insurance

Settlement Agreement, or the TCJC Settlement Agreement. NCAC further objects to this Request as vague and ambiguous. NCAC will not produce documents in response to Request No. 43.

Document Request No. 44: All Documents and Communications Concerning the consideration and/or negotiation of a pre-packaged bankruptcy to resolve Abuse Claims against the Boy Scouts of America.

Response to Document Request No. 44: NCAC states that this Request is largely duplicative of Request No. 42. NCAC incorporates its response to Request No. 42 as if fully restated herein.

Document Request No. 45: All Documents that set out Your document retention policies and practices over the last five years, including but not limited to the period over which You retain electronic communications.

Response to Document Request No. 45: NCAC objects to this Request as it calls for documents that may be attorney-client privileged or attorney work product. Subject to and without waiving the foregoing objections, NCAC will produce documents any non-attorney client privileged that set out NCAC's document retention policies and practices over the five years prior to November 5, 2021.

Document Request No. 46: All Documents that memorialize any directive or instruction given by You or anyone else to Your Local Council and its staff directing them to retain documents concerning the Chapter 11 Cases.

Response to Document Request No. 46: NCAC objects to this Request as it calls for documents that may be attorney-client privileged or attorney work product. Subject to and without waiving the foregoing objections, NCAC will produce any non-privileged documents responsive to this Request on or before November 5, 2021.

Dated: October 18, 2021

/s/ James Van Horn
James Van Horn
Adeyemi O. Adenrele
BARNES & THORNBURG LLP
1717 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006
Ph. (202) 289-1313
Fax (202) 289-1330
JVanHorn@btlaw.com
Adey.Adenrele@btlaw.com

Attorneys for National Capital Area Council of the Boy Scouts of America

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the 18th day of October, 2021, a true and correct copy of the foregoing Responses and Objections to Century Indemnity Company's Subpoena Duces Tecum was served by electronic mail on stamoulis@swdelaw.com.

/ s / James Van Horn
James Van Horn

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11 . . Case No. 20-10343 (LSS)
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,	. . . Courtroom No. 2 . 824 North Market Street . Wilmington, Delaware 19801
Debtors.	. . September 23, 2021 . 1:00 P.M.

TRANSCRIPT OF TELEPHONIC DISCLOSURE STATEMENT HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Debtor:	Derek Abbott, Esquire MORRIS, NICHOLS, ARSHT & TUNNELL LLP 1201 North Market Street, 16th Floor Wilmington, Delaware 19899 - and - Jessica C. Lauria, Esquire WHITE & CASE LLP 1221 Avenue of the Americas New York, New York 10020
Audio Operator:	Brandon J. McCarthy, ECRO
Transcription Company:	Reliable 1007 N. Orange Street Wilmington, Delaware 19801 (302)654-8080 Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

TELEPHONIC APPEARANCES (Cont'd):

For the Debtors:	Matthew E. Linder, Esquire Laura Baccash, Esquire WHITE & CASE LLP 111 South Wacker Drive Chicago, Illinois 60606
For Century:	Tancred Schiavoni, Esquire O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, New York 10036
For the FCR:	Robert Brady, Esquire Edwin Harron, Esquire YOUNG CONAWAY STARGATT & TAYLOR LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801
For Tort Claimants:	James Stang, Esquire PACHULSKI STANG ZIEHL JONES LLP 919 North Market Street, 17th Floor Wilmington, Delaware 19801
For the Ad Hoc Committee of Local Councils:	Richard Mason, Esquire WACHTELL, LIPTON, ROSEN & KATZ 51 West 52nd Street New York, New York 10019
For the Coalition of Abused Scouts for Justice:	David Molton, Esquire BROWN RUDNICK LLP 7 Times Square New York, New York 10036 - and - Eric Goodman, Esquire 601 Thirteenth Street NW, Suite 600 Washington, D.C. 20005
For the AIG Companies:	Michael Rosenthal, Esquire GIBSON, DUNN & CRUTCHER LLP 200 Park Avenue New York, New York 10166

TELEPHONIC APPEARANCES (Cont'd):

For the United Methodist and Roman Catholic Ad Hoc Committee:	Jeremy Ryan, Esquire POTTER ANDERSON & CORROON LLP Hercules Plaza 1313 North Market Street, 6th Floor P.O. Box 951 Wilmington, Delaware 19801
For Numerous Firms and Claimants:	Irwin Zalkin, Esquire THE ZALKIN LAW FIRM, P.C. 1441 Broadway, Suite 3147 New York, New York 10018
For Zurich Insurers:	Mark Plevin, Esquire CROWELL & MORING LLP 3 Embarcadero Center, 26th Floor San Francisco, California 94111
For Zalkin Law Firm:	Thomas Patterson, Esquire KTBS LAW LLP 1801 Century Park East, 26th Floor Los Angeles, California 90067
For the Committee Of Local Councils:	Joseph Celentino, Esquire WACHTELL, LIPTON, ROSEN & KATZ 51 West 52nd Street New York, New York 10019
For HMM Victims:	Evan Smola, Esquire HURLEY MCKENNA & MERTZ, P.C. 20 S. Clark Street, Suite 2250 Chicago, Illinois 60603
For Guam Abuse Survivors:	Delia Lujan Wolff, Esquire LUJAN & WOLFF LLP 238 Archbishop FC Flores Suite 300 Hagatna, Guam 96910
For the Girl Scouts:	Eric Lopez Schnabel, Esquire DORSEY & WHITNEY LLP 300 Delaware Avenue, Suite 1010 Wilmington, Delaware 19801

TELEPHONIC APPEARANCES (Cont'd):

For the U.S. Trustee:	David Buchbinder, Esquire Hannah McCollum, Esquire UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE UNITED STATES TRUSTEE 844 King Street, Suite 2207 Lockbox 35 Wilmington, Delaware 19801
For Hartford Financial:	Philip Anker, Esquire WILMERHALE 250 Greenwich Street New York, New York 10007 - and - James Ruggeri, Esquire SHIPMAN & GOODWIN LLP 1875 K Street NW, Suite 600 Washington, DC 20036
For the Church of Jesus Christ of Latter Day Saints:	Adam Goldberg, Esquire LATHAM & WATKINS LLP 1271 Avenue of the Americas New York, New York 10020
For Abuse Survivors:	Paul Mones, Esquire PAUL MONES, P.C. 13101 Washington Boulevard Los Angeles, California 90066

MATTERS GOING FORWARD:

1. Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving Form, Manner, and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief (D.I. 2295, filed 3/2/21)

2. Debtors' Motion For Entry of Order (I) Scheduling Certain Dates and Deadlines in Connection with Confirmation of the Debtors Plan of Reorganization, (II) Establishing Certain Protocols, and (III) Granting Related Relief (D.I. 2618, filed 4/15/21)

3. Motion for Leave to Exceed Page Limit Requirement for Objection of the Tort Claimants' Committee to Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving Form, Manner and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection With Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief (D.I. 3529, filed 5/10/21)

4. Motion for Leave to Exceed Page Limit Requirement for (i) Objection of Century Indemnity Company to Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving Form, Manner and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief and (ii) Century Indemnity Company's Objections to the Debtors' Solicitation Procedures and Form of Ballots (D.I. 3858, filed 5/12/21)

5. Motion for Leave to Exceed Page Limitations Regarding Debtors' Reply in Further Support of Debtors' Third Motion for Entry of an Order Extending the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof (D.I. 4102, filed 5/16/21)

6. Motion for Leave to Exceed Page Limitations Regarding Debtors' Omnibus Reply in Support of Debtors' Motion for Entry

of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving the Form, Manner, and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief (D.I. 4111, filed 5/16/21)

7. Motion to Exceed Page Limitations with Respect to Certain Insurers' Supplemental Objection to Motion for Approval of Debtors' Disclosure Statement (D.I. 6054, filed 8/17/21)

8. Tort Claimants' Committees' Motion to Adjourn the Hearing to Consider Approval of Disclosure Statement and Solicitation Procedures for the Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC (D.I 6222, filed 9/15/21)

9. Motion for Leave to Exceed the Page Limits Regarding Debtors' Amended Omnibus Reply in Support of Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving the Form, Manner, and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief (D.I. 6250, filed 5/16/21)

THE COURT: Good afternoon, counsel. This is Judge Silverstein. We're here for the continued disclosure statement hearing on Boy Scouts of America, case number 20-10343. Turn it over to debtors' counsel.

MS. LAURIA: Mr. Abbott, you're muted.

THE COURT: Mr. Abbott, I'm not hearing you.

MR. ABBOTT: Sorry about that, Your Honor. I guess I muted instead of unmuting. So again, Derek Abbott of Morris Nichols here for the debtors. Your Honor, we -- we wanted to just sort of organize a little bit at the beginning of the hearing if we might.

From the debtors' perspective, Your Honor, there are, I think, four things that we need to do, you know, between today and maybe sometime next week. The first is, obviously Your Honor expressed an interest in hearing some limited discussion on the confirmation issues as a -- as a preview, I guess. Second, we -- we obviously need to -- to work through the voting and solicitation procedures that were proposed.

The third thing, Your Honor, is to talk about a schedule to get to confirmation, assuming that the Court ultimately approves the disclosure

statement. And the fourth is just a final review and -- and -- and final getting Your Honor to call balls and strikes on whatever remaining disputes there are on the disclosure documents. The parties are currently in -- you know, began last night, and I think we'll be working today and probably through the day and -- and evening to -- to get those documents squared away.

It makes sense to the debtors, Your Honor, that that final check of the documents probably occur Tuesday or Wednesday. Ideally, we would -- we would ask the Court for whatever Your Honor can give us on Tuesday with some spillover Wednesday, if needed, just for that final document discussion.

The other two things that we think are critical today are -- are the -- obviously the voting and solicitation but then, also, Your Honor, to address scheduling to get to confirmation. The reason we think this is critical today, Your Honor, is that the debtors have proposed a schedule, and Mr. Kurtz and will go into greater detail on it. You know, candidly, we don't expect that it will be uniformly embraced, Your Honor, so we thought that some early discussion would be good.

Today is important to us, Your Honor,

because that proposed schedule has some things that start to happen in the next few business days of next week -- or early next week. So we thought it would make sense to touch on that. Again, I think Mr. Kurtz will drive the train on that when -- when it's time. But those are at least the debtors' thoughts and priorities, Your Honor, for -- for what it's worth. And obviously, we stand ready to procedure however the Court wishes.

THE COURT: Thank you. Those things were all on my list. I would like to start with -- and I -- and first of all, I do agree that any, you know, review and discussion of the disclosure statement documents should happen next week so the parties have an opportunity to review them. And I did ask Ms. Johnson this morning to take a look at my next week, and I will consult with her during a break so that we know exactly what is available. I would like to start with voting and solicitation.

MR. O'NEILL: Great, Your Honor. Good afternoon. This is Andrew O'Neill, White & Case, on behalf of the debtors. I guess I drew the -- the short straw or the long straw, depending on your point of view, and get to address these issues. Before I jump in, I would just like to thank Your Honor, again,

for accommodating us over these last couple of days and then stay again. It's been a bit of marathon, and that's on the heels of your -- your marathon Monday in the Imerys case, which I suspect we'll hear about today.

I just want to let you know we're grateful for your time and your role in this to forge ahead on solicitation while we, you know, parallel path, iron out the disclosure fixes and -- and augment that document that we've discussed with Your Honor over the last couple of days.

You know, usually I'm accustomed to solicitation procedures being a little bit of an afterthought. I think most people on this, you know, hearing probably feel the same way. But -- but obviously given what -- what happened on Monday and -- and what you instructed us last night, you know, that -- that's different in this case, and we understand and appreciate your focus on these issues.

With -- with that, Your Honor, you know, I'd just like to say, you know, although I wasn't involved in the Imerys hearing, and I know that others on this -- on this hearing will have been directly involved, I think we have a handle and understand some of the issues that are bothering Your Honor based on that

hearing and some of the issues that have arisen in that case.

All that said, we do think and -- and we'd like to tell you about -- and I'll tell you about some of the major differences between our case procedurally and the solicitation materials in our case. And -- and by that, I mean that I'm -- mostly mean the proof of claim process here, Your Honor, and the master ballot before you, which is fundamentally different than the master ballot in a couple respects from Imerys. It has additional certifications and protections.

You know, we -- we know, though, that Your Honor has been putting a lot of thought into this, as well, when -- whenever you have some time in your schedule, given -- given the hearings this week. And -- and you may have suggestions for us, and we're ready to listen. So I -- I'm -- first and foremost I'd like to -- to offer that. So you can stop me at any point if there are things that you want to suggest to us based on your review of the solicitation procedures. And I don't often open a hearing with that --

THE COURT: Don't worry.

MR. ABBOTT: Yeah, okay. Good. You won't

disappoint me, it sounds like, which is great. Because this is very important, Your Honor. We want to get this vote right. The estates have been waiting a long time to send out materials. And, you know, I don't want to be presumptuous, but -- but we think we have a confirmable plan, obviously, that provides a lot of values to -- a lot of value to survivors and to other creditors in these cases and also continues the vital mission of the BSA.

And we -- we want to get this solicitation started. I think you even said that yesterday or the day before. So once we've made these revisions to the DS, you know, in a -- in an agreeable fashion, we want to get these packages out. It's a complicated case. As you know, there's over 82,000 unliquidated nonduplicative abuse claims. We need to solicit those folks in a way that -- that makes sense and -- and is not overly burdensome on the estate, but -- but also protects the estate from any fraud or -- or misdoings that -- that some may wish to undertake. So we think we can do that.

So what I would like to do, Your Honor, is start with a little background on some of the earlier case milestones that sort of impact the solicitation and have impacted our procedures and how they have

been developed, some of the clay we have to work with here, if you will. And then I'll describe some of the critical features of the procedures in the master ballot from the debtors perspective and -- and how we think they'll help insulate the integrity of the vote.

After that, you know, probably sadly to you or some on the phone, I'll jump back into our handy 110-page chart to address the remaining solicitation objections. But -- but I think in this case, it'll only be the last ten pages or so. So that's how I plan to proceed, Your Honor, but if -- but if you'd like to -- to do something differently, please let me know. I'd -- I'd be happy to --

THE COURT: That's fine.

MR. ABBOTT: Okay. Fantastic. So, Your Honor, unlike many asbestos cases or asbestos and talc in the Imerys case, we did have a bar date established in this case, as Your Honor well knows. May 2020, our date order was approved, setting November 16th as the date for abuse survivors. And you approved a customized proof of claim form to use for -- with special confidentiality provisions for the submission of those claims.

Pursuant to the bar date order, the debtors conducted a multi-million dollar advertising program

involving TV, print media, and others that was designed to reach the maximum number of men over the age of 50, which is the primary target audience. We think we reached over 95 percent of those men. During the claim's filing period, Your Honor, the TCC filed a motion to -- to supplement the bar date order to clarify the admissibility of electronic signatures. The debtors did not oppose this relief.

However, the -- on September 30th, the coalition filed a motion to revise the bar date order to permit the authority for attorneys to sign claim forms on behalf of abuse survivors. We -- we did oppose that relief. However, that was permitted and also clarifying that electronic signatures were permitted.

Unlike cases with no bar date, like Imerys and like so many of the asbestos cases where any party purporting to have a claim could vote, here only claimants that there is a proof of claim on file on or before the bar date can vote.

As Your Honor know, these proofs of claim all contain three serious requirements or penalties, a certification that I have examined the information in this sexual abuse survivor proof of claim and have a reasonable belief that the information is true and

correct, a declaration under penalty of perjury that the foregoing statements are true and correct, and a potential penalty for fraudulent claim of up to $500,000 or imprisonment for up to five years. Those are heavy, heavy requirements and penalties, Your Honor.

As of the November 16 bar date, approximately 82,500 unique timely filed abuse claims have been filed by abuse survivors on account of sexual abuse. This number is now approximately 82,200 after accounting for withdrawals. Importantly, Your Honor, I think it's important for the Court to know -- and we checked with our claims agent Omni last night -- that, as you probably suspect but -- but maybe didn't know, there have been a significant number of amendments to these claims in the intervening months since the Bar Date.

Specifically, there have been approximately 24,000 total amendments, and that includes approximately 17,000 amendments since February 16, 2021, which is the -- the date that the last of the declarations of Mr. Schiavoni's proof of claim evaluators were -- were filed. And of course, the amendment standard being what -- what it is in Delaware, there are more amendments coming all the

time, and we expect there to be significant amendments all the way up until, you know, the -- the -- the confirmation hearing. So, Your Honor, that sets the table on the bar date.

There -- there's also been other activity in this case. And I won't belabor this, but -- but, you know, I think it's important because in this context, there's going to be evidence presented about, you know, handwriting experts and proofs of claim and what they're missing or we're missing or -- or, you know, lazy or nefarious -- call it what you will -- signatures that have been affixed or -- or printed or photocopied.

But much of this is -- has already been -- I hesitate to say litigated -- but has been brought before this Court in the 2004 and 2019 context. And as Your Honor, you know, obviously knows, the -- the 2004 motion seeking to serve discovery on a sampling of actual claimants, and what we're worried about here are the claimants, not necessarily the attorneys and the aggregators because I think, as Your Honor identified, you've looked back and although, you know, other case have -- have, you know, identified issues with the attorneys and aggregators, no one has really prevented somebody from voting because of their --

their -- the way their vote was called or the way it was produced by their attorney.

But in any event, there -- there has not been 2004 discovery on -- on the claimants. We do know that -- that Your Honor obviously approved some of the 2004 with respect to certain claims aggregators and then ordered the 2019 statement to be filed by the Kosnoff firm.

Your Honor, after the bar date in service of this solicitation, the debtors endeavored to create what we call the solicitation directive. And the important part about the directive was -- was to get back in touch with the attorneys for these 80,000-plus abuse claimants and try to figure out a way to -- to solicit in an effective and administratively efficient manner, and then the best way to get those folks, the claimants, the actual voice to vote.

On the bar -- or on the proof of claim form, rather, Your Honor, there was an ability for the claimant to note its law firm and -- and to accept or to allow the debtors to communicate with their law firm. And the debtors did that through the directive to ask what their preferred mode -- mode of solicitation would be.

Just as a note, the directive also went out

to some claimants where the communications with the firm box was not checked, but in those instances in order to respond on behalf of the claimant, the law firm was required to submit written verification of their authorization from the abuse survivor client to receive the solicitation package on his or her behalf.

Those directives, Your Honor, specifically asked if they would prefer to receive a direct ballot or receive -- on behalf of their clients -- or receive a master ballot to vote on behalf of their clients in one centralized document.

The directive requested that the law firms voluntarily informed the debtors of their preference, and many firms did. Importantly, Your Honor, because I think this will come up later in the context of whether or not a 2019 is now required for a firm to vote its master ballot.

These directive did themselves contain, actually, pretty extensive certifications. Among other things, the directive certification provided that by signing below, I hereby certify that I have authority under law and I have duly valid and enforceable authorizations to vote to accept or reject the plan on behalf of my abuse survivor clients in accordance with my firm's customary practices.

Further, it provides I represent each of the abuse survivor clients set forth on the Excel spreadsheet that lists the claim numbers' names, mailing addresses, emailing addresses, and other information regarding my survivor clients that I have received from the solicitation.

So Your Honor, it provided more, as well, but I won't continue to read from the certification. But the point is that that directive was sort of an intermediate step for the -- the estates to liaise with these firms that represent the clients and try to understand and confirm that they represented this group of clients and that they would prefer to vote via master ballot.

THE COURT: Mr. O'Neill, is that -- is that certification on file -- the format, the template for the certification on file with the Court somewhere?

MR. O'NEILL: Yes, Your Honor. It is. And I'm getting a docket cite. Oh, it's Exhibit 11, Your Honor, to the order.

THE COURT: Okay. Thank you.

MR. O'NEILL: Sure, and I -- you know, happy to have you read along or you can read at your leisure without me having to belabor it on the Zoom vid. So I'll continue going -- do you want to go over it, Your

Honor? I'll wait.

THE COURT: I don't recall seeing it, but obviously, I'm reading a lot of documents. But the -- but what you're telling -- is what you're telling me that the -- that these certifications have already gone out and been filled out and been returned?

MR. O'NEILL: Correct, Your Honor. Yes. This happened back in April. And just to clarify one point, if the directive went out and did not come back, the debtors will be sending direct ballots to those claimants.

THE COURT: Okay.

MR. O'NEILL: So meaning if the firm was unable to certify to these things, their clients are going to get direct ballots, and they can send them in.

So Your Honor, one of the effects of that is that working with Omni, the estate has been able to utilize this information to help support and validate the master balloting process. And as a result, we plan to send a total of approximately 19,000 direct abuse claim solicitation packages instead of approximately 82.200, which, depending on where we end up with Mr. Buchbinder later on the form of packaging, in any event, it saves the estate significant money.

But if we have to mail hard copies, we're talking -- I can't do the math in my head, but millions of dollars, if not tens of millions of dollars.

So Your Honor, so moving to solicitation and what we're asking for from Your Honor today, we filed disclosure statements, as people have been wont to point out over the last couple days, and rightfully so, as well as four versions of the solicitation procedures order and related materials, including the version currently before the Court.

While the plan and DS (phonetic) have evolved significantly, as you might suspect, the solicitation procedures, in large part, have remained the same, especially the versions filed on July 2 and last week. There were very few changes, but we've provided red lines to these documents, and they're in your document binder under Exhibit B, and that begins at Page 244 of the PDF numbering to the extent you want to reference the documents.

The voting procedures and forms of nonabuse claimants are standard for nonabuse claimants, Your Honor, and have raised a couple of objections that are kind of catch-all objections from the U.S. Trustee's office.

But given the nature of the survivor claims

pool, as Your Honor well knows, we're stuck with some special procedures for that class, just in order to deal with 80,000-plus unliquidated claimants and how to solicit a group that large with -- with little visibility on the actual claims. So we've -- we've done what most debtors in this position have done, but we've added a few critical tweaks. And I'll -- I'll walk through those with you, Your Honor, just to -- just to give you an idea.

First, as noted above, we submitted a voluntary directive intended to streamline the transmission of the solicitation information. Not only has this put us in a position to solicit more effectively and -- and administratively more efficiently, but it created another layer of defense to confirm which of these firms represents the claimants. It took the proof of claim information, put it to these firms, and they had to certify that there were willing to vote on behalf of those folks.

Second, given the -- the large number of abuse claimants represented by counsel, we're -- we're going to use the master balloting process. And this is typical. But beyond that, it's important here to give the number of claimants administrative convenience and -- and also, Your Honor, our ballot --

our master ballot is not typical. You know, I'm not going to sit here and tell you everybody's done this, so we need to do this. That -- that may or may not be true, but in fact, we're using a master ballot that's a little bit different and unique in a good way.

First of all, it's specifically tied to the claimant's proof of claim that that firm -- that are those firm's clients. So the Excel spreadsheet that's attached has a specific dropdown for each client, you know, to vote in the release election and the expedited election. And then a law firm must fill out this box for each client.

And second, there will be a claim number for which a claim has been submitted under penalty of perjury for each claim on the exhibit that is mailed to each law firm, along with claimant name, last four of Social Security, and month and year of birth. Law firms will not be able to add claimants to the master ballot. This is not an ad hoc process, Your Honor, were a firm goes through its files and pulls out, you know, 2,000 new claimants so it can juice the vote. That can't happen here. It's -- it's based on the bar date and submission of proofs of claim.

And, you know, as I alluded to earlier, Your Honor, in our certification section -- and we -- we

can talk about whether this is beefy enough -- but we have eight certifications rather than the three that were on the Imerys master ballot.

And -- and if Your Honor would like, we can turn to them now. But I'll -- I'll just submit to you that this includes a robust additional collection of representation regarding representation, the collection of ballots, and the authority to vote on the plan. The plan is defined as the plan, so it means our plan. And a representation that the disclosure statement has been provided to that abuse survivor client. I think you'll find, Your Honor -- and we don't need to read through them together with -- with all these, you know, folks on the hearing and on the call -- but I think you'll find that they're materially different and improved.

THE COURT: Let me ask -- let me ask a question, Mr. O'Neill. I do have the certifications and acknowledgements in front of me. I happen to be looking at the clean copy. I realized after I started I wasn't working at -- looking at the red line, and I can find that if that's what other people have been looking at. But -- and I'm specifically looking at the master ballot for Class A, direct abuse claim master ballot. And I think I have a couple of

questions before the certifications, but with respect --

MR. STANG: Your -- Your Honor? Your Honor, could you tell us the docket number you're looking at so we can all pull it up?

THE COURT: Yes, I --

MR. STANG: Because some of us have the red line up.

THE COURT: I'm at Document 60 --6215.

MR. STANG: Okay. Sorry to interrupt. Thank you, Your Honor.

THE COURT: That's okay. Thank you. 6215, I'm in dash 1.

MR. STANG: Got it.

MR. O'NEILL: And if you're on the red line, you're in dash 2. Sorry -- sorry to interrupt, Your Honor, but that might be helpful.

THE COURT: And I'm on Page 116 of 240.

MR. O'NEILL: Okay, Your Honor, would you like me to highlight the -- the --

THE COURT: Let me ask -- let me ask some questions. I'm just making sure everybody has time to get to it.

MR. O'NEILL: Got it.

THE COURT: I don't --

MR. O'NEILL: Sorry.

THE COURT: Good for y'all that can do that on computer. The -- and I do think it's an important distinction that you've raised that in Imerys, I did not have the benefit -- or some may say not benefit, but I didn't have the benefit of a bar date order, so I didn't have a universe of claims in front of me, regardless of what you think of those claims. I didn't have a universe of claims in front of me. And so we were in situation where the master ballots went out to law firms, and -- and law firms were -- well, the number of claims that they -- that they returned was a stranger -- a stranger basically to the Court, in terms of what number they -- they returned on their ballots.

So there certainly was less clarity about what -- where -- how ballots were generated and the source and the basis for the claims on those ballots. So I -- I do acknowledge that that's quite frankly a material difference. I really do think it is a difference. And let me ask a couple of questions with respect to the certification.

First question I have is it's -- it says the -- the -- the prefatory language is, by signing this master ballot, the undersigned certifies on

information and belief that the following statements are true and correct. And some of these statements -- maybe all but at least some of these -- I don't think should be on information and belief. I think -- not the way I think of it as a pleading kind of -- how you would use that in a pleading. Some of these things are true or they're not true, and they're -- and they should be able to be validated, the easiest one, for example, seven: I've provided the disclosure statement in hard copy, flash drive, or electronic format to my abuse survivor clients.

The attorney did that or didn't do that and can verify that. And I recognize maybe his assistant did it or something, but nonetheless, I think that's something that should not be on information and belief. That's the statement. They did it or they didn't do it. And actually, I like the fact that they had to do it, so I appreciate that. The abuse survivor may be overwhelmed by -- by getting that document, but I think that's appropriate. So --

MR. O'NEILL: And -- and we -- we --

THE COURT: -- I'm wondering what -- the base -- why -- do we need information and belief? And on which one of these do we need information and belief?

MR. O'NEILL: I think we're -- the debtors are prepared to just strike that entirely, Your Honor, and not monkey with which of it applies to -- what does it apply to and what doesn't it apply to.

THE COURT: Okay. The -- another question I have, then, with respect to what this certification could be -- and quite frankly, I'm up to hearing discussion about it because I haven't had to think through these issues before.

To the extent -- and -- and I have conflicting views on this. Should this certification be made as an Officer of the Court? These are being made by attorneys. As an Officer of the Court pursuant to -- let me say it this way. Should it be expressly made -- these certifications be expressly made as an Officer of the Court pursuant to and subject to all applicable rules of professional conduct that any attorney may be subject to?

And the reason I'm asking this is because I think those kinds of statements convey to the signer the seriousness with which this document is being signed and reminds the signer -- and let me say right here. I do not believe every attorney perhaps needs to be reminded. But it reminds the signer of the import of what they're signing.

And on the other hand, I could make the argument that when the attorney is signing for the client, they are acting as the client, not necessarily as the lawyer. And therefore, I think that has ramifications in terms of down the line discovery or -- or subjecting yourself to questions that your client would have to answer.

So I'm -- I'm throwing it out there. I recognize you don't realize what questions I'm going to ask. But it -- the thought I had as I read this as to the capacity in which the lawyer, employing the master ballot, is certifying -- and in this instance, I do think he's certifying as a lawyer and perhaps should be reminded of the seriousness of which I would take such a certification.

MR. O'NEILL: And -- and, Your Honor, I -- my reaction to that is, if that is what Your Honor thinks -- or rather, if that would make Your Honor more comfortable with our process and the eradication of any fraud or bad behavior, then I think that the estates would be comfortable with that, that the debtors would be comfortable adding language to that effect. I -- I -- I understand entirely your thrust here, which is to put some more seriousness behind it so you're not just signing something. You're doing it

as an Officer of the Court, and the expectations of that weight of being an Officer of the Court are therefore on you when you sign this.

I -- I -- I think it's a -- it's sort of a middle ground between making this subject to penalty of perjury. And, you know, I think this could be an appropriate middle ground. Obviously, we're happy to hear from others if anybody thinks it's inappropriate, but seems to me that Your Honor has been contemplating this since Monday, and it's not coming out of the blue on this -- this call, so --

THE COURT: Yes, but contemplating this since all of Monday and -- the other way to look at it. So I don't know if this has been done in any other circum -- any other cases. Again, whether it has or hasn't is not influential, necessarily. But it's a -- it's a thought I had.

MR. O'NEILL: I mean --

THE COURT: I don't know if any others have thoughts on this and want to weigh in or not.

MR. STANG: Your Honor, I have my hand -- it's Mr. Stang. I have my hand up.

THE COURT: Mr. Stang?

MR. STANG: Your Honor, we are definitely living in a post-Imerys hearing world. There's no

doubt about it. And this order with -- with all due respect to everyone on this call, was done with some maybe less awareness of some the problems that can arise in these situations. Certainly, for me this -- what happened in Imerys at the hearing that I -- we represent -- we have representation of Imerys. While I wasn't on the call, Ms. Grassgreen participated in the hearing, and I heard about it in details.

I think the word that stood out from all of Mr. O'Neill's presentation was integrity. We have got to be sure that the process has integrity, but as important -- and this is critical to Mr. -- Dr. Kennedy, Mr. Humphrey, and the seven other committee members. This will be probably the only instance, other than maybe the proof of claim process, where a survivor can truly say, I have been heard. This is -- this is the time. This is probably the last time in this case where they will be able to have -- speak their own voice. And so integrity is really important.

And so I think the highest standard -- I mean, I didn't hear you say Officer of the Court as some kind of middle ground to penalty of perjury, the way Mr. O'Neill stated it, but we should have layer upon layer upon layer here.

And I want to make one thing absolutely clear. While the TCC opposes this plan, this has nothing to do with my comments on the first day about mass tort lawyers and what impact it may have on the case. This is about survivors. And we need to be sure that whoever is submitting a master ballot using a process that does not bear that client's signature on the ballot has every level of protection that their voice is being accurately heard.

So I have lots of comments on the certification part, Your Honor. I will hold back on that, but as for this Officer of the Court, applicable rules of professional conduct, thumbs up, thumbs up. Penalty of perjury, thumbs up. This has got to be rock solid as we can make it as far as the certifications are concerned. Thank you, Your Honor.

THE COURT: Thank you. Mr. Schiavoni? You need to unmute.

MR. SCHIAVONI: So I'm not quite sure how you intend to proceed here. I thought you were going to hear proponents of the form of order and then opponents of it. I mean, I'm happy to proceed on this line-by-line however, but --

THE COURT: Well --

MR. SCHIAVONI: -- I would like to be heard

at some point in a --

THE COURT: Of course.

MR. SCHIAVONI: -- (inaudible) way. And -- and I'd like to make a proffer of evidence, and I'd like to offer evidence, also, as part of that, so --

THE COURT: We'll get to that, and, you know, that's a good question about exactly how this part should proceed. But I will absolutely give you an opportunity to speak. I'm throwing out some -- some thoughts out there. And I realize that some people have question -- all types of issues with respect to voting, and we're going to get to those.

MR. SCHIAVONI: So let me, then, take your invitation and just comment on this, on whether or not -- you know, Your Honor, I did sit through and listen to Tom Bevan's testimony. I know Tom Bevan from other matters, and we've read his prior depositions from other cases. You know, I don't know how you could listen to -- well, let me put it differently. My case --

THE COURT: Let's be careful because he's not here.

MR. SCHIAVONI: That's -- that's fair enough. That's fair enough.

THE COURT: Okay?

MR. SCHIAVONI: I think -- here we -- here's my concern, without making it specific to him, but it's -- it's, like, I think that there are -- there are lawyers who think that there's nothing wrong at all with what they did. And that the description that we sort of heard when you asked him about, you know, what was done to vet the claims, and his -- and the responses we got about, well, all I needed was sort of a thought that it was possible we had a claim, if you remember that as part of the vetting.

And then it was even looser than that, a sort of good-faith sort of basis for it. And then questioning about, well, gosh, did you get any, you know, conflict waivers? And it's like, no, of course not, okay?

Does anyone think really that the certification would have changed the vote from that fellow? I -- it -- you know, or not -- not with respect to him personally, but does Your Honor -- I think you have to sit back and think about this, about whether or not fundamentally self-certification to a lawyer who's going to take 40 percent as -- as part of a locked-up coalition, you know, of the money here wasn't going to change anything.

It's, like -- you know, Your Honor, as part

of the, you know, the decision about -- and the advice Your Honor gave to the parties about how they should sign the proofs of claim. Your Honor admonished folks that the proofs of claim should, you know, really be signed by the claimants. Your Honor was going to allow attorneys to do it, but if they did it, they were admonished on the record that, like, they really needed to vet the claims. And you have the evidence before you on what happened. Does -- you know, you can -- you can put belt and suspenders on the certification, but if it's -- at the end of the day, it's a self-certification that doesn't allow any testing by the Court. Does it get us anywhere? Does it change anything?

THE COURT: It's a fair question. It's a fair question. Then the -- the situation might be do we allow master ballots at all, but the -- I'm not sure what the in-between position is, but I hear that. I hear that, and it's a fair question, and something I've thought of. And that's why I'm having this discussion because I thought of this since all of Monday, okay?

MR. SCHIAVONI: I think this --

THE COURT: And I'm not sure what exactly to do with this. So --

MR. SCHIAVONI: (Inaudible).

THE COURT: -- Mr. Rose -- oh, I'm sorry.

MR. SCHIAVONI: I'm sorry, I thought yesterday Your Honor was half maybe suggesting or maybe I'm reading too much into it that the history of these master ballots and, you know, I think, you know, it is true that they've been used in mass tort cases for some time.

There's been a couple of cases where the -- those issues were tested, not as broadly as here, to be clear, and when I get an opportunity to make my overall presentation, I'd like to talk about those. But the real background on this is that this process sort of start, like, it was used by indentured trustees --

THE COURT: Um-hum.

MR. SCHIAVONI: -- you know, who have -- it's an entirely different kind of background where they have --

THE COURT: Right.

MR. SCHIAVONI: -- you know, a contractual obligation, you know, delegated authority, and they would, like, the practice was for them to use master ballots. And it was picked up, you know, by some here in some of these mass tort cases and used, and then,

there were some challenges to it. But there, you know, there has not been a court that's looked behind it.

I don't know that there's any precedent for someone trying to change their vote so that it would kind of reveal kind of what was happening or precedent, frankly, for what we have here as far as, you know, the evidence on the proofs of claim.

So yeah, you are going to hear me argue that master ballots should not be used here or at least not used in particular circumstances.

THE COURT: You're back, okay, I'm sorry. I was frozen there for a bit. I don't know if everybody else was or not. I'm familiar generally with master ballots in the context of indentured trustees, with master ballots in the context of shareholders, equity, a proxy fight in CD and Co (phonetic) and that kind of thing. I don't know how they got imported. I'm sure some enterprising mass tort lawyer said, here's something we can use to help in a particular case.

But I hear the point. I'd like some others' thoughts on it. I will say sort of connected to this whole idea, especially in a situation where there's actually going to be, if this ballot is approved, a party can elect into a $3,500 settlement, in essence,

of their claim.

That's a whole other level of complication here, to make certain that the client understands that they've settled their claim and that the lawyer has authority to settle their claim for $3,500. And I recognize, again, people have issues that, but to throw things out there, that, to me, is another level of complication to this.

MR. SCHIAVONI: Your Honor --

THE COURT: (Inaudible), oh.

MR. SCHIAVONI: Yeah, just, you know, another that's -- and you'll hear me talk about this, but another thing that flows into is the fact that the voting bloc for which the master ballots are really going to be used, the attorneys' fees are being -- are embedded in the plan, so that the -- it creates, I think, a conflict between the lawyers and their voting clients.

You heard Mr. Molton yesterday talk about what's in his letter, but I think he came at it from the wrong side because his retention letter, if you remember, went out to the Coalition, all their clients, okay? And you know, they claim there's, like, 50,000 of those clients. Most of them, the vast bulk of them, affirmatively opted out of retaining Mr.

Molton.

So it's like the statement in the letter, retention letter, that says you may seek a substantial contribution claim, that could bind the actual technical Coalition members, but there's a relatively small number of those. I forget whether it's 14 or 17,000 is the claim. The bulk of them affirmatively opted out, so now, we have the debtor putting that in the plan, encouraging -- and it's pretty clear, it's to lock up the votes of the voting Coalition members to deliver this vote that they're talking about.

And when we objected to the fees in connection with the RSA we set out for Your Honor, we gave you all the case law about the conflict that poses, really, for a lawyer, you know, when he has a direct self-interest in something -- to inject that into the balloting, it does inject yet another level of complication for the Coalition to use master ballots.

THE COURT: Mr. Rosenthal, you've had your hand up for a while.

MR. ROSENTHAL: Thank you, Your Honor. Michael Rosenthal of Gibson Dunn on behalf of the AIG companies. Your Honor, I want to address the specific question you raised. And while I don't think my

answer is directly on point, I think by analogy it may be.

I fully support that these certifications should be -- either as Officers of the Court or more appropriately, I think, under penalty of perjury. We have some examples of this in the asbestos context. You know, the Court may know as the case law has developed as the years have gone by that courts hearing asbestos cases, including your colleague, Judge Cary, when he was on the bench, you know, have insisted on fraud prevention measures to prevent fraudulent claims from being asserted.

Now, that was not in the context of voting, but it was in the context of asserting claims against trust. But I think it has the same impact. Those fraud prevention measures include certifications, but they also include audit rights, and they include the ability to hold a lawyer to account for filing claims that are inappropriate.

And it is that last mechanism that causes, I think, the lawyers to pause before they submit claims that they don't believe are appropriate or that they don't have support for. And that's, you know, that panoply of fraud prevention measures is what Judge Cary ordered in the Miramonte case.

THE COURT: Miramonte?

MR. ROSENTHAL: Um-hum. And what have been ordered in any number of cases dating to the original case that set this up was the Garlock case out of the Western District of North Carolina. So I offer that, and I think that here requiring that does make these lawyers stand back and have certainty or at least investigate these claims enough to be able to say, yes, I'm entitled to both these claims. I'm entitled to make the election because I've spoken to my client about it. I am committing them for something.

THE COURT: I'm aware generally of Miramonte and the issues that the United States Trustee and others have been raising in the various cases. And I assumed this was an issue we would get to with respect to TDPs. I do wonder whether there's something we can borrow from it to put in the ballots. And I don't view the fact that this issue was not something I drew attention to specifically at proof-of-claim time, although I do recall admonishing lawyers of their responsibilities in signing the proof of claim.

I don't consider, you know, the horse out of the barn. This is another -- this is another step, and I think we should impose appropriate admonitions here. And I want to say, again, particularly because

I know I have members of the plaintiffs' bar on this Zoom cast, and I'm not impugning the integrity of any particular plaintiff's lawyer, and I don't want to suggest that I'm doing that.

I'm addressing an issue that I've not had to address before and, quite frankly, haven't really seen in my 35 years of practice of how we should be handling the ballots, particularly in this master ballot situation where we do have lawyers voting for their clients. And here, perhaps resolving a claim in that very same vote.

MR. STANG: Your Honor, just on that element, there are retainer agreements that are on file with the Court that -- some of which talk about -- and I had put aside the certification that was done earlier in the case, the retainer agreements sometimes, and I had the authority to settle the case.

But we all know from the rules of professional conduct that you have to consult with your client regarding a settlement. The client has to have informed consent, and you know, this idea of the $3,500 election, as you've pointed out, is a whole new wrinkle.

Someone's got to talk to the client about that. I don't think you can rely on something that

was done in April -- I think it was April -- when the $3,500 expedited payment wasn't even in most people's constellations. It certainly wasn't there at the time of the execution of the retainer agreement.

So I think you're right. The different elections, be it 3,500, the releases, whatever after check-the-boxes are going to be, adds a complication on the informed consent aspect of this.

THE COURT: Mr. Smola?

MR. SMOLA: Thank you, Your Honor. I just wanted to give the Court plaintiffs' lawyers' perspective on this for just a moment.

THE COURT: Um-hum.

MR. SMOLA: This plan and the impact of a yes vote is significant. It potentially compromises that individual's rights against a local council. It potentially compromises that individual's rights against a charter. It presumably turns down an offer of $3,500. All of these things have to be conveyed under all of the rules of ethics to every client, and it needs to be signed off on by every client.

And it's particularly important in this case because a yes vote from a victim doesn't just impact that victim. This court's going to be deciding issues involving non-consensual third-party releases. So

those yes votes, that consent, and the integrity of that consent is absolutely critical.

So I would endorse every possible mechanism this Court seeks to employ to ensure the integrity of the vote. Thank you, Your Honor.

THE COURT: Thank you. Okay.

MR. GOODMAN: Your Honor. Do you see my hand up?

THE COURT: Oh, I'm sorry, Mr. Goodman. I hear you. There you are. Okay.

MR. GOODMAN: Thank you, Your Honor. Eric Goodman, Brown Rudnick, on behalf of the Coalition. Your Honor, I would just like to state our understanding as to how this is supposed to work so there's no ambiguity on these issues. And before I even get into that, I did want to correct a statement that Mr. Schiavoni said earlier, and I've heard him say this several times, and it is not true that, you know, tens of thousands of clients represented by Coalition firms affirmatively opted out of being part of the Coalition. That is false. You know, to my knowledge, I'm not aware of any "opt-outs." You know, so I just wanted to correct the record on that point.

Your Honor, if you look at the master ballot solicitation method, there are really two parts of it.

I don't know if the Court has -- what you have in front of you. I'm looking at Docket number 6215-1. This is on Page 7. It's Section 5A, and notwithstanding my tendency as a draftsman to go from number to letter to number, there's a 5AA in the whole and then a 5AB.

As Coalition counsel, I'm really not terribly focused on 5B. That's the provision that would have firms claiming that they have authority under applicable law to vote. I'm actually --

THE COURT: Sorry, Mr. Goodman. I'm not following you. You're in document 6215-1, and what page are you on?

MR. GOODMAN: I'm on Page 24 of 240.

THE COURT: Ah, in the -- I got you, Page 24.

MR. GOODMAN: Yeah, I just want to correct --

THE COURT: Okay.

MR. GOODMAN: -- I think there's a -- so I'm looking at 5AA.

THE COURT: Um-hum.

MR. GOODMAN: And it's --

THE COURT: I have AA, yeah.

MR. GOODMAN: Yeah, and that's -- I'm

actually not terribly thrilled or concerned about B. I'm much more focused on A. From our perspective, the master ballot solicitation method permits law firms to, first, find out from the client how they want to vote. Second, cast the votes based on that direction as provided by the client. Third, report that vote on a master ballot, and then, submit the master ballot to Omni.

Under these procedures, Omni is to send the disclosure statement package to each law firm, but each law firm must transmit and make those materials available to the client. The client decides how they will vote. The language in 5A, which describes the master ballot solicitation method, states that each of the survivor shall have indicated to the firm his or her informed decision on such vote.

That's something we added. That's something the Coalition insisted on. Unless a firm has clear authority to vote on behalf of its abuse survivor clients, and I'm not saying any do, each survivor must communicate to his or her firm how he or she is voting. And the votes must be cast in strict accordance with the client's instructions.

The Coalition firms will recommend that their clients vote yes, but -- and I want to be very

clear on this -- we will not and do not guarantee that 100 percent will vote yes. There have been multiple filings in this case where the Coalition has stated that it would use reasonable efforts to advise and recommend. You've seen phrases like meaningful and informed participation on voting decisions. That's our language. That came from us.

Survivors are entitled to make their own decision. I don't know how many times I have to say that, and I will keep saying it. Votes should be cast based on the survivor's decision. Now, why is this important here? We are trying to avoid disenfranchisement. When you make firms a voting hub or a polling location, to use a modern analogy, the result is a process that runs more efficiently than any alternative that I have seen. It works.

And we would not be here supporting procedures if they were not efficient and if they were not designed to be implemented in a way that would be successful in this particular case. We're trying to use the best tools at hand.

If survivors have questions, and I think almost all of them will, they can and they will contact their attorneys. And despite the time spent on the disclosure statement, I must say, respectfully,

it's a challenging document for a layperson to understand and so may be the plan summary.

I think a lot of the survivors here are going to look to their attorneys for help in figuring out what to do. And when the Coalition firms say, as they have, that they support the plan and will recommend that their clients vote yes, that is real value in a mass tort case. All of the progress in this case hinges on that. The Hartford settlement, the TCJC settlement, future settlements with insurers, the plan architecture for chartering organization all depend on survivors voting to accept the plan.

Otherwise, there can be no (inaudible) injunction, and without that, this entire plan fails. So we do want to use the best tools available, and we also know that if and when we get to plan confirmation, dissatisfied parties, and I know there are a number of them who are here today, are going to object, and they may challenge the vote.

We understand that going in. You would have to be crazy not to, and we know that this has to be done right. We know that every I has to be dotted, we know that every T has to be crossed, and we expect that this will be an issue at confirmation. And we're going to be prepared for it.

Last point I want to make, Your Honor, there was a bar date in this case as Mr. O'Neill noted at the beginning of his presentation. The proofs of claim here were filed under penalty of perjury, and those claim forms make it abundantly clear that the claims asserted are for sexual abuse. They're not generic claims.

And I will note that many, many of the amendments that Mr. O'Neill mentioned that have been filed since February were filed to add clients' signatures to the claim form. I think it's premature, frankly, for any party to be challenging votes at this stage or even bringing up that issue for the simple reason that we don't know who is going to show up and vote.

Even in cases with very, very robust voter turnout have never seen 100 percent tort victim participation. And if past events are any indication of future events, I would expect that the survivors that put the most time, the most effort into completing the claim forms are the ones that are the mostly likely to vote. That is true in most mass tort cases, and I have no reason to expect a different result here.

I'm happy to answer any questions the Court

may have, but we feel very strongly that solicitation procedures like these are necessary, extremely helpful in a case like this, and you know, these are things that should be done with the utmost integrity. And anyone who's suggesting otherwise, I respectfully disagree. Thank you.

MR. O'NEILL: Your Honor, this is Andrew O'Neill, I seemed to have started a cavalcade of sort of opening statements, and I would like to get back to my presentation, if we could do that. And I, you know, if Your Honor, you know, wanted to continue to talk about the certification, that's fine, but it seems like we'll get to it in other parts of the discussion when we get to some of the objections. So if I could continue, Your Honor?

MR. STANG: Your Honor, in that regard, I just -- you have not, I think, actually ever spoken to my partner, Debra Grassgreen. She would like the address the Court on the issue of the use of master ballots, and Ms. Grassgreen has the unique status that she was a personal -- she was a creditor of PG&E.

Her home was burned down, and she can tell you something about how master ballots worked in that case and the experience of an actual fire victim as to the master ballot process vis a vis her lawyer. So if

you want to do that now, she's ready. If you want to put that off, I just want you to know that she'd like to address the Court on that personal experience she had.

THE COURT: Well, Ms. Grassgreen, I'm sorry, I thought Mr. Stang was going to say that your experience was in some case. I'm sorry it was as a personal creditor of PG&E. I will hear you. I am hearing -- because I did ask the questions yesterday about the use of master ballots, and so I will certainly hear you. I will say that I've -- no, I won't say that. The -- but let me know because I don't want to forget this.

I'm glad -- I'll ask Mr. Goodman. I'm glad Mr. Goodman referred us to paragraph 5AA because I think the language in there is more -- and I do recall reading it -- I think it's more -- it's phrased differently than the certifications, and I think it's actually helpful language. And it may be that we can take parts of that and use it, as well.

Ms. Grassgreen? And then, we will get back to Mr. O'Neill.

MS. GRASSGREEN: Good morning, Your Honor. Debra Grassgreen, Pachulski Stang, and, yes, my family lost its home and my husband and my son were trapped

in the fire, so it's a pretty personal issue to me. But the experience that I had with respect to a lawyer who had multiple clients who had actually signed an RSA in that case was not on the committee I think it's just important to share so that we can figure out as we go through this process how we communicate with the clients of firms that have, you know, multiple clients.

Because what happened to me was that I opposed the plan in PG&E. I voted against it, but I had an attorney who had signed an RSA and agreed to recommend it and not oppose the plan. So I was in the situation where I had a lawyer who could not take my instructions.

Now, I was unusual because I was involved in the case, and I understood the case, and I'm an experienced bankruptcy lawyer who's appeared before Judge Moncalli (phonetic) many times, and I was able to represent my own family's interests individually.

But -- and an unsophisticated client who is a client of a lawyer who makes a recommendation, how are we going to communicate to them what do they do and how the lawyers are going to deal with that ethical problem. It wasn't addressed in PG&E, and what happened in PG&E was there were lots of clients

who voted yes, voted no, but if they had the same lawyer, there was a conflict, and their voices weren't heard.

My voice was only heard because of who I am, so I just wanted to share that experience with you. I mean, it happened to me, you know, and I called my lawyer, and my lawyer said I agreed not to oppose the plan, and oh, if I oppose the plan for you, this person, client, wants me to support the plan.

So how are we going to help survivors understand that the decision isn't being made for them, either in reality or effectively, because of the master ballot process and because of the joint representation. That's what I wanted to share, that particular personal experience. It's a very difficult one, Your Honor, but that's what happened to me.

THE COURT: Well, I think there's a -- if I heard you correctly, if you -- agreeing to recommend the plan is not agreeing to deliver a yes vote. That's how I view it. And if a client instructed their lawyer that their vote was no and their lawyer refused to check the no box, I think that lawyer --

MS. GRASSGREEN: So it's a different --

THE COURT: -- has an issue.

MS. GRASSGREEN: My vote was accurately

recorded as a no vote. It's not the voting, but I had an objection to the plan. I had an objection. And so the clients, somehow we need to, under the appropriate rules of professional conduct, make sure that they understand that just because they're part of a group that's represented by one lawyer, and it doesn't -- this isn't at all unique to the Coalition. It's unique -- it's for any lawyers that are representing multiple clients -- that if they --

THE COURT: Right.

MS. GRASSGREEN: -- want them to raise an objection, if they disagree with the recommendation, that the lawyer may not be able to represent them in that disagreement. I think that's the concern and how do we communicate that.

MR. STANG: Your Honor, I would add that in the RSA, which I acknowledge has expired, but I have no idea what the agreements are between the FCR, the Coalition on the issue. The RSA had a specific negative -- two negative covenants. One was the firms could not object or take any other action to interfere with the acceptance of the plan and could not solicit approval or acceptance of, encourage proposed file, any vote that was for anything other than the admitted plan.

So it's not just the recommendation part. There were negative covenants in the RSA. And again, I don't know what the terms are of whatever agreement that now exists between the Coalition and the FCR and the debtor, but it was in the original RSA. Thank you, Your Honor.

MS. GRASSGREEN: And it may be as simple, Your Honor, as in the communications that go out to survivors to explain to them that if your lawyer is representing more than one survivor and those clients, some want to support the plan and some want to oppose the plan, you may have to get a different lawyer.

I mean, I don't know what else you can say, but I don't think an unsophisticated survivor would understand that. I understood it, obviously, I'm not your normal victim in a mass tort case.

THE COURT: Okay. Thank you. This raises issues that are not unique to the mass tort case. Every lawyer who's ever had multiple clients has conflict rules to work through and issues to work through with respect to multiple representations, hopefully worked out in the beginning of the representations, but I have -- and lawyers have their state law ethical duties.

Whether I can be -- and I think I cannot --

be the personal guarantor that every client has chosen the right lawyer and that every lawyer is respecting their professional obligations is something that I said probably at other points in this case and certainly in other cases that there are state law rules, there are disciplinary council, there's all kind of structures surrounding that.

So I have to give this some thought. I think we've talked about this as much as we can. Let's move on, see what other issues we have, and I will be giving all of this some thought, but I, of course, appreciate what I'm hearing on this call, which is that each individual survivor's vote needs to be appropriately reflected in a ballot, counted appropriately.

And what I'm going to be giving thought to, and I'm sure it's going to come up in other aspects of this, is can we take a vote so that at confirmation, challenges of whatever nature people want to raise, there's an ability to do so and have a vote that we can look at to apply those challenges to. So that's what I'm trying to think about, as well, as we go through this process.

For example, there is challenge to the $3,500 expedited distribution and questions about

whether that is going to sway the vote and whether it should. Well, we're going to know the answer to that question when we get the vote and whether the votes of the survivors who choose the $3,500 distribution swing the class. We'll know that. There are things we can know once we see the vote and who's voted.

There may be -- and that's what I'm thinking about. Is there a way that at confirmation, if people are going to challenge the vote, that we have the information necessary to answer the questions that will arise? So I'm thinking about that, as well, in connection with how the vote goes out and the information that we ask for in the ballot.

I'm going to go back to Mr. O'Neill.

MR. O'NEILL: Thank you, Your Honor. And we agree with much of what you said, and you'll hear me actually iterate that, I think, throughout this discussion. You know, there are a lot of things that people have raised that we just don't believe are a today issue or are a front-end solicitation issue. It might well be a back-end issue with the voting report or, you know, a matter of slicing and dicing the information in connection with confirmation objections.

We think we are position to do that at that

point, but again, our theme is we would like to begin the solicitation, and we have procedures in place, including the master ballot, which allow us to do that. Mr. Goodman hit on this, but remember, it's the claimants that gave us the ability to contact their law firms and have their law firms select the method of voting.

We are pro-suffrage, we are also wanting to do this the right way, but we acknowledge that people get to choose how they want to vote. So we're trying to sort of juggle all those balls, Your Honor, and I think we've done a good job as we'll discuss.

So I don't want to set off another round of discussion with this very talkative crew on the certifications at this point. I just -- my last point on the certifications is that it has a built-in audit procedure for the debtors to require a power of attorney or other written documents be provided to the debtors.

So you know, and we talk about this, Your Honor, but perhaps, you know, we can use that on the backend to, you know, just double check in a couple instances what, you know, what certifications have been made and if there's a valid authorization for the attorney for be voting.

So Your Honor, in sum on my opening remarks, I think the debtors submit these procedures are appropriate and protective given the unliquidated claims pool that we're dealing with in this case. And again, I think what we've provided in our procedures are the only way that we are going to get to confirmation on the schedule that we've proposed. Our schedule is typical in these matters.

Again, you know, there's an objection on that from the TCC, though I'm not sure it's live, I'm not sure what their objections are, given their involvement in the RSA. But it seems that there may be some. So in any event, with that, Your Honor, what I'd like to do, and my idea was to sort of imitate yesterday's hearing and the day before where we go through this chart and discuss the outstanding objections because that seemed like a fairly orderly way to do it. And although I'm, to be completely candid, a little bit loathe to have multiple people jumping in, I guess, you know, that's the process by which we can do this.

I know Mr. Schiavoni noted before that he has some evidence that he would like to proffer or other evidence that he will be providing. The main Century objection, Your Honor, comes at sort of the

end of the chart, which is to say that they have some other objections, but number 67, which is kind of at the very end of the chart, I think we probably could wait until then for the evidence to come in and you know, we'll see what happens when the evidence does come in.

I think we'll have something to say, and others might, as well. Or we could do it now, at the front end, and just get it out of the way and then move into the objections.

THE COURT: Why don't we go through the chart.

MR. O'NEILL: Very good. Okay. Thanks, Your Honor. So the first -- and it's number 60 on my master chart, that's page 107. And you'll see the title is solicitation procedures master ballot procedures. That may sound a lot like what we've just been discussing for the last 45 minutes, but in fact, it's more specific than that and tailored.

The main thrust of this objection is that there's a problem with ballots -- master ballots being submitted by the same firms that have the same plaintiffs on them. And we actually have a procedure that deals with this, Your Honor. First of all, it's not likely to happen very much, just given the way

that we've designed the master ballot where specific proofs of claim will be provided on their attachment with the ballot that they actually get to vote.

But in the event there is overlap and there's a conflicting vote that Omni will do research on the proofs of claim, they'll go back and double check everything. And in the event that that's not sufficient, then they will require both firms to show proof that they actually represent that client and have the authority to make the vote.

And based on that, the debtors will be able to determine which is the valid vote. To the extent that we can't, the vote will not count. So that's the procedure. We think it's the best way to proceed in these limited instances where there'll actually be a conflicting vote.

Really, the other objection under this category, Your Honor, it's actually from Century but it's not going to implicate the evidence is that we forfeited the obligation to police the solicitation process.

I think that's probably a general comment. It sounds familiar from what we've heard. But this isn't specifically with respect to requiring the last four digits of the Social Security number. That

actually is a part of the ballot in an attachment to the ballot. So we are requiring that.

The next objection, Your Honor, on the chart --

THE COURT: Well, let's wait, and let's see if there are any further outstanding objections with respect to those two issues.

Mr. Stang?

MR. STANG: Your Honor, I'm not sure if -- the way this is broken up, the objections, I'm not quite sure when to address paragraph 5A because it contains a number of things. I have some very specific comments about the exact wording of 5A, and you know, some -- I'm just not sure which pigeonhole that would fit into as we go along. But if you want me to go through 5A, there are about three or four things I would comment on. They don't go to whether or not there should be a master ballot. We're past that one.

THE COURT: Mr. O'Neill, does 5A fall anywhere within here or the order fall anywhere within here?

MR. O'NEILL: I'm not aware of what that objection would be. We haven't seen any language from Mr. Stang, so I'm not sure what exactly he's referring

to.

THE COURT: Okay. Why don't we put at the end of this the form of order? And that way, everybody can comment on whatever issues they have with the form of order.

MR. O'NEILL: Very good, Your Honor. And it sounds like the form of order, which will approve the solicitation procedures hopefully, and will have some emendations or something with respect to language in certain sections.

MR. STANG: Yeah, I guess it's -- Your Honor, it's actually a solicit -- 5A is in the solicitation procedures, which is an exhibit to the order. I just have comments on 5A. Whenever it's time for me to make those specific comments, I'll do it. I just --

THE COURT: Well, I went through the form of order and the solicitation procedures, and I've got some markups, too, so we're going to get to that.

MR. STANG: Okay.

THE COURT: So that will be the time when everyone can comment on the form of order.

MR. STANG: Thank you, Your Honor.

THE COURT: Thank you.

MR. O'NEILL: Thank you, Your Honor, and I

apologize to Mr. Stang and the Court. There was one more sort of objection in this category, and that's just a timing issue, which is that if there are duplicative votes on master ballots, that the parties have 14 days instead of 10 days to resolve the dispute.

And the reason it's 10 days rather than 14, Your Honor, is that 14 is the entire amount of time that Omni is going to have to generate its report. So there needs to be some time on the backend to just do the final product. I'm not even sure that Mr. Stang is pursuing that anymore, again, but it is here on the chart, so I thought I --

THE COURT: Is that an issue for anyone? I don't hear anything. Let's go to the next issue.

MR. O'NEILL: Great. So the next category is called solicitation procedures proposed dates and timelines. Again, I think I just don't know if the TCC is pursuing this at this point. But certainly, the U.S. Trustee's objection here that Labor Day is implicate and therefore, it's not a good schedule is mooted at this point, sadly.

So the thrust of the TCC objection, Your Honor, was that 43-plus days that we've afforded for people to vote is not enough. We certainly think it

is. Again, most of the population of voters will get substantially more than the 43 days, up to -- well, I'm looking at my colleague, but 50 or so. In any event, we don't think additional time is necessary.

And again, as Your Honor knows, and I'll come back to this siren song again, is that we need to get this going and our schedule is tight. So that's why we're doing this on the schedule we're doing. But also footnote that and say this is a completely normal solicitation period.

THE COURT: Mr. Schiavoni?

MR. SCHIAVONI: So Your Honor, this -- I will come back to this when we get to make our general objections, but if you just think about this for a second as a practical matter, okay? The Coalition firms, which are locked up in this bloc to vote, many of them are very small firms with only three or four lawyers, but they have thousands and thousands of claims.

In the 2004 motions, we brought this out about just, like, temporally, how they were voting hundreds of claims a day and how putting aside, you know, the testimony we haven't obtained from those lawyers yet, but just the impossibility of vetting the claim in that period of time.

Apply that here to the use of a master ballot, instead of individually just handing them each ballot and express their views, they're going to poll, you know, a firm with two or three lawyers is going to poll thousands and -- like, 7,000 claimants in a matter of 43 days and get their individual views.

I mean it just masks what's really going to go on here. You know, it's, like, the lawyers for the Coalition are going to vote as a bloc.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: Yes, Your Honor. I don't want to repeat what Mr. Schiavoni said, but I think there are two issues implicated here. One is the schedule generally, and obviously, we want to talk to you about the schedule generally. We think that there should be significantly more time allowed.

But I agree with Mr. Schiavoni that because of the two-step process required in a master ballot situation and all of the communications that have to go between not just the debtor and the law firm, but the law firm and each of it multiple clients and the explanations and everything, this is why in a master ballot situation, you generally give, you know, more time in any event, and certainly in this particular case, you would think that it would take quite a bit

of time for people to vote hundreds if not thousands of claims in a master ballot format on a fully informed basis.

THE COURT: Mr. Stang?

MR. STANG: Thank you, Your Honor. I'm looking at it from the perspective of actual survivors, and while I appreciate Mr. O'Neill's need for moving this case along, you know, if he'd listened to Mr. Molton and me and Mr. Patton (phonetic) about the original Hartford deal, the BSA wouldn't be in the time crunch they're in. But that's an aside the point.

THE COURT: You have the second point. Let's move on and let's stay with the issues.

MR. STANG: I will, but he keeps on invoking it, so that's important to understand. You have untold numbers of letters from prisoners who have explained to you the difficulties in getting mail and sending mail out. People should have as much as time as is reasonable, and 60 days is reasonable.

Likewise, I am told by state court counsel from time to time that their clients don't use email, they use snail mail. They can be hard to get ahold of. You've had some exposure already through the letters to some of the communication issues that

survivors have. We need to afford these folks a reasonable period of time.

Just remember the mission of the Boy Scouts and this case includes and fair and equitable treatment of survivors. We shouldn't for over 13 days deprive those folks of an opportunity to make a meaningful vote. Thank you, Your Honor.

THE COURT: Thank you. This --

MR. O'NEILL: Your Honor, understood, and look, we understand Mr. Schiavoni's role here, obviously, and Mr. Stang. You know, we'll leave that one alone, but I think, you know, part of this is what the schedule's going to be. Mr. Rosenthal is right, and I think, you know, if we can keep it on the right side of, in our view, 60 days, that would be best, obviously, but we're willing to be flexible on this, obviously, as it pleases the Court.

THE COURT: Okay. I was going to say, we can consider this with the overall schedule, but I will say, this is a complicated case, and counsel need time to speak with their clients and for their clients to have an ability to understand what they're doing and determine their -- what their vote's going to be.

And I actually am aware of the prisoner issue, as well, because I've noticed several of those

letters. I'm not sure exactly how to do this to make certain they all get the mail appropriately. But I think 60 days is probably more in the ballpark for the additional time. But we're going to consider this in the context of an entire schedule.

And as for lawyers with small shops, they took on the clients. They're going to have to figure out how to appropriately represent them.

MR. O'NEILL: Thank you, Your Honor, and agreed, they can work the phones, and we'll take this up in conjunction with the scheduling.

The rest of the objections up until the U.S. Trustee are in the order of sort of me, too -- the TC wanting to get access or be part of the process when votes are looked at for irregularities. And we think we've addressed all of these with language in the solicitation procedures, but I'll defer to Mr. Stang to see if they have any outstanding objections of this ilk.

MR. STANG: Your Honor, to the contrary. There are a whole number of paragraphs that originally had us, the Coalition, and the FCR having rights regarding extension of deadlines to vote. I mean I can go through each subparagraph, but there was a host of things that collectively the Plaintiffs' interests

and the debtor had to coordinate on, like, extending the bar date, dealing with votes that seem to be invalid.

And they changed all that to just being the debtor. So we can go through each subparagraph, but I felt like they were trenched. Maybe they have an agreement with the Coalition and the FCR as to what to do because they're now supporters of the plan, but I thought it was actually retrenchment.

MR. O'NEILL: Your Honor, I think what we've defaulted to instead of parties participating in the process is to make a voting report -- it available in the voting report. And then, I believe there are notice provisions to be heard for parties on that voting report.

But you know, this again, I think is something we can talk about with Mr. Stang. I think that neither the TCC nor the Coalition nor the FCR are directly included. So that's currently the state of play.

THE COURT: The issue that this raises is another issue I've been thinking about recently in connection with solicitation procedures, which is how much discretion should the plan proponent be given to vary dates, extend deadlines, accept a late ballot,

permit withdrawal of a ballot, and what's the role of -- and should the voting and the solicitation agent be, like, a third party neutral, or is there some advocacy, if you will.

And this was something that certainly became highlighted, as well, in Imerys is how does a debtor use their discretion? Are they using it selectively or not? Are they using it to favor the outcome they want? And is it okay if a debtor does that, to promote confirmation of a plan?

MR. O'NEILL: So Your Honor, that's a great question, and I didn't articulate it well at all before, but I think what I meant to say was what we landed on is for full disclosure of these decisions in the voting report, so that parties are put on notice and can see what was done and it can be discussed about, you know, discussed in an open forum.

So instead of going through the TCC and the Coalition and others who obviously get the flavor on this hearing, they're not going to agree on anything. Maybe, hopefully, they will be by then, but at this point, we don't know how a process could work with that dynamic. So instead we've decided to put it in the voting report, and then, people can have at it.

And that's part of this back-end process

that I think Your Honor favors and is part of transparency in this.

THE COURT: I'm not sure if I favor it or not. I think that's where it ends up sometimes. No, front end would be better so that we're not dealing with these issues on the back end. But including it in the report is a minimum, and I've required that since I've been on the bench.

There are no undisclosed extensions, decision-making, anything that requires discretion. Nothing should be within the sole discretion of the debtor. Everything has to be subject to reporting and court approval, if necessary. Should others have an opportunity to weigh in? I don't know if it makes it more or less difficult because each party's going to weigh in.

Presumably if people are weighing in, it's not neutral, it's not becoming neutral. It's become partisan, if you will. Why should people disagree? If someone wants to file a late ballot, what are the reasons people are disagreeing over that? It's because it doesn't serve their interest.

So I'm not ready to cut it out because, again, I haven't had the benefit of thinking this through. I don't know that I want every late-filed-

ballot issue coming in front of me. I don't know that that's an effective use of time or it needs to happen. And so it's this balancing act, only becoming an issue in -- well, this in particular, is it neutral or not, is something I've been thinking about for well over a year in different contexts.

But I shouldn't be solving a singular issue, you know, with a sledgehammer. It's not to procedures and practices, and I recognize that. So --

MR. O'NEILL: And I'll add to that, Your Honor, the sledgehammer, again, it's voting. We don't know what's going to happen or which of these issues will be implicated. That's part of the trick here, and so the sledgehammer, you know, might be the wrong approach, although I --

THE COURT: Absolutely.

MR. O'NEILL: -- take Your Honor's points about, you know, certainly looking backwards with the benefit of Imerys on parties' interests. So I think our proposed procedures do give that period for people to come in and challenge what was done, and I think that that's an appropriate way to do this, not that Your Honor wants to deal with one-off issues, but that's currently how it's constructed.

If there's a better mousetrap to vet that,

we can continue to think about that. But we don't think it's a free-for-all with 1,000 professionals each looking at a ballot that came in, you know, for some really good reason it was late, but it should be accepted. It's not a, you know, this is going to make-my-case or kill-my-case issue that people, you know, are thinking about it that way.

And again, that's why Omni in the first instance has the decision-making on many of these issues.

THE COURT: Just want to make sure Omni has a fulsome report as to what has -- votes they've counted, votes they haven't counted, and why. Any extensions, anything that varies from the approved process needs to be accurately reported.

MR. O'NEILL: Understood, Your Honor, and we will make sure that happens. So Your Honor, -- oh, Mr. Stang's hand.

THE COURT: Mr. Stang?

MR. STANG: Your Honor, I really appreciate what you just said. At the beginning of the case, we had a little tiff with Omni because a certain communication was included with the notice of the commencement of the case that we thought was an inappropriate communication by the debtor to

creditors.

And Omni informed me that in that circumstance they were an agent of the debtor, and the debtor told them to include the letter from BSA with the notice of commencement of the case, and that's what they did. So they have a capacity where they are working as your claims agent.

THE COURT: They do.

MR. STANG: I don't know if it's noticing agent, claims agent where they said to me, we're an agent of the debtor, and I pointed out they have responsibilities as an entity doing the clerk's work, if you will. But I appreciate what you just said because Omni needs to really understand that, you know, they are not to be taking instructions from the debtor in making decisions on this. At least that's my read on what you said.

THE COURT: Well, that's the question. So it used be before there were claims agents, right, that ballots went to the debtor, you know. There's this whole cottage industry that sprang up, but it used to be ballots went to the debtor, and the debtor reported. And that's why I say when I've been thinking about these issues, you know, is the balloting -- I'm not sure that Omni is a -- is acting

in a clerk's capacity when it's doing balloting.

Think about it in the nonbankruptcy context, in a proxy statement, right? The company hires somebody to do the balloting. So I'm raising issues. I'd love the benefit of thoughts people have. I'm really serious about that because I think these are all issues that we've taken for granted over the years, but then, occasionally, there is a problem.

On the other hand, if it's a singular problem, I don't want to hit it with a sledgehammer. But it used to be, of course, that ballots went to the debtors. They solicited, they reported, they presumably made decisions that we maybe knew or didn't know anything about.

Mr. Rosenthal?

MR. ROSENTHAL: I'm sorry, Your Honor, I'm very confused because I'm an old-time bankruptcy lawyer. You know, I don't understand why a voting deadline doesn't mean a voting deadline, and ballots that come in by the voting deadline get counted. You can -- we've always been able to change your vote, and the last vote you make counts if it's in before the voting deadline. And then, why is that any different from a bar date?

THE COURT: Bar date.

MR. ROSENTHAL: Yeah, you can file a claim after the bar date, but you have to show some excusable neglect. You have to show some basis for not getting it in timely. I just think if you go away from it -- look, I'm speaking more generally than specifically on this case, but you asked for views.

THE COURT: Um-hum.

MR. ROSENTHAL: I think if you go away from having a voting deadline that's a pretty hard deadline, you're just asking for mischief because people, you know, people end up saying, well, she's not going to kick it out anyway, I'll file it, you know, I'll file it five days before the hearing, or I'll see what the general tendency is, and then, I'll file something. I think that's asking for more problems than it solves.

THE COURT: I think that's a fair point.

MR. O'NEILL: I think it is a fair point, and I think that is what we're proposing to solve for with our voting report and having to account for what that would be. And I agree with Mr. Rosenthal, generally, on late-filed claims.

So Your Honor, I think moving along from that topic to the rest of the objections in this section, 62. There are some old objections from the

U.S. Trustee's Office that I believe are not -- no longer live.

I'll let Mr. Buchbinder speak to that, but we have been exchanging emails with his office on what we understand to be his last couple of comments, and one objection, which they will be pursuing, and it's later in the agenda.

So I -- unless Mr. Buchbinder says otherwise, I'll move on.

THE COURT: Mr. Buchbinder?

MR. BUCHBINDER: Thank you, Mr. O'Neill, for letting me speak for myself. One issue that I have remaining here on number 62 was the Rudy Sweetwater issue, and you can see what the debtor wrote in that column, Your Honor, by revising it to be subject to the entry of the confirmation order. It's a minor point, and if you want to punt it to the confirmation hearing, I'll defer to your discretion.

THE COURT: If it's really a confirmation issue, let's push it. I'm looking for it.

MR. BUCHBINDER: It's the Rudy Sweetwater issue. We can do it now or we can do it later. I'll leave it to you, Your Honor. And I doubt it will actually be raised here as a practical matter.

THE COURT: Well, do you want to remind me

what the issue is? I'm sorry.

MR. BUCHBINDER: The issue is if no one in a class votes --

THE COURT: Ah.

MR. BUCHBINDER: -- (inaudible), the class is deemed to consent to the plan.

THE COURT: Yeah, isn't there language that qualifies that, that if the plan is confirmed with that in it -- I don't generally approve that in advance. You have to ask for it, and I thought there was -- I thought I read language that said subject to a confirmation order approving this.

MR. BUCHBINDER: They revised it to that, Your Honor. If you're fine with that for today and move it to the confirmation hearing, I'm fine, too.

THE COURT: I'm fine with that today, and we can move that to the confirmation hearing. Thank you.

Mr. Patterson, I saw your hand was up.

MR. PATTERSON: Thank you, Your Honor. I'm on the West Coast. I'm three hours behind everybody, but I just wanted to go back to the voting deadline issue, and I'm looking at 6215-1 at page 33. And this is the order, and I guess we're ultimately going to talk about the order and the procedures. But I just wanted to note that 6215-1, page 33, paragraph 8, and

--

THE COURT: I've got that circled, yeah.

MR. PATTERSON: Okay. Then, we're going to get to it, Your Honor. I'll reserve.

THE COURT: What's your concern, though?

MR. PATTERSON: Well, it seems to me that a change of vote, withdrawal, or modification should really be pursuant to court order. And the voting -- the request for confirmation can include a request for deviations from the vote as tabulated by the voting agent and the debtor can make its case why some should be in, and some should be out, and why they should be modified.

But to Mr. Rosenthal's point, I think, you know, presumptively, we're using the voting deadline as the voting deadline. So that's my thought on that one, Your Honor.

THE COURT: Thank you. Those are the words I had circled in that provision, and Rule 3018 tells us how to deal with -- actually, doesn't even say after voting, but in my mind, I've sort of made that line of demarcation, that you can do what you want ahead of time, but afterwards, you shouldn’t be able to change it without coming to the Court.

MR. PATTERSON: Right, and that's not -- and

with respect to changes that take place prior to the voting deadline, I assume that the voting report will also reflect that, but --

THE COURT: It should.

MR. PATTERSON: -- I agree with Your Honor. It's where the votes lay at the voting deadline that is presumptively the vote tabulation that the agent provides.

THE COURT: I think that's correct, and it results in the least mischief, and parties just shouldn't wait till the last minute to vote.

MR. O'NEILL: We can make an appropriate change to accommodate that, Your Honor.

THE COURT: Thank you. Mr. Schiavoni?

MR. SCHIAVONI: Your Honor, I just wanted to deal with this issue about the voting agent. I mean I do think you've got some visibility in sort of some of the things that's happened with -- as this voting agent cottage industry has developed, you know, there's a lot of money behind it. They're picked by the debtors. There's a lot of, you know, world series tickets get exchanged and you know, lot of -- you know, all that kind of stuff goes on.

But the main thing is the voting agents have, you know, really feel beholden to the debtors

and they, you know, increasingly feel beholden to an outcome. They should be independent in how they're handling things. But whatever one's view is on that, you know, transparency, sunlight is the answer to a lot of things on this.

One particular issue here, you know, just to show you where there's a problem is this whole sort of like procedure to elect to use a master ballot, you know, we wrote the debtor and said, gees, you know, we'd like -- you know, and I think we separately may have written Omni, saying, you know, we'd like to see copies of, you know, the elections, particularly with regard to AIS.

You know, Your Honor's aware that there's particular concerns about AIS, with conflicting 2019 statements about it. We had Mr. Kosnoff making public statements that he controls those, you know, that those votes should not be voted on a master ballot, and we would have liked to have had those documents, so we could have had an informed discussion here about, you know, in a practical, direct way how those decisions are being made.

Is someone like -- you know, it's the largest single bloc of Coalition votes. It shows up in all of their representations that have been made in

connection with the LDS and the Hartford settlement and the restructuring support agreement that one law firm is going to deliver the entire group of those and represents -- they represent all of them.

And you know, we've put before the Court written statements by Mr. Kosnoff, granted in the form of tweets about his views otherwise, but also in the form of his 2019 statement on this, and you know, we -- but we don't have the documents that would have shed light on it, you know, the documents exchanged with the voting agent, you know, with respect to that.

So I can't have an informed discussion on that right now. We could take from the Coalition how -- what's the answer on that, how that's come down. Are they are going to vote by master ballot or not?

MR. O'NEILL: Yeah, Your Honor, first of all, I just want to clear the record that Mr. Schiavoni did receive those directives, so you know, what you just heard is completely inaccurate and --

MR. SCHIAVONI: No, we don't have the responses from the Coalition. We don't have, like, Mr. Kosnoff's submission -- response, we don't have that.

MR. O'NEILL: My understanding is that you do, Mr. Schiavoni. So maybe there's some confusion on

your end.

I think, Your Honor, what Mr. Schiavoni's inadvertently done is led us into the next objection, which is about the solicitation procedures directive.

THE COURT: Okay.

MR. O'NEILL: And you know, this was from the TCC, and again, I'm not sure this is a live objection. I know we helped, or we worked with the TCC to craft the directive, and they were involved in that. But maybe Mr. Stang has a different view.

THE COURT: Mr. Stang, any --

MR. STANG: Your Honor, I apologize.

THE COURT: -- (inaudible) this?

MR. STANG: Mr. Lucas, in my office, was really involved in this, and I think he's going to have answer whether we still have an issue with this.

THE COURT: Mr. Lucas?

MR. LUCAS: Yeah, I'm sorry, Mr. O'Neill, could you state that one more time? I apologize.

MR. O'NEILL: Oh, sure, Mr. Lucas. How are you? I was just saying that there's -- it could be an old and cold objection from the TCC because I know you all worked on the directive.

MR. LUCAS: Yes.

MR. O'NEILL: (Inaudible) indication of the

survivors' proof of claim or whether the debtor should contact the debtor. I think essentially -- well, hold on, let me just read it carefully. The debtors' procedures involve an attorney solicitation.

It appears that you were objecting to the directive, that -- rather than take the word of the attorney on whether they should get the master ballot on account of the claimant, we should go back to the proofs of claim to review and see if they were one of, I think, 95 percent that said they were represented by counsel and wanted communications distributed to counsel and defer to that for master balloting purposes.

MR. LUCAS: I believe that we worked that out because I think that the default was that the master ballot, along with the survivors who would be listed on any master ballot, would be sent to the attorney to the extent that the proof of claim reflected that the survivor said that the attorney may be contacted instead of the survivor. So that is correct.

MR. O'NEILL: Right, that was sort of the follow up. Got it. Okay. Thanks, Mr. Lucas, for clearing that up. So I think, Your Honor, that that answers that question. I think -- I don't know if Mr.

Lucas or Mr. Stang, I still see Mr. Lucas loud and clear here.

But the next objection --

MR. STANG: Hold it. If this was leading into my objection, Your Honor, could we have an answer, then, to is AIS voting on a master ballot or not? I mean putting aside the representation I've been given the documents, which I can't find, but it's, like, is AIS voting on a master ballot? I mean if you're --

THE COURT: Well, I think that conversation should take off offline. I think it's -- I don't see why there should be any lack of transparency over which firms are going to use a master ballot. Those directives are there. If Mr. O'Neill says they've been shared, if you can't find them, share them again, and let's find out.

But I don't know that that's something that has to be here in the disclosure statement hearing.

MR. LUCAS: Your Honor, this is John Lucas. I'd just like to state for the record that the TCC would like copies of the results from the directives. If they were shared with others, the TCC would like them, too, please.

THE COURT: Again, it seems to me there's no

reason why they should not be shared. If there's confidential information in them, people can deal with that appropriately as they have with other things, but -- meaning the survivors' confidential information.

MR. LUCAS: Well, for what it's worth, Your Honor, you know, obviously, the TCC or the counsel to the TCC, my firm, has full access to all the proofs of claims. We've seen the proofs of claims, and so with respect to a survivor's name and all that sort of stuff, you know, we have been authorized by the Court to see all that information.

But obviously, if there's something else, we're willing to discuss it. We're not looking to get an advantage, but we would like to see how the directive process resulted or how it turned out, and to make sure all the steps are being followed.

THE COURT: Okay. Again, I'm not sure that's a disclosure statement issue, but you've heard my views that I think -- I don't see a reason why those directives would not be shared in an appropriate way.

MR. O'NEILL: That's fine, Your Honor, and the debtors have no problem with that, obviously, subject to the confidentiality issues you described, which may not apply to Mr. Lucas and the TCC. We're

obviously happy to share with Mr. Buchbinder at the U.S. Trustee's Office and others. So --

MR. SCHIAVONI: But Your Honor, if I may, I mean just most respectfully with regard to this, if we're going to discuss what procedures are proper here, isn't it directly illustrative of how they work to know whether the largest bloc of votes here, which is hotly disputed among their own lawyers in conflicting 2019 statements, are going to be voted, you know, under what's been already submitted as a master ballot or not? Because it'll give great guidance on how this procedure's going to apply otherwise.

THE COURT: Why not, for purposes of your argument you're going to make to me, just assume they're going to vote by bloc and let's -- we'll talk about it by master ballot?

MR. O'NEILL: Your Honor, again, it's clear that Mr. Schiavoni has some issues with the AIS. And, you know, he's got rights down the line to potentially designate those votes, also. So there are options here, and we don't think it's indicative of anything with respect to our general procedures and our form of master ballot or the process to use master ballots.

So we can -- I'm sure he will talk about it

later in his larger presentation. So I'd like to, then, move along, Your Honor, if that's --

THE COURT: That's fine.

MR. O'NEILL: Thank you. So Your Honor, the next item on the chart is 64, and that is on page 111. And this is -- is or was or still is from the TCC, and it, I think, dovetails with a lot of what we heard from Mr. Stang over the last couple days about isolating information, about local councils, and figuring out what the claim amounts are for particular local councils.

Essentially, the objection wants us to, I think, go out and try to research and find out for the holders of proofs of claim that haven't listed their local council, what that is for purposes of their ballot, which, you know, as a general matter, we're just -- we're not in a position to do that.

We had a proof of claim process. It was very fulsome. The TCC participated, and you know, if people didn't list a local council, they didn't list a local council. If that comes up later during the TDP process, it can come up during that process, when their claim is allowed and valued under the TDP.

But you know, to require additional work and I'm not even sure what that work would be, short of a

new bar date or something along those lines, this is inappropriate. We also don't see any need, Your Honor, to list local councils or do any upfront work to try to segregate claims into different silos based on local council.

So the ballot is a ballot for the BSA bankruptcy case, and they are voting on the BSA bankruptcy plan. And so the Debtors are not inclined to do anything with respect to the ballot in terms of adding local councils or charitable organizations, for that matter, which, I think, is another objection that may be placed in a different category, but the same argument applies.

THE COURT: Mr. Stang?

MR. STANG: Thank you, Your Honor. This is one of the important ones. Certainly -- and Mr. Patterson will have a lot of say about this, and I'm not going to step on his agenda or -- I shouldn't say agenda, his issues. But the Debtor -- the proof of claim form did ask for local councils. I don't think it asked for chartered organizations, but we think that should be included, too.

I'm not asking the Boy Scouts to go out and research my claim. If I had put down my local council, then, tell me which one it is. But if

they're going to use preprinted ballots for people with barcodes and all that kind of good stuff, they could fill that in for someone.

From my perspective -- and we could, when we get the claim form, check my ballot against my claim form to see if I did put down the local council. But it's really important to know the local council for the creditor and the charter for the creditor. Mr. Patterson will explain to you why.

But as Mr. O'Neill has pointed out, there have been lots of amendments. I think he said there were thousands and thousands of amendments. We get questions every day. I have more information, do I need to amend my claim now, when do I need to amend my claim now. So we don't know if everyone is sensitive to adding more information than is necessary for the best analysis of how the voting turns out. This is what Mr. Patterson's going to talk about.

So it's not a big -- I don't know why it's a big deal to ask a survivor to put down the name of their local council, if they know it, and to put down the name of the chartered organization, if they know it. I am not suggesting that if I don't know the name of my local council that my ballot doesn't count. I'm not saying that. But for people where this has been a

-- I think someone sometimes uses the term iterative process, and people are going up to the attic to find the box to see if they have their Boy Scout card that might have the name of the local council on it. I mean, people should be able to update the information on something like this.

Now, Mr. Patterson, I think will --

THE COURT: Okay. I'm unclear -- I guess I'm unclear. I thought the objection was you wanted the debtor to put information on the ballot. Now, I'm hearing you want the survivor to be able to put information on the ballot it returns. Which is it?

MR. STANG: If the debtor -- I think it would be simplest if the debtor knows the local council information and if it is doing some kind of individualized ballot that it should carry that information over from Bates White (phonetic) and put in on my ballot, so that it's clear.

I don't have to go take the ballot and go check the proof of claim to see what my local council is. If they know it and they can technologically do it, it would be a nice gesture on their part of include it, so that all of us, as we're looking at the ballots from different perspectives, will have it right then and there.

If they don't have the information because it's not on the proof of claim, I'm not asking Mr. O'Neill to go do a search for my local council, but if that is already in their database, put it on. If it's not in their database, leave it blank, and let the survivor fill it in, if the survivor, since the filing of the proof of claim, which was November of last year, has since discovered the name of his local council. That's what I'm asking for.

THE COURT: And what's the import of that if they do? Let's say --

MR. STANG: I --

THE COURT: -- the proof of claim didn't have that information, and now, the survivor has figured it out or remembered, what's the import of that?

MR. STANG: I could tell you, but Your Honor, this is something that Mr. Patterson it's near and dear to his heart, and we share his views on this, so could I kick it over to him?

THE COURT: Yes. Mr. Patterson?

MR. PATTERSON: Thank you, Your Honor, Tom Patterson for Zalkin and (inaudible) firms. The issue that we're talking about right now is kind of the endpoint of a series of issues, not the starting

point, so that's why, I think, in part, your discussion with Mr. Stang was somewhat awkward because you're wondering why are we talking about this.

So here's our issue. Because of the nature of the BSA liability, we talked about this yesterday with the exemplar claims and so forth, it is not a situation like the standard mass tort case where I, Tom Patterson, have a claim against the debtor, and in the opioid case, all of the manufacturers of opioids, because I took a bunch, and all of the drug stores, because I went to CVS and Rite Aid and Walgreens and so forth. That's not this case.

What this case is is a survivor has a claim against a local council, against a chartered organization, and against the BSA. So for purposes of master mortgage, when this Court assesses whether or not the release provisions are approved by the vast majority of the affected creditors, the affected creditors have to be, for those purposes, measured by people who claims against a particular local council or a particular charted organization.

And that's particularly true where they are themselves being treated differently. Local councils are making different contributions, they have different kinds of a liabilities, they have different

asset bases.

And so a creditor making a decision whether to release the Orange County council is making a different decision from the creditor in Ohio, who's making a decision whether or not to release the applicable Columbus, Ohio, local council that they feel was responsible for the abuse they suffered.

And so our view is that this isn't a classification issue, but our view is that when the debtor tabulates the votes, when Omni tabulates the votes, it's important that the report reflect the yea or nay votes for the plan divided by the affected local councils and chartered organizations, if applicable.

And the reason for that is even more significant because there are -- we talked about Exhibit F yesterday, Your Honor. Exhibit F was the very long report that had the unique and timely claims and the non-barred unique and timely claims.

THE COURT: Yes.

MR. PATTERSON: That was at Docket 6213, page 369. And I think the debtor was doing to -- the Court had some modifications to that report. I believe it was going to updated and modified. But if the Court just looks at an example of that. For

example, so with regard to the Greater St. Louis area, I'm just picking, I think, the fifth or sixth one down.

There are 921 unique and timely filed claims, and 64 non-barred unique and timely filed claims. So when we ask who voted in favor of the plan and who didn't vote in favor of the plan, for master mortgage purposes, there's a lot of information that's important to know.

First, who's affected by that local council release? And second, what was the vote among the 64 people, if I'm still on the right line, the 64 people who actually have preserved the claim against the local council? Because again, if what we got was 52,000 votes in favor of releasing the Greater St. Louis council, it's meaningless. If what we got was 850 votes in favor of releasing the Greater St. Louis council, that's meaningless.

What's really meaningful and who's really affected by that release, who is making a judgment about I'm going to give up something to get something? It's someone who has preserved a timely claim in the tort system or still has the right to file a valid claim in the tort system.

The person who doesn't have a claim against

that local council because they weren't in that geographic area or the person who let their claim against that local council lapse and didn't file it and now it's time barred, their decision is should I get something for nothing or should I not get something for nothing. Something for nothing sounds better than not something for nothing. So I'll take something for nothing.

And the real master mortgage question is the people who are giving up something for something and that's why the vote tabulation has to reflect this. Now, the issue that you were talking to Mr. Stang about, it's kind of the backend of that issue because, as has been reported, a great number of claimants didn't name their local council when they filled out a proof of claim. And so we have kind of a backend question -- what to do with that.

We could, as Mr. O'Neill said, if they didn't list a local council, they didn't list a local council. Their vote would not be tabulated, recorded, or reflected for purposes of figuring this test out. We can do it that way. That's one way to do it.

Another way to do it is to say, well, you filled out your proof of claim form, but now -- and you weren't asked to list this information, but we're

going to give you another chance to provide that information because we're using it in a different context, and if you want to name it now, you can name it now.

But -- and you know, I'm happy to discuss that issue with the Court, but that issue is sort of the backend issue. The front-end issue is really the key to the case, which is are people who are adversely affected by the release of the local council the ones who are voting in favor of releasing local council.

And now, we can disagree at confirmation over the importance of this information. The debtor can tabulate, but we can't disagree over the importance of this information at confirmation if we don't have it at confirmation.

And so it seems to me that this is an important piece of information that the Court should have, and I assume the debtor would want. If all the classes come in and all the people who have preserved their timely claims against local councils are 100 percent in favor of giving up those rights in favor of this plan, then, that's meaningful information for the Court. And if they're not, that's meaningful information.

We can argue about whether it's dispositive

and all the rest of it, but that's tomorrow. I think the key is today to make sure that we put in place structures that give us that relevant information.

THE COURT: Thank you. Let me hear a response from the Debtors.

MR. O'NEILL: Yeah, thank you, Your Honor. I think the response is this. Mr. Patterson has laid out one of his confirmation objections. He's spoken passionately about it and what he thinks the information will be that he'll use to support it.

The information is already there, Your Honor. We're getting votes on the plan, and then, on the backend, if we need this information, if Your Honor thinks that this is a valid argument and it's something that the Court needs to look into, we will have all the proofs of claim, and at that point, they will all be amended with the latest and greatest information reflecting not just local council but, you know, 1 of the 41,000 chartered organizations.

And the Court can choose to use that information how it likes, and the Debtors will be able to slice and dice it how it likes. But to add a new ability to select the local council or chartered org in a ballot is inappropriate, it's expensive, and it's not necessary. We carefully built a bar date program

and bar date notice and bar date for folks to file their claims and name their local council or chartered org if applicable.

I don't think we now need to add a line item on a ballot that would have them do that further. I think it creates confusion in addition to all the issues I just noted before. If parties want to, you know, amend their ballot, they can do that. Mr. Patterson can advise his clients that haven't filled out that portion of their ballot -- I'm sorry, their proof of claim to do so.

And then, at the end of the cases or I should say at the end of solicitation, in conjunction with confirmation, if this is going to be an issue, we can try to create a matrix with 250 local council and 41,000 chartered organizations and how people in those -- with -- that marked their proofs of claim -- by the way, which will not be validated, vetted, allowed, or evaluated claims. That will happen under the TDP by the Trust, how those should be evaluated.

Your Honor, we don't think this is necessary. I think actually Mr. Patterson got frontend and backend issues mixed up. So we disagree, and we think the ballots are fine as is.

THE COURT: Okay. I can hear everyone, but

I can't see anyone anymore. We're working on that. Let me ask this question because this goes to sort of what I said before, are we going to have the information -- thank you -- are we going to have the information we need to have, in the event we need it, at confirmation, and are we going to have an ability to -- for people to make the arguments they need to make and have the data they need it to be based on?

And is what I'm hearing is that the debtor has a database that it will -- that it can slice and dice and come up with these -- the categorization and the vote by categorization if need be?

MR. O'NEILL: Oh, to be clear, Your Honor, we don't think that will be necessary, but we have, though Omni, the database of the proofs of claim and as they'll be amended at the time of confirmation, which have a line for local council and a line for chartered organization. And then, you'll have a voting report that lists by proof of claim who voted yea, who voted nay. So necessarily, we have that information.

And the question of whether we need it, whether Your Honor wants to see it is a question for another day, we feel. We dispute the legal premise, but we acknowledge that it's a confirmation issue.

But we will, I think, be in a position to have what we need.

THE COURT: And for others to have what they need. So that'll be a discovery issue where if people want that information, it will be provided to them.

MR. O'NEILL: Correct.

THE COURT: Mr. Zalkin?

MR. ZALKIN: Thank you, Your Honor. I just want to point out to the Court that -- and I'm sure you understand -- that many, many, many of these survivors cannot remember what their council -- who their council was or --

THE COURT: Yes.

MR. ZALKIN: -- or who was the chartered organization. And one of the things, when we filled out the proof of claims and those were filed, we were told that we would be able to get rosters from the local councils or from the BSA that would help our clients remember or identify councils and sponsoring organizations.

That hasn't happened. We've had a great deal of difficulty with getting that kind of information. So I would ask that the Court please ensure that there be a process where that kind of data, to the extent it exists, to the extent it can be

provided, will be provided as we were told it would be, so that we can help our clients to the best of our ability and their ability identify these local councils and these sponsors. Thank you.

THE COURT: Thank you. Mr. Patterson.

MR. PATTERSON: Your Honor, the issue of whether or not -- they should have led with -- was this issue of whether people should be given the ability to put the name on the ballot at this point. And I mean it just really seems to me that what we're trying to do is ensure at the confirmation process that we have the highest quality of information that we can with respect to who the folks are and who they're not.

And a situation I don't want to get into is a situation where we don't ask for this information now. We have, as we know, 20,000-odd ballots that -- or pardon me -- claims that didn't list a local council. And then, the debtor has a metric for saying, well, here's who they really are. We know who they are because we know what their geographic area is, and we're going to assign them to a local council.

So if the debtor doesn't want to ask for that information now, then, it seems to me that's it. We're not going to, then, ask for it later when they

need it or come up with a second-best alternative later on when the debtor thinks they need it or want it. This is the time to find out whether we're going to get that information.

MR. MASON: Your Honor? Ricky Mason on -- I don't know if you can see me.

THE COURT: I can.

MR. MASON: Okay. I didn't want to cut my friend, Mr. Patterson, off, and I apologize. I just want to briefly respond. First of all, we do disagree vehemently with Mr. Patterson's statement of the standard for a master mortgage determination of whether the local council releases, assuming the plan is voted in favor of, whether that's satisfied.

It sounds to me like he wants to create, frankly, not just 250 subclasses, one for each local council, but potentially thousands of additional subclasses, depending upon the chartered organization releases. And we don't think that's appropriate. That's obviously an issue for confirmation, but I didn't want to let the moment pass by being silent and having folks assume that we agree.

I also think that if we have additional lines on the ballot, we're doing two things. We're sort of heading in the opposite direction of what, I

think, Your Honor has appropriately tried to do, which is simplify things. I really do worry that the debtors or Omni getting ballots with local council information filled in, what happens if there's a conflict between the information on the ballot and what's in the proof of claim?

The proof of claim is really where the action occurs with respect to the identification of the local council. As Your Honor heard, the proofs of claim are being amended as people find additional evidence of which local council is involved in the alleged abuse. That's the process by which a local council should be identified, if it's necessary at the confirmation hearing. And I think we heard Mr. O'Neill say that the debtor has that information available should the Court decide that it's required.

With respect to Mr. Zalkin's statement about rosters, we've had numerous iterations of roster requirements on the part of local councils and certifications and providing information to the extent that folks have it into a database.

So I'm not sure if Mr. Zalkin has access to that, but local councils with -- working with the TCC and others have undertaken over a year's worth of effort in that regard. And frankly, that roster

information, together with the proof of claim information, ought to obviate the need to have the information on the ballot, as well. Thank you, Your Honor.

THE COURT: Thank you.

MR. LUCAS: Your Honor, may I just jump in here really quick because I want to follow up with something that was just said by Mr. Mason.

THE COURT: Yes.

MR. LUCAS: Because I think it's important. Under the third and fourth stipulations extending the preliminary injunction, there were processes or procedures put in place to deal with the limited production of rosters. And so while the TCC worked hard with the debtors here to try to arrange a process, we were unable to address, I think, sort of the point that Mr. Zalkin was raising.

For example, a survivor just doesn't know, doesn’t recall, you know, when he was abused when he was ten years old. You know, it wasn't impressed upon him by his parents to remember his local council. And so in that context, there aren't rosters being searched for for that individual because the process that's set up, it's, you know, survivor, you know, the survivor says, I list local council X, and then, so

the proof of claim is sent to local council X, and local council X is looking for the roster that has that survivor's name on it, if it exists.

But when the survivor doesn't know, then, there's no search being done, and no search has ever been done for that right there. And so there is a big gap and there's a big hole there, and I think that's what -- and I'm putting words in Mr. Zalkin's mouth, but I think that's one of the big limitations here about trying to locate rosters, which the TCC has been asking for and trying to work to get since the committee's appointment in March of 2020.

THE COURT: Okay. Well, I don't remember this issue being brought in front of me. I remember hearing about it here and there. I don't remember it ever being brought in front of me. So I think the question in front of me now is am I going to require the Debtors to put a line on the -- to include a line on the ballot for local -- for survivors to add information to about their claim.

And I'm not going to require it. And one of the reasons I'm not going to require it is because I don't want some survivor to think that they have amended their proof of claim by doing that.

MALE VOICE: Exactly.

THE COURT: Okay? And that they therefore don't have to provide any further information to perhaps the settlement trustee, perhaps somebody else to help validate their claim. I don't want them to be under any misapprehension about what -- and that's why I asked what's the import of putting that information on a ballot, and I think the answer's going to be none.

So I don't want there to be any misunderstandings out there. So I'm not going to require it. But what I am hearing, of course, number 1, is a dispute over the relevant standard of what I will have to decide at confirmation with respect to third-party releases. But to the extent that this information is relevant to my decision, if the Debtors don't have it, they don't have it. And that would be problematic.

So I'm not going to require it. I will also say that once -- and I even hate -- hesitate to say this -- once I approve a disclosure statement, as far as I'm concerned, it could start now. Once discovery's open on confirmation, it's open on any information that is relevant to confirmation. People can seek discovery.

Okay. Next issue.

MR. O'NEILL: Thank you, Your Honor, and we appreciate that. I think that also when we get there, we can discuss it, but I think that also addressed a couple of later objections that are down in number 65 of the same nature or ilk. So thank you for that.

I'll ask a question to the Court, if Your Honor would like to take a break for five or ten minutes or keep going. We've been at it for two-and-a-half hours.

THE COURT: Let's take a ten-minute break.

MR. O'NEILL: Okay. Very good, Your Honor.

THE COURT: Good idea.

MR. O'NEILL: Okay.

THE COURT: And parties can look through and see what additional specific disclosure statement objections remain outstanding. Thank you. What time is it? I've got 3:31. Why don't we just say 3:45 we'll be back? Thank you.

(Whereupon a recess was taken)

THE COURT: This is Judge Silverstein. Going back on the record.

MR. O'NEILL: Hello, Judge Silverstein. Thank you. Is everybody back, or should we wait a couple more minutes, I see? I guess we have who we have. Should we get started?

THE COURT: Yeah, we can get started.

MR. O'NEILL: Okay. Thank you, Your Honor. I think the next item is Item 65 on Page 111 of the chart. And excepting the sort of objections at the bottom that we discussed with respect -- or in respect of Number 64, just prior to the break, the idea behind these objections is that instead of temporarily valuing the claims at $1 for voting purposes that the Court should create some sort of proxy value based on the TDPs or otherwise to value the claims for voting purposes in that manner.

And of course, the objectors use 1126 as the justification for doing so, arguing that we can't properly determine amount of voting for -- for confirmation purposes.

You know, as Your Honor knows, I think, you know, this started in H. Robinson (phonetic) and Johns Manville (phonetic), and it's been a long-used mechanism, where you have, like here, tens of thousands of unliquidated claims that are not going to be evaluated by the estate for allowance but rather by the trust, which is going to be administered by a trustee post-effective date.

There are some arguments made about various ways you could do it. I'd submit to Your Honor that

they're all premature, given that the TDPs have not even been approved, and many of the same, you know, parties to this objection and on the phone or on the screen plan to object vociferously to those TDPs.

So picking and choosing one or another scaling factors or a base amount or some other proxy for value for claims, which again, haven't been fully evaluated and are not complete, as we discussed -- many are amending their claims, as we speak, and will going forward -- is not a good way to do that. And we submit there is no good way to do that. That's why the $1 proxy is commonly used.

So Your Honor, I can allow others to give you their point of view, but you know, I just leave you with -- and I know that all the precedent in this area, you know, is -- is not perfect, as we've identified earlier in this -- in this discussion. But in this case, there -- there really is no other way to do it.

The one case that's cited by the objectors for this proposition is Quigley, and of course, in Quigley, the evaluated at confirmation because it felt it had to do that because it wasn't abundantly clear from the voting percentages that, you know, in addition to numerosity, which was clear, that the

amount would be satisfied. Here, we hope to be in the good position of -- of not having ambiguity on that point, but I would submit that, you know, again, if -- if necessary, this could possibly be done at confirmation with more information at that point. But right now, the $1 proxy is the way to go out with these station procedures.

THE COURT: Okay. Mr. Patterson?

MR. PATTERSON: Right, Your Honor. I still think I'm right, but I haven't got anybody interested in this in this case. And so we concede this point. But I still think I'm right.

And to Mr. O'Neill's point that I spoke passionately, I felt a little remonstrated for that. I think it's because I talk a lot with my hands. My sister once said that the way to shut me up was to tie my hands, and so I apologize for that. I try to maintain appropriate decorum. But on this issue, Your Honor, we're down to a dollar a claim it is.

THE COURT: Okay. Okay, so it sounds like that issue is not a today issue, in any event.

MR. SCHIAVONI: Your Honor, you have our written objection to this, and we stand on that --

THE COURT: Ah.

MR. SCHIAVONI: Sorry. We stand on our

written objection. I'm not going to belabor it. I think Judge Gerber's observations are directly on point. There's clearly going to be a vote that is close here, no matter what, and you know, what Gerber observed, Judge Gerber observed, was that, you know, when that's the case, you've got to basically, you know, wait the votes.

The acknowledgement -- admission, I'll call it -- that the estate has done nothing to "evaluate the claims" that you just heard, they certainly -- and in the subsequent statement that they haven't "fully evaluated the claims" is the situation we have here. The debtor's done nothing to evaluate the claims. And that's being used as the base to vote when there's clearly evidence that there's a systematic problem with the -- with the proofs of claim.

So we stand on our written objections. I do think, in a way, the way the debtor has sort of broken up this sort of way to argue it, you kind of missed the forest in the trees, and I'm going to save my remarks for the next -- next of their bullet points, our bigger picture points.

THE COURT: Okay. Well, let me say this, which is that I -- given where we are, I will approve it with the dollar going out. But that is not to say

that people are precluded from raising the issues at confirmation about whether that's the appropriate way for me to -- for the votes to be counted.

And -- but I'll make another observation, at least, with respect to the insurance companies. My understanding is different than in Imerys. My recollection is that, here, the insurance companies are placed in a separate class. And so their individual vote will not be overrun, if you will, by the votes of the survivors.

So certainly for purposes of voting, I'm not sure whether insurers will have the ability to raise that particular issue in -- on that -- raise the dollar issue on voting issues. Maybe for something else, and I'm going to hear from you, Mr. Schiavoni. But I'll -- I'll point that out, and that is different than in Imerys, where they were lumped together so that -- so that personal injury claimant's votes, in fact, are going to -- could outstrip and control the class. That doesn't happen here.

MR. SCHIAVONI: Thank you, Your --

THE COURT: Mr. Patterson's client's obviously in a different situation. They're in the same class. Mr. O'Neill?

MR. O'NEILL: Thank you, Your Honor, and I'm

-- I won't respond to much of what Mr. Schiavoni said, but I'll just say there were no admissions there. I was just stating what everybody knows here, which is that the TDP process by the trust is going to be the only full evaluation of these claims during these cases.

So Your Honor, moving on to 66, I don't know that we have an issue with the TCC at all on this cover letter, but I'm -- as I sit here, and I could have missed it, given what's been going on this afternoon, but I -- I don't know that we have a letter from them.

But I think that we are not opposed to it pursuant to the -- the discussions over the last two days, but we -- we obviously need a draft of something before it can be agreed to.

So that leaves Mr. Buchbinder's objection, Your Honor. You know, I guess -- I guess I'll start by saying, you know, there's -- I'll state the obvious. There's a lot of claimants in this case, and even with the -- the procedure with the master ballot, which -- which saves us from sending, you know, a full package to tens of thousands of people, Mr. Buchbinder's office is still saying that we should send a full package of paper, over 1,000 pages, to the

voting parties in these cases.

To us, this is not just a case of, you know, administrative or expense savings for the estate, but it's also just wasteful. Sending over 1,000 pages to people in this day and age is not appropriate. It's not the trend in the case. Mr. Buchbinder backs that up, I think, with a -- with a request for not a CDROM but a -- a thumb drive, which is what some courts have done.

We think the link is perfectly sufficient, Your Honor. It's how most of us access documents these days, well, at least, you know, us people sitting in conference rooms on a, you know, hours-long court hearings. But I think the vast majority of the population is in that same boat.

I don't want to belabor this point too much, Your Honor. I think maybe you have a perspective. So I'll just defer to Mr. Buchbinder if he wants to argue this.

THE COURT: Mr. Buchbinder.

MR. BUCHBINDER: Thank you, Your Honor. David Buchbinder on behalf of the U.S. Trustee. Frankly, Mr. O'Neill, in his tone and his attitude, expresses his entire lack of understanding for the 82,500 abuse claimants in this case. I'll start with

that.

Bankruptcy Rule of Procedure 3017(d) is quite explicit. And it reads in part, except to the extent that the Court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders, the debtor in possession shall. And then it goes on to say mail the solicitation package to all of the impaired creditors. There's no exception here for cost savings. There's no exception here for the fact that they're going to get master ballots from attorneys.

And let's go back to that issue and the certification for a moment. It would appear that in the certification, the debtor is attempting to pass off its duty to serve hard copies of the solicitation package to the abuse claimants through the attorneys who are going to recommend to them to vote for the plan. I don't have a problem with that, but the problem I have with that, as was pointed out by many of the other parties in the earlier discussion this afternoon, was despite the certification and despite the comments about additions to the certification to act as a deterrent, there isn't going to be any real practical way to police that these personal injury attorneys have actually sent the solicitation package

in some form to their clients. That's the debtor's responsibility.

And it's one thing to propose a master ballot where the attorney who represents multiple clients will report the votes of his or her clients. But it's another thing to say that that means that those clients received the materials they needed to analyze to determine how to tell their attorney how to vote.

Bankruptcy Rule 3017(d) authorizes summaries, but it doesn't authorize them in lieu of a solicitation package.

Additionally here, many of the abuse claimants, based upon the hundreds of letters that have been sent to the Court, are incarcerated prisoners. Outside of those letters, other prisoners have from time to time filed pleadings, indicating to the Court how difficult it is for them to receive materials or to send them back. The incarcerated prisoners among other issues have limited or no access to computers, or when they do, they only have limited time periods where they can access the screen. Those folks have to have hard copies of the materials.

Additionally, many of the abuse claimants are elderly. Many of them are computer-illiterate.

They still read pieces of paper. The debtor here has told us that it's going to cost millions of dollars to send these packages to people. Frankly, that's poppycock. They try to compare this case to Takata and to PG&E. I was involved in both of those cases, and each of those cases had millions of creditors, not 82,500 plus the trade creditors and insurance companies. There are many ways in which the debtor could print the solicitation package to economize its expenses. It could be printed on newsprint. The pages could be printed two up, back to back, and it would be -- look like a prospectus in its material, but that would be the least expensive way to produce it and to mail it, and everyone would have their hard copy. They would get their summaries. They'll get their letters from whoever's going to tell them to vote for or against the plan, but they'll have all the information that the code and the rules entitle them to. And we can't pass this off to the third-party attorneys for all the various reasons stated by other counsel.

Finally, Your Honor, if the debtor thinks it can't afford to comply with the requirements of the Bankruptcy Rules of Procedure in this regard, then maybe it ought to be rethinking the chapter it is in.

Thank you.

THE COURT: Thank you. Mr. Stang.

MR. STANG: Thank you, Your Honor. I just wanted to point out that if we do put in a letter, that letter per the procedures goes to the attorneys, who will then communicate only the disclosure statement to their clients, not the entire solicitation package. So this may be what we do at the end, when we go through the order, but since we were talking about the letter, the way they've done it, the letter doesn't have to go to the -- to the clients. Only the disclosure statement goes to the clients if it's done through the attorneys.

The attorneys get it, but they only have to send out the disclosure statement, which of course has the plan, you know, attached.

THE COURT: Okay, thank you. Response, Mr. O'Neill?

MR. O'NEILL: Yeah. No, thank you, Mr. Stang. We can make that clarification. That certainly wasn't the intent to -- to prevent the letter from going along with the disclosure statement.

To Mr. Buchbinder, what we're hearing from Omni is that this would cost the estate over $3 million to send paper. I think maybe we could, you

know, quibble about that number based on different methods of printing. But I think what's more important here is that everybody in this case, all claimants are getting the notice of confirmation hearing. And on that notice, printed writ large, is a phone number, and they can call Omni, and they can request a paper copy to be delivered to them free of charge.

Nobody is relying on the attorneys, although they have that obligation if they're going to certify to the vote, to show their clients the disclosure statement in order to -- to Mr. Stang's point, the entire solicitation package.

We are giving people the option to self-help, if they want a paper copy. But for the vast majority of people -- and we think it is the vast majority that aren't going to do that -- we think the current mode of solicitation is sufficient, Your Honor.

THE COURT: Okay. Mr. Buchbinder, let me ask you a question, and as parties will know, I fit -- apparently, I fit into the old category because I'm a paper person.

The -- I see the rule. I'm looking at it. But I know that in the past, I have been asked to

approve -- and I'm sure I have approved -- used to be CDROMs. Then it used to be a flash drive. I don't know what else you can put it on these days, you know, pair of glasses you could send somebody. I don't know.

But I've been asked to do different things, right? And as long as there's an option for someone to request paper and it is free to them, and maybe we could even make certain that it gets sent out by overnight so there's not a loss of time to review the papers, are we meeting the spirit of the rule, which was obviously drafted at some prior point in time?

And I've also, I should say, then had situations where the ballot, probably the letter from the committee, I forget, the notice, certain other things, certain portions were sent by paper, and then the rest was either on some electronic format or you could request paper.

Are we not meeting the spirit of the rule? And I'm with you in terms of paper for anybody who wants it. And I want to make sure they get it timely and in enough time to review it. But I recognize I'm a dinosaur. So if there are people who, in fact, would review it online or would review it in some other fashion, are we not meeting the spirit of the

rule?

MR. BUCHBINDER: Thank you, Your Honor. I'm also a dinosaur, and in most cases, I wouldn't disagree with a word that you've said. But we need to look at the nature of the abuse claimants in this case. Many thousands of them are elderly, very elderly, in their 60s, 70s, and 80s. Many of them, as we've noted, are incarcerated. Many of the elderly ones, I would venture to guess, may live in assisted living or other types of facilities where they don't have access to computers, where they -- or where they can easily request the paper copies.

And, as Mr. Humphrey pointed out to us yesterday, there are 82,500 individuals who are going to be mistrusting this entire process if they don't get the papers. This is a different mix of creditors here. This is a unique class of claims, and they need to be served with hard copies for all of these reasons.

There has been no declaration filed as to the cost, but you know what, the cost to these individuals over the decades that they have suffered is immeasurable. And so the debtor can afford to pay the bill for them. Thank you.

THE COURT: Okay. I'm convinced. Mr.

Buchbinder is correct. I think the unique mix of creditors here, which does, at least has been represented to me, skewed towards older and would make sense, given that the debtor has consistently said that its more current measures to prevent abuse means that there are less victims who are younger. I'm going to require paper. It is an expense, but quite frankly, 3 million in this case -- it sounds horrible -- it's a small number in this case. Mr. Ryan?

MR. RYAN: Your Honor --

THE COURT: You need to unmute.

MR. RYAN: Yeah, can you hear me now, Your Honor?

THE COURT: Yes.

MR. RYAN: I wasn't sure when to raise this, but now that we're on the topic of putting things in the mail is just the issue of -- of those who aren't creditors -- you know, the charter organizations who aren't creditors whose rights are getting affected, and I wasn't sure when Your Honor wanted to address that part of -- of solicitation or notice.

THE COURT: We're going to have to deal with that, and, Mr. O'Neill, when did you plan to deal with that?

MR. O'NEILL: Your Honor, we had

communications with Mr. Ryan. I'm not sure exactly what he's referring to, but I think what we assumed was that in the communication that we were putting together with -- with the assistance of Mr. Ryan, that that would contain all the -- the necessary disclosures and other things that he was looking for. We plan to have that, you know, prepared and then approved as part of the order, as part of the solicitation materials so that we could have it sent out to the relevant parties as part of this process.

MR. RYAN: And that's the issue, Your Honor. It's to whom are they going to send because it's -- the procedures right now were drafted, you know, with a different -- a different -- a different world. And so there's a call to send out solicitation packages to indirect abuse creditors, which there are 16,600. But there are 40,000 chartered organizations who are going to, whether they're creditors or not, their rights are going to be affected by this plan or -- or purported to be affected by this plan by -- by moving them into certain categories and -- and affecting their rights as additional insureds, and giving them releases. So I think they need to know.

THE COURT: There's going to have to be some notice to them directly. Anyone whose rights are

going to be affected by that.

MR. O'NEILL: We agree, Your Honor, and all 41,000 chartered orgs will be getting the communication that we are working on with Mr. Ryan, which -- which will be comprehensive. We devoted quite a bit of time to this over the last couple days, discussing what will be in it, and we plan to work in good faith to make it plain English and to make it useful, and all 41,000 will get it.

MR. RYAN: That sounds perfect, Your Honor. I just wasn't sure when to raise and just make sure that we had the -- the mailing part of the mechanics done.

THE COURT: Thank you. Well, if your crew skews younger and you want to suggest a different method, I will consider that for you. Mr. Lucas.

MR. RYAN: I was going to say, Your Honor, it may be -- it may be that -- that for -- for -- for -- I don't know how -- how young church elders skew. I won't pretend to know that for -- for -- for all these churches. But it may be that a hybrid of sending out a paper notice and a link so we're not adding another million eight to -- to the expense cost is -- is something that I think is probably a good -- maybe a very good solution for -- for -- for the

chartered organizations and not ring up, you know, a forest of dead trees that the Boy Scouts could otherwise preserve.

THE COURT: Mr. Lucas.

MR. LUCAS: Thank you, Your Honor. I wanted to follow up on something that Mr. Buchbinder was saying, and it goes into the Court's ruling just now, and I think it's important to understand.

As we've said before, my firm receives calls and inquiries -- calls, emails, and inquiries from just a great number of prisoners, people who are incarcerated who are survivors. There are approximately at least 2,000 survivors that have filed proofs of claim that are incarcerated. And so when this paper is going to be sent to them, the solicitation package, in addition to putting the exact address and the prisoner number, which you know, I obviously -- debtors can only supply to the extent it's on the proof of claim.

In addition to that, it's important to say that there are legal materials inside on the cover. When my firm communicates and asks questions, we put that so that it gets to the survivor. Otherwise, sometimes it's -- it's stopped, it takes -- there's delay, and it doesn't go directly to him or her, and

it takes a while. And so that's -- again, that's maybe something that we could talk with the BSA's counsel about just to ensure, as has happened with the number of communications that we have had.

And then I had a follow-up question about the paper ruling, Your Honor. The solicitation -- you know, under the master ballot process, it's -- it's the Plaintiff lawyers or -- or their state court counsel, if you will, that are going to be sending the solicitation packages. Does that mean that the Plaintiff's lawyers are sending the solicitation packages in paper to their respective clients?

THE COURT: Well, I would think it -- on a normal master ballot, CD kind of thing, bond issuance kind of thing, I think the ballots are -- the paper is given to the -- to the agent, who then follows it on. But the packages are delivered. I don't know. Y'all can work on that and how you want it done, but that's how I think it's normally supplied. I think the debtor's supposed to do it.

It may be that it's duplicative and we should not task the Plaintiff's lawyers with doing it. We should think about that. If the -- I certainly don't think that they should be getting two packages, one from the debtor and one from the -- their

attorneys. That's a waste, and that's confusing, and they shouldn't get two packages. So if you want to talk further about which you think is better or how that should work, that's fine.

In terms of the prisoners, please work with debtor's counsel and then with Omni. I have seen some of those letters. I have seen the -- the issue about sufficiently noting legal documentation. Some prisons may -- may do it differently. So notwithstanding everyone's best effort, it still may not get there. I understand that notice issue. It's a problem. But let's do the best we can to get the information to that -- to everyone, and we have to hope the Bureau of Prisons on the federal level and whatever state equivalents there are is going to get the information to these -- to these parties. We can -- have to do the best we can. Mr. Smola.

MR. SMOLA: Your Honor, I just -- to follow up on Mr. Lucas' point, there are many, many men in this case who have not told their families about their abuse. And if they receive a solicitation package to their home that is focused on abuse, that is going to harm them further. We specifically have in our firm a way in which we keep track of which men find mail to their home acceptable and which do not. And I will

tell you the vast majority do not.

THE COURT: Do not.

MR. SMOLA: So -- so the -- the problem I foresee is hundreds, if not thousands, of phone calls about why an individual -- an individual's spouse who they haven't told about their abuse just received a solicitation package about their sexual abuse. Thank you.

THE COURT: So Mr. Buchbinder, does this -- does -- I find that somewhat compelling.

MR. BUCHBINDER: I'm giving it serious thought. I did have a couple of suggestions before Mr. Smola's comment. One would be to take the attorney certification -- take the service of the solicitation package out of the certification -- out of the attorney certification, and the second would be to put on -- a legend on the envelop legal documents.

But Mr. Smola seems have a -- have made a good point. And this is a very difficult issue because he's -- this is one where, you know, I'm thinking back to Fiddler on the Roof, and the scene in Fiddler on the Roof where all of the men are talking, and Reb Tevye looks at the first one. He says, you know, you're right. And the second guy says something, and then Reb Tevye says, you know, you're

right, too.

Everyone's right here. The rules are the rules, and Mr. Smola is not wrong. And we need to find a -- we need to find a viable compromise that works for everyone because we do have, as I indicated, the many thousands of elderly people, some of whom may or may not be in Mr. Smola's category, who still would want to get paper copies. So we have a difficult quandary here, and I do understand Mr. Smola's well-made statement.

MR. SMOLA: So I -- I would just point out to the Court that we have about 4,000 clients, about 800 to 900 fall into the category of not capable of using email. And -- and we have clearly are -- defined those clients in our firm, and they'll receive a paper copy from us if they want one. So but even within that group, some don't want mail. They only want to communicate via phone, so it's -- it's a very complicated issue.

THE COURT: Thank you. Mr. Patterson?

MR. PATTERSON: Your Honor, I wasn't going to address myself to this issue, so I'll let this issue go. I'd like to be heard subsequently.

THE COURT: Okay. I -- I'd like the parties to talk and present me hopefully with some kind of

agreed way to do this. I -- I am sensitive to the -- to the fact that many of the survivors are older, and therefore, maybe not be as technologically savvy. But I think Mr. Smola's point is excellent, well taken, and we don't want to create more angst for the survivors by sending something to their home which they do not want sent to their home, invading their privacy further. And -- but we have to make certain that they get appropriate notice.

So I'd like the parties who understand these issues to talk. I'm not trying to avoid making a call. I'm just trying to make sure I'm sufficiently informed in giving the parties who really understand the concerns -- the issue. I am willing to break from the rule in this circumstance, and make sure -- but I want to make sure that the survivors get what they need to make the decisions. I see Mr. Beckett, who has his hand up.

MR. BECKETT: Yes, Your Honor. Richard Beckett on top of -- or representing about 165 Claimants. In addition to the matters that Mr. Smola brought forth, we also have a couple of Claimants who are homeless, and we're able to get in contact with them because we have means of getting a hold of them. But if they go out in the mail, I don't think they'll

ever receive the materials.

THE COURT: So another complication. Well, it certainly looks like the lawyers need to be involved in this process, and I think that's what has to happen. And to the extent that we need some separate type -- and maybe it's a separate type of certification of how they reach their clients, then maybe that's what we do. And they can indicate whether they were able to do it by mail or email or phone or whatever. But we'll know that they have reached their clients, and I would like some subset of you, including Mr. Smola and Mr. Beckett if you're interested, speaking with Mr. Buchbinder and the debtors' counsel, and let's come up with the best we can do under the circumstances, mindful of the rule but mindful of the privacy concerns and mindful of the need to reach these men.

MR. BECKETT: Thank you, Your Honor.

THE COURT: Thank you. Oh, Mr. Lucas?

MR. LUCAS: Just, Your Honor, a thought. We will work with debtors' counsel and the others that you referenced earlier, but I -- as I'm looking through some things here, I just wanted to let the Court know, I think that there are ways in using the proof of claim to substantially narrow the issues and

to ensure that the communication or the disclosure of the notice or how -- whatever it's going to be -- gets to the survivor and the survivor, his or herself, as opposed to somebody in his or her family that might not know about the abuse. And so I -- I do think that there are ways -- you know, we might not be able to deal with every single person, but I do think that there are ways to substantially narrow this problem.

THE COURT: Okay, thank you.

MR. O'NEILL: And -- and, Your Honor, we pledge to work with Mr. Lucas and Mr. Beckett and Mr. Smola and also Mr. Buchbinder to figure this out. I think it's -- it's complicated. There are people who have opted out for confidentiality purposes, law communications. So there's a whole bunch of categories of people that would -- not similarly impacted by this. So we appreciate Your Honor's, you know, thoughts on this, and we'll -- we'll work to put together a sensible protocol based on what we've heard.

THE COURT: Thank you.

MR. O'NEILL: Okay. Your Honor, I think with that we're -- we're to Number 67 on the chart on Page 113, which is the sort of string of Century objections, which -- which Mr. Schiavoni has referred

to. I -- I believe that he has the intent to put on witnesses, so I think with that, I'll let him proceed to that, and we'll -- we'll deal accordingly on the debtors' side and any other parties that want to cross or otherwise deal with these witnesses.

THE COURT: Mr. Schiavoni?

MR. PATTERSON: Your Honor, may I -- I apologize for interrupting, but just before we get to that, could I finish off our prior discussion with a couple --

THE COURT: Oh, I'm sorry. Yes.

MR. PATTERSON: No, no, it's -- thank you, Your Honor. When we talked about the master mortgage and what would need to be shown, I may have said but may have neglected to say that it may also be relevant with regard to chartered organizations, particularly those that have become contributing chartered organizations, now that those amounts are going to be earmarked, to know who of the claimants who are -- who have viable commission against that entity and then what percentages are those claimants in particular voting to give a chartered organization a release. So I may have said that, but if I didn't, I wanted to ensure it.

Second, Your Honor, the plan, as Your Honor

has indicated, has a provision allowing claimants to elect for the $3,000 or so distribution, similar to the general and secured creditors, although for them I think it's $50,000. Our view is that people who make this election are fundamentally in a different position from those whose claims are going to go through the TDP and be subject to the settlement trust and so forth.

And so our view is that that group should be separately classified. I would urge the debtor to do that because I think it's an obvious case. It's an administrative convenience class. The code provides for it. Encourage the debtor to do it, but if the debtor doesn't do it, we'll file an appropriate motion to be heard at confirmation to designate the people who make the election as a separate class so that those people's votes, again, are not counted towards the various other provisions that the rest of the creditors are going to be tied up with.

THE COURT: Thank you. And I'm not surprised to hear that, having read the papers. But as I said, we'll know who that is, and that's sort of the objective is to -- to make sure the people have the information they need to make the arguments that they will -- will make.

MR. PATTERSON: Thank you, Your Honor.

THE COURT: Mr. Moxley, I see your hand.

MR. MOXLEY: Good afternoon, Your Honor. I'm Cameron Moxley of Brown Rudnick on behalf of the Coalition. Your Honor, given Mr. O'Neill's comment that he would be turning the podium over to Mr. Schiavoni, who, I understand, intends to call witnesses, we do just want to note for the Court that we have some very limited objections to the witness -- to the witnesses that may be called. I don't want to interrupt Mr. Schiavoni's presentation if he is calling witnesses at the top but to be heard, if I could, Your Honor. Or if he plans on presenting some things, you know, before witnesses are called, I will be heard before the witnesses are called. Thank you, Your Honor.

THE COURT: Okay. Well, I'm going to let Mr. Schiavoni make his presentation, and we'll see where you fit in, Mr. Moxley.

MR. MOXLEY: Thank you, Judge.

MR. SCHIAVONI: So, thank you, Your Honor. Tancred Schiavoni for Century Indemnity. Your Honor, I do think there is -- although the -- the Circuit has not directly address the -- the use of master ballots, they have -- they have, in fact, touched on it in a

very important way that I think gives guidance in the Combustion Engineering decision. In that decision, the Court reversed -- even though there was a majority vote in favor of the plan -- the Court reversed and remanded for several reasons, but including an 1129(a)(3) reason for good faith based upon how the balloting went forward in that case.

And if you remember from the facts of the case, there was an effort there by the debtor to put together a -- a bloc group of claimants in advance of the bankruptcy and then bring them into the bankruptcy to bring about a yes vote. And the group they put together, so the Circuit says, were claimants that were either unimpaired or had only "slightly impaired" claims. They refer to them as "stub claims."

And that ended up being the voting majority in the case. They happen to control in that case the -- the official committee, and there was an ad hoc committee in the position effectively of -- of where the official committee is here, made up of Mr. Cassin (phonetic) and some other groups of claimants who represented mesothelioma claimants. And they appealed the plan, and they appealed it on, you know, among other reasons on how the balloting was done.

And the Third Circuit, in looking at the

balloting in that case, observed that the consequence -- the consequence, you know, of the "debtor" balloting in the manner that they did was that it -- that a group of Claimants that "represented" a voting majority, despite holding in many cases only a slightly impaired stub claims, were the ones that carried the vote at the end of the day. That's on 244 of the decision, which is 391 F.3. The Court found that, accordingly, the monitoring function of 1129(a) I think (10), which requires that at least one class of impaired Claimants must accept the plan "may have been weakened." And -- and then it went on to say enabling a manipulation of the voting process, and that's on Page 243.

And then the Circuit went on to talk about "the chief concern with such conduct is that it potentially allows a debtor to manipulate the Chapter 11 confirmation process by -- by engineering literal compliance with the code while avoiding opposition to the -- to a reorganization by truly impaired claimants."

Here -- and then -- and then the Court, as part of -- as part of the remand specifically directed as part of the remand that discovery be directed at that issue or -- or the Court be able to develop a

full record with respect to it.

It is very hard, Judge, to look at this record that you have before you and not see that guidance called directly into play. The Court has before it in evidence, based on prior proceedings, the email from the head of the coalition at the time the coalition was formed that was submitted to the U.S. Trustee by the official committee.

That -- that email is blunt, it's direct, it's to the point about why the coalition was formed. It's -- it's disparaging in its nature to the claimants themselves and to the members of the committee, and it talks specifically about how the purpose of the coalition was to form a voting bloc -- a voting bloc in favor of -- of -- of basically gaining control of the case. I think that's the exact words that Mr. Kosnoff used, gaining control of the case. And that's what they did. They gained control of the case.

And we now have -- that -- that's the fact pattern that we sort of start with here, the voting, the solicitation procedures, and the plan that's resulted from this, from the -- from the claims that they generated -- and if you remember in that proof of -- in that -- in that email, he goes on to say how

they're going to focus, you know, on generating these claims.

And then Mr. -- Mr. Kosnoff has since submitted a sworn 2019 statement acknowledging that the point of what he was doing was trying to generate invalid claims from statute of limitations states. He doesn't call them invalid, but he says he was directly trying to solicit claims from -- from states where the statute of limitations had run.

So that's -- that's the sort of base that we start with here. Then what -- the result that comes from it, the plan and the solicitation procedures, are exactly what you would -- that flow -- and it's very similar to what the Circuit saw. The Circuit saw in the Combustion Engineering case a use of master ballots by this ad hoc group to deliver the bloc that they promised pre-petition and that they promised to get the -- get the plan done, and they got a plan that they wanted and a plan that favored disproportionately paying those kinds of claimants.

Here, we have a plan and solicitation procedures that calls for claimants to get paid, curiously a number that's a -- you know, somewhat -- you know, two to three times above what the advertisements were for the cost of buying one of

these claims early on, 30 -- this $3,500 number, to vote and be completely, you know, un -- unreviewed. There's no scrutiny on the $3,500 claims.

So you have that class going into the vote. You also have going into it the -- a plan designed by these folks that is specifically directed at the kinds of claims that they -- they put together. It has very low scrutiny, and there'll be evidence, if Mr. Green stays in, that there's a -- the trustee put in has a close connection, we believe it will show to the group that was put in to basically approve their claims.

The other thing it's going to have is it's going to have imbedded in the plan, just like it was imbedded in the RSA, requirements that the fees incurred by the Coalition -- even if that's really what it is -- but at least $10 million as a lump sum is going to be paid in fees, and then a mill -- almost $950,000 a month on a going forward basis. By the way, it's going forward post-confirmation for at least some period of time, I believe, how that is phrased.

You heard that I misrepresented somehow that there -- how folks opted out. I didn't. Go back. It's in the record. It's in the record of the 2019 submission by the coalition where they were specifically proffering what the evidence was that

Brown Rudnick, in fact, represented these groups.

And what they had to do as part of that, is they had to go out -- the firms that were part of the "coalition" purportedly represented somewhere in the neighborhood of 50-or-60,000 Claimants as a result of the advertising campaign. They had to go out to those folks, and they had to get affirmative consent to the Brown Rudnick engagement. And they -- they -- they post they have a sort of consent letter that they have, and they told you as part of the 2019 submission that they had obtained a certain amount of consents and that they were still getting others and that they were going to make a secondary submission on it. And they did. They did just that.

And what they did was, they went out to those folks, that 50-to-60,000, and they said, will you agree to this? Will you agree to be a part of the "coalition" and in essence fund the Brown Rudnick fees? The coalition, as it's now represented, doesn't have 50,000/60,000 members in it. It has a much smaller number, and that's represented by the most recent 2019 statements that they filed. It's a number -- I don't have it on the tip of my tongue, but it's -- it's somewhere below 20,000. I think it's 17,000 or some -- somewhere in that neighborhood.

That means that the other 40-to-50,000 Claimants that that group represented turned down the request to -- to, you know, be members of the coalition and agree to pay these fees.

What the plan does in putting those fees into it is that it -- it overrides -- it's, like, these -- these lawyers all represented people who were asked, do you want to pay? Do you not want to pay? And they're told in the letter that if you say no, it won't be part of what you're going to pay. And large numbers of them, the vast majority of them, said no. And they've now put in a plan a provision that requires them to vote yes, so that -- it's, like, that is both a secondary provision that's going to tie directly into what I believe the Circuit looked at as far as the inducements here to create a situation where you have a minority -- where you have these lesser impaired claims taking control of the case and voting and raising a good faith challenge.

Now, we've put before the Court, in connection with the RSA, specific case law about the conflict posed by having a lawyer both getting -- being offered a financial inducement as part of something as well as making recommendations to their client. And although it's a little sort of worded

differently from the RSA, we're in exactly the same situation. It's like here, the Coalition is going to make a recommendation to support the plan, and they're -- and they have a financial inducement, those lawyers, to do so.

And there's no mistake about why that was arranged that way. It was arranged exactly that way, I think you will in evidence confirmation, for the very reasons that the voting bloc group was arranged in -- in the Combustion Engineering case. And in fact, you'll find some of the same lawyers involved. Mr. Rice was involved in that case, and you'll find Mr. Rice is involved in this case in the Coalition.

So it's some of the same reasons. It's something that really -- it affects the vote. It has the potential to taint where the case is going to go overall.

You have here -- the Court, remember, in Combustion Engineering, referred the matter back to say let's -- we're remanding for further record developed on that. Here, the Court has a record. It's like we developed a record in connection with the 2004 process, showing -- I think we made more than a prima facie case that there was significant problems with how the proofs of claim were put together. I

think there's some acknowledgement of that, perhaps. I don't want to put words in your Judge's -- in Your Honor's mouth, but to the extent there's a ruling about the 2004 case is a basis for them to go forward. I think there's a recognition that what we put forward was legitimate evidence that there's a significant problem here. Putting aside the fact that we're dealing with a case where the claims went from 245 in the tort system and maybe another 1,000 or 1,500 asserted to the -- to the -- whatever that number is. My math is bad, but 2,000 claims to over 82,000 claims and allegations such as $100 billion now of liability generated by a process controlled by the people who generated these claims and generate them through an advertising system that was found to have fundamental misrepresentations made in connection with it.

The claims that we put before Your Honor on evidence that was uncontested in the prior proceedings was that attorneys submitted proofs of claim affixing electronic signatures that had nothing to do with that claimant. There's examples of handwritten signatures that are completely forged or -- well, I guess forged is the right word. They're the same signature on hundreds and hundreds of claims.

There's other evidence of -- that -- that we

put before the Court, showing that the aggregator itself was the one that was affixing signatures and -- and reviewing the claims. That -- that evidence, we asked for the ability, we were cautious, we were careful about how we proceeded on this. We asked for 2004 discovery before going on and making further conclusions. It was targeted, what we were after.

And Your Honor, we didn't sit on our rights. We brought this early. We brought it up at every single opportunity that we thought this was an important issue. It was an important issue to us especially because the -- the -- the concern that these very claimants, this very bloc was generating a plan that was set to kind of create liability where liability didn't exist and would infect the process of creating -- of creating the plan.

Well, we have the plan that it generated, and we never got really to test those claims. We -- you know, Your Honor gave us the right to issue the discovery to the -- to the aggregators. We did so as fast as we could after the -- within 48 hours of the orders being issued. That discovery is going to come back, you know, the document portion of it next week. Your Honor asked us to hold off on the specific discovery directed at the lawyers that were -- you

know, that we revealed what they were engaged in, and that was based upon -- you know, like we didn't just run off and issue subpoenas to them. We put before the Court very specific evidence about what was going on.

Further, we put before the Court the results of what was coming out of these claims on the back end, and Your Honor has all that. We needed that further discovery to sort of tie some other links together. We did not want to run out and file, you know, large numbers of objections to proofs of claim without having more specificity. We tried to be careful about this. And you know, we now are where we are.

We would -- we don't think that the solicitation procedure should go forward or solicitation without some effort to vet the claims. I mean, the entire solicitation process is supposed to be one under 502, where the claims are presented and there's an ability really to legitimately test them.

You know, despite what Mr. O'Neill said -- and granted, you know, I -- whether he speaks for the whole debtor or not, it's an admission of candor here that there was no evaluation by the debtor of these claims. And there was no need to. Once they reached

a deal to cap their liability, it's like there was no -- there was no need to. And in fact, the whole plan was to basically work with the Coalition to come forward. That is what it is, and if that's acceptable to the Court, so be it. But that's a situation we face them now.

The procedures that they've put forward, I mean, we would say that the solicitation shouldn't go forward until our discovery gets to go forward and complete itself. And we'd be prepared to move as fast as possible to do that, but we can't move faster than what the rules provide us on when we could serve the subpoenas.

You know, on the -- on the -- you know, some of the lawyer depositions, it's like we would have started with Mr. Kosnoff, who made specific allegations and didn't identify some of the people that he was referring to as a way to go forward. We do think that discovery is necessary. Mr. Kosnoff actually posted a tweet, saying why is it taking so long for someone to serve a subpoena on me. If one -- I mean, that is among the more crazy tweets he's issued, but I don't think -- it's like there's any -- he's so over the line at this point that there's any reason to hold back from that.

As far as the procedures that you have in the face of the evidence that you have before you, what we effectively have through these procedures is a self-certifying process, a process whereby, you know, the -- the councils certify that they've complied. And Your Honor, I don't think that complies, ultimately, with the gatekeeping function that you really have under 3018.

The ballots allow anybody to claim -- any one of these lawyers to claim that they're authorized agents but without any proof to establish that in any of these cases.

We know from looking -- in the Coalition's case, the -- the -- you know, the ballots -- the retention agreements have been produced. In the case of AIS, there's direct -- there's actually a 2019 on file, saying that the AIS lawyers do not have authority to use a master ballot. But these procedures -- you asked me to assume how they're done. The procedures allow self-certification that they can go ahead -- one of the three firms can go ahead and ballot them. It's -- the self-certifying nature of the procedures is just inconsistent with how this should work. Whatever's done should be transparent so that the Court -- if they're going to vote a master

ballot, they should provide the proof that they could get to vote, each one of these -- each one of these clients, so it can be tested by both the Court and the other parties.

There's no requirement of showing that counsel's authorized to cast the votes on any of these votes here. There's no requirement that any of the counsel comply with Rule 2019, and Your Honor, that is a mechanism that when I said that some courts have touched on this, Judge Fitzgerald towards the -- maybe the second half of her tenure in these cases started to issue rulings that she would only accept ballots if there was, I believe, an individual proxy for the specific case. And she also required Rule 2019 submissions in those cases.

There's a -- there's a -- I don't have the ruling right in front of me, but there's a ruling on this, I believe, in federal Mogul (phonetic). It was -- it was a sort of unusual ruling because it required these submissions to be made, but then you had to make a showing in order to see them. So it's like -- but they're -- but they were -- but they were made, the Rule 2019 submissions. It allowed the Court to assess itself whether or not they had proof.

We don't think that's the way to go here, to

be clear. We think that there's sufficient evidence before the Court on, in this case, like when the Coalition came back and asked that the -- that the certification process for the proofs of claim be changed to allow lawyers to certify instead of claimants, there was significant back-and-forth argument about whether that should happen or not.

And as part of that, the record is robust with the Court -- and with an exchange among the parties -- let me put it that way -- including the Court that, you know, basically, the use of the attorney proofs of claim signatures should -- I don't know how -- it's not exactly what Your Honor said -- but should be the exception rather than the rule. And that by doing so, among other things, the lawyer was putting themselves at risk that they would -- they would -- they would waive any privilege over what they did to vet the claims. That was the basis of the 2004 submission, that by -- by -- in large blocs, the lawyers doing this, they were exposing themselves to being questioned about what they, in fact, did to vet the claims. And given the enormous volumes of claims and the small number of lawyers --

(First audio ends)

(Second audio begins)

MR. SCHIAVONI: -- almost a prima facie suggestion that it was impossible for them to have vetted the claims, that besides the fact of like the rapid fire submission of them. But with that evidence before the Court to -- for the debtor to suggest that just more certification is adequate in this situation, it just -- it -- it's -- it's in context of this case, it just doesn't make sense. It doesn't hold water.

It's, I think, a little like what you saw in Emeris (phonetic). It's the situation that the Third Circuit that the Third Circuit in W.R. Grace (phonetic) referred to, that the Court shouldn't hide its eyes to what's right before it, that large numbers of lawyers in this coalition, you know, or large numbers of proofs of claim were signed by lawyers who didn't really -- who -- who either gave their signature page to an aggregator or the aggregator signed the -- signed it.

Meanwhile, the attestation under oath of what they did was made under oath. It wasn't even -- it wasn't a certification or as a member of the bar. It was under oath, and -- and it came with a warning and the admonition of the Court about the importance at that point of doing it.

And with all of those warnings, we still got

the result we did. I don't think further certifications is what would deliver what you need to have here. Of all the -- all the stuff you've heard about these solicitation procedures, the one is you haven't really gotten any kind of, like there's no evidence before you or anything else to suggest what's the problem with sending out ballots to individually balloting these folks?

From everything I've heard, it's almost more laborious and more intensive to do a master ballot and go through various hoops in the process than to just send out individual ballots to the individual claimants and get back the results, whatever they are. And the one thing I think you've sort of seen, or I've seen, or I thought I've seen from these proceedings, from the several claimants who have spoken pro se is there really is like a wide view on -- on how they would come out on things.

So I don't know how if I was a lawyer representing them I could individually poll them otherwise, or recommend that they all vote one way or the other. I think it's -- they've got -- the ballots should go out individually, and if Your Honor is not going to do it that way I think the self-certification doesn't work for those firms who haven't provided

direct evidence to the Court that can be tested that they really have authority to do what they're doing.

AIS would be one example of that, but others would be those firms that we have the retention agreements from all of them in evidence before the court on the 2019 submissions, and the bulk of them don't contain a joint engagement waiver or a joint engagement description of the risks.

And, you know, I -- I did hear Your Honor and I took it to heart that this is not the court to address ethics issues or what -- what not among the parties, but 3018 vests this Court with the -- with the gatekeeping function of deciding who should get to vote. And here when you have the engagement letters directly in front of you, and they don't contain waivers, it's -- I -- I think you can make that decision. It's not a close call. It's like that -- those -- those waivers are required in every state.

So, Your Honor, with those -- with all of that, you know, you've heard our argument that we think that, you know, some discovery further ought to go forward on the claims and that master ballots ought not to be used. If we had been permitted to complete the discovery, we would -- just to make a short proffer, Your Honor, we would -- we would have

proffered the results of what we got from the -- from the aggregator firms. We would have proffered the results of the testimony from them and the testimony from the lawyers associated with the filings of the proofs of claim. We have before Your Honor in these prior matters concerning the proofs of claim, the declaration of Eric Specland (phonetic). That's at 1975-4. That was admitted into evidence, and of Paul Hinkland (phonetic), which is 1975.3. That, I believe, was also admitted into evidence. We would move into evidence Mr. Cosanov's (phonetic) verified statements, which is 5917 and 5919.

If there's no objections, I would -- I would move those statements into evidence.

THE COURT: Thank you. Okay. Let me hear from others.

MR. SCHIAVONI: Your Honor, --

THE COURT: Okay. You're not (inaudible).

MR. SCHIAVONI: -- hold on. I'm -- so, Your Honor, I'm just not sure about -- it's like is the -- is there no objection to the move of the --

THE COURT: Is there any objection to what Mr. Schiavoni wants me to review, which is the declarations of Mrs. Specland (phonetic), Hinton (phonetic), and, too, Cosanov (phonetic) statements,

the 2019s.

MR. SCHIAVONI: I think the -- the --

THE COURT: Or the declarations.

MR. SCHIAVONI: -- the two declarations I referred to were already in evidence in connection --

THE COURT: They were --

MR. SCHIAVONI: Right.

THE COURT: -- in connection with the Rule 2004. I recall them. They're still sitting on my desk somewhere.

MR. SCHIAVONI: And I -- so what I -- I'm moving afresh, and I -- I ask to make that part of the record here, but I'm moving afresh with regard to Mr. Cosonov's (phonetic) verified statements.

THE COURT: Yes.

MR. SCHIAVONI: 5917 and 5919.

THE COURT: Mr. -- Mr. Moxley?

MR. MOXLEY: Yes, Your Honor. Good afternoon, Cameron Moxley, again, Judge, from (inaudible) for the Coalition.

Your Honor, we would object to the Court's consideration of Mr. Specland (phonetic) and the other declarations that Mr. Schiavoni had previously raised in the 2004 context and seeks to now raise in connection with the disclosure statement (inaudible)

procedures hearing.

Your Honor, there are a few reasons. They all go to relevance. I'll be very, very brief, Judge. First, these declarations were all submitted and -- and made in January and February of 2021, more than seven months ago, Your Honor. As you heard from Mr. O'Neil, at the beginning of the solicitation procedure presentation today, Judge, there have been thousands of amendments to the proofs of claim in the intervening seven months.

Those declarations, Judge, frankly, are now stale because many of those amendments, as you heard throughout the proceedings today, involved a change where the signature previously of a lawyer is now the claimant's signature. So those declarations are simply outdated and mooted, Judge, by intervening events.

To the extent, and I understand, as I mentioned previously, that I understand Mr. Schiavoni intends to or is considering at least calling one or more of those witnesses to testify today. Your Honor, to the extent that those witnesses have updated analysis or opinions that they wish to share with the Court in the course of this hearing, we would suggest, Judge, that -- that they not be allowed to do so and

object to their doing so because those witnesses would have failed to update their expert written reports in accordance with Rule 26(a)(2)(b)(1), Judge, which requires that experts provide a written report, which sets forth all of that expert's opinions including all of the reasons and bases for those opinions.

So on the one hand, Judge, just to summarize, on the one hand the prior declarations, if being admitted now, they're mooted. They have very little evidentiary value. If there's updated opinions, those updated opinions have not been shared with the parties and shouldn't be heard on the fly today, Your Honor.

Your Honor, more fundamentally, we would just note that none of these witnesses, which, you know, Your Honor may recall from the earlier 2004 proceedings, these -- these -- these opinions go to analyses of, you know, handwriting experts or meta data analyses of signatures and when those signatures were put on a document, those types of things.

None of those declarations, Judge, set forth an opinion that any of the proofs of claim should be disallowed. They don't -- they don't actually serve any relevant purpose other than the purpose of -- of -- of -- that Mr. Schiavoni has argued that there needs

to be sort of further investigation. But Century in its own pleadings, Judge, and I would just point Your Honor to Docket 5214 where Century itself said that this is not the time to disallow any particular proofs of claim. So it's just not the right forum, Judge, for these issues to be raised, and we don't think that there's a basis for the Court to consider these declarations now or to hear from these witnesses in the course of this proceeding. Thank you, Your Honor.

MR. SCHIAVONI: Your Honor, briefly, of course, there's no evidence at all that anything's been amended, let alone any of the proofs of claim reviewed by our experts. So I don't think you can -- I don't think the coalition can moot the relevancy of a witness through non-presentation of evidence. Okay? It's like plus and besides that, look, the testimony is being offered for what happened. It's like the same lawyers are going to be asked to self-certify here, so I -- it's like it's directly relevant to what's before the Court on procedures and what procedures ought to be put in place.

THE COURT: Thank you.

MR. SCHIAVONI: I take it there's no -- but I do take it there's no objection from -- from the -- from Brown Rudnick (phonetic) to the -- Mr. Cosonov's

statements coming into evidence.

THE COURT: Mr. Moxley?

MR. MOXLEY: Your Honor, we don't take a position on Mr. Cosonov's statements. We are concerned with respect to the experts that Century wishes to move into evidence.

THE COURT: Thank you. Mr. Kurtz, I've seen your hand up. Do you have an objection to the evidence? I'm sure you have other things to say, too.

MR. KURTZ: Yeah, no thank you, Your Honor. Glenn Kurtz, White and Katz (phonetic) on behalf of the debtors. I'm only raising my hand on the evidentiary issue Mr. O'Neil will be handling the substance here. We have a slightly different objection. We don't have an objection to the introduction. We don't have any objection, by the way, to the verified statements of Cosonov (phonetic).

We have an objection, a limited objection to the use of the expert declarations. I wanted to give a little background on how they got here. They weren't -- they weren't produced for or appended to the objections to the voting solicitations procedure. They were cited to some extent but only as -- mostly at least as a historical matter for 2004 and in 2019 applications.

And we had -- it wasn't briefed. There was no explanation how it would be relevant to the voting procedures. It looked to us as if it was an effort to disallow claims, although they specifically disavowed that in papers, alternatively, maybe, to designate votes, but the votes haven't been cast yet. So that would be premature. We don't know who will vote, and we don't know what the bonafides will be of anybody at the time that they come to vote.

The debtors certainly have an interest in ensuring that only valid claims are voted. That can be assessed only after the votes are cast, and then, of course, that will have to be noticed to the specific abuse victims so that they can be heard on the issue. That has not happened in this motion. No one has joined issue on this proof. There's been no discovery on it. It came up for the first time last Friday when Mr. Schiavoni indicated this should be on a witness list.

So notwithstanding what we think would be valid objections to introduction, we're only -- we're only offering a limited objection to using it for anything other than the belief of Century that they've uncovered potentially invalid claims. We don't think it would be appropriate for the court to actually make

findings with respect to the validity of proofs of claims or with respect to the issues of voting unless we have votes and then only subject to a hearing that has noticed the right parties. We think that's all premature.

So I'm not even positive Century is asking for findings, but it sounded like it was at least brushing up on that subject. And so we object to the use for -- for -- for that purpose. We don't think it would be appropriate to make factual findings that there were invalid votes.

We don't think that there's anything about the -- the investigation, which sounds like it's still going on and therefore may be a little premature that -- that has to do with the procedures themselves, as opposed to instances where we have claims. We would ask that it be limited to the use of -- of -- of -- of just Century's views on -- on potential defenses to certain proof of claims that will have to be raised later if at all.

MR. SCHIAVONI: Your Honor, the declarations I cited are in our solicitation objection. You can -- they can be found at Docket Number -- I think it's -- if I read -- yeah, Docket 3857 on Page 10 of that docket number, page 11, page 12. Mr. Kurtz, you can

find them there. They're discussed at great length over three or four pages there, and in the argument section. And they were provided within the rules, you know, at the -- at the time they were admitted into evidence without objection by Mr. Kurtz's client or anyone else. And those declarations were also and those witnesses were specifically noticed on the agenda in accord with the Court's, you know, requirements for scheduling witnesses.

THE COURT: Okay. Let me interject here. I -- I -- I recall the testimony and the -- and the -- from the previous hearing. I don't necessarily thing that because it was introduced in a previous hearing that it gets introduced here. I don't consider discreet issues to be rolling. Like this isn't like a rolling evidentiary record from the beginning of the case until now.

But let me -- let me say this. One of the reasons I didn't grant the Rul3e 2004 motion with respect to the depositions of the individual claimants, well, there were several reasons, but one of them was I needed a context in which that discovery should be taken. And I didn't think the Rule 2004 openness gave me a context in which it -- in -- in which it should be taken.

I also said that I didn't think that the movants had shown that the -- I forget what they're called now, but the subgroups, the population subgroups, the six to seven population subgroups would give a basis to file mass claim objections, which is one of the reasons that those motions was filed. And that the case law related to surrounding and I'm remembering Judge Fagone's (phonetic) decision out of Maine, the case law surrounding what to do with, for example, a proof of claim that was -- where the signature was an issue. And his cases I think had to do with signatures in mortgage cases in the 2008 mortgage, you know, debacle.

The -- the result wasn't disallow a claim. That was not the result of those cases where there was issues where the signatory did not have knowledge, supposedly. It wasn't disallow the claim. So there were many reasons why I didn't permit the discovery at that time. We're having a context now. We're having a context in connection with confirmation where if there are issues for voting purposes we can have that discussion, and I permitted some discovery to start. And once confirmation discovery starts, you can take confirmation discovery.

So I think that's where -- that's where we

are. We don't know who is going to vote. We don't know how the vote's going to turn out. We don't know if the counsel who have said they can deliver certain votes can deliver them. We don't know.

I've already heard argument, you know, we shouldn't let the $3,500 expedited discovery be the tail that wags the dog. Can probably make that argument without any discovery, but you can see how much of the coalition group is in the 3500. We're going to have that information, and I think it would be appropriate for appropriate parties to be able to do that discovery.

Now, I'll say this again because I have to think about it. The insurance company is not going to be voting in that group. Their vote is not going to be decided by the votes of the survivors. So I need to think about the context in which the insurers can use that information. There may be another context in which you can use that information. But I understand the issue. I did have an expressed some concern about the way some of these claims were generated. I've permitted discovery with respect to the aggregators to understand how it was generated.

And if it creates a problem for the vote, once we get the vote in, although you don't have to

wait to take discovery, if you don't want to, until we get the vote in, we're going to have to deal with it. But maybe the vote won't be influenced that way. I don't know. I just don't know, but I think the context matters. I think we need to understand these arguments in the context in which they're going to arise when it comes to voting, which is the combustion engineering issue, the Quigley (phonetic) issue. Let's -- let's -- let's consider it.

And if there needs to be discovery around the certifications that counsel are going to file with respect to their master ballots, so be it. I would hope we don't get into side issues, but if we're going to go there, we'll go there. So I'm -- I'm -- I'm not going to stop the master ballots from going out. I'm going to see where they end up, and that could delay things. I don't know. But the debtor has decided to go out with master ballots. People are saying we should. I do have some concern about going out with individual ballots given the discussion we just had about ways to deliver the ballots to individual survivors and to ensure their confidentiality. So I do have concerns about individual ballots at least in some circumstances.

So I understand the issues, but in terms of

I'm looking at what you -- the relief you want from it. I'm not going to go with individual ballots here. I -- I -- that could leave us in a situation where we have problems at confirmation. But it's what the debtors requested. Given the discussion we just had, I'm not going to in the first instance send out those individual ballots.

If there's a separate, and maybe there needs to be, as I said before, some separate certification page that we need to do to get more information from law firms that are sending out the master ballots or that are submitting the master ballots, I'm okay with that.

And, yes, I recognize that I cannot police people's ethical -- whether they follow their ethical obligations or not, but there may be a consequence if what I see in front of me suggests that we had a problem. And I'm going to deal with it on voting.

MR. SCHIAVONI: Your Honor, I'm not going to -- I'm not rearguing anything, but just, you know, I -- so I hear your ruling on the master ballots. You know, the alternative step you could take is to require that everyone who files a master ballot by doing so is 2019.

THE COURT: I actually think that's fine.

MR. SCHIAVONI: And -- and --

THE COURT: I don't have a problem with 2019.

MR. SCHIAVONI: -- and has to file a complaint 2019 statement.

THE COURT: I have no problem with that. They should file a 2019 if you're going to do a master ballot. I think that's perfectly acceptable, and I see no reason why a law firm should have a problem doing that.

MR. SCHIAVONI: Your Honor, just to try your patience on just one further thing, okay, the -- look, I -- I hear why the -- the claimant 2004 was denied. Okay? The whole concept of us filing at that time the two different 2004s were they were coming at this from the two ends of the pipeline. The one was -- that was denied was let's see what comes out and test certain proofs of claim. And -- and Your Honor found statistically that didn't work or wasn't -- wasn't -- didn't provide sufficient support and denied it.

But the other one was still getting at the same point of what proof of claim challenges could be filed but in a different way. It was trying to identify the sources of the proofs of claim, okay, by who was generating them and where the problems were to

target objections at that.

Now, you're -- you know, we're not before you on a request to file an omnibus relief there, but in part that was the point of that discovery, to file clusters of it. So we're pursuing the aggregator discovery. We'll pursue it with light speed, but Your Honor said we have to come back to you on some of the, you know, on the other part of it with lawyers, and I've got the -- the problem with lawyers, deposing them, okay, but to get at the problem faster if we could have relief from two or three, to allow two or three to go forward, that would just allow us to move at a quicker speed and get at the answer I think quicker.

THE COURT: I don't think you need my permission to proceed with confirmation discovery. So you should proceed with it, and if parties have problems, they can file a motion for a protective order. I want it all brought on quickly, and I'll deal with it, but recognize, again, that the case law even around -- am I going to throw out people's proofs of claim because they hired the wrong lawyer? That's a good question. And -- and the case law that I read in any event, doesn't suggest that. It would give parties an opportunity to amend their claims, and I

understand I don't have evidence. But there's representations in front of me that some 20,000 I think was the -- was the number plus have amended claims.

My guess is because of the signature lines, some of the lawyers corrected that. So that's the issue I'm struggling with is what would I do with the information that you gave me, and I'm not saying I can't be convinced. I'm saying we looked at the law, and we -- at the time, and we independently, and we didn't see case law that suggested that you could disallow these claims, which was really the basis for the motions, as I recall.

Now, if there's an issue, I understand the issue with voting. That's perhaps a little bit of a different issue, but, again, disenfranchising claimants because of an action their lawyer took or didn't take, assuming, of course, the underlying validity of the claim. And that's the -- you know, that's the -- the issue. If somebody has a valid claim, would I throw it out because their lawyer mass produced a signature.

MR. SCHIAVONI: Your Honor, I -- I understood that is how you focused on it, but that was really not the direction we were going in there. It's

like the context was -- to give context to it, was we did subsequently give you this declaration of Verona Stensonson (phonetic) who was one of the people who worked in the boiler rooms.

THE COURT: I do recall that.

MR. SCHIAVONI: And the point here was not to disallow -- like I got it, a big fish net could go out and it could pick up some valid claimants and it could be picked up in a bad why by an aggregator or something, but the guy could still have a valid claim. I understand that, but the point is that somebody working at $15 an hour, it's like that's where the bad claims may be concentrated. That's what -- that's what we were trying to get at.

THE COURT: And I'm going to let you do it now.

MR. SCHIAVONI: All right. Thank you, Your Honor.

THE COURT: Later than you want, but I'm going to let you do it now, and we'll see how the vote comes back.

MR. O'NEILL: Thank you, Your Honor. So if I -- if I'm following correctly, and I don't want to give you more than you need because I feel like you kind of got to the conclusion already.

So I was going to correct the record on quite a few things that Mr. Schiavoni said, but I'm -- I'm not going to do that, not just because I take visual cues like somebody shaking their head no, but because it was my inclination.

So I think what we'd propose, Your Honor, is we have some work to do to clean up the certification, and I think the order. We have several people that are in on the discussion about how to properly distribute packages, vis-à-vis paper packages versus other options versus no option, if somebody opted for confidentiality. And we will take all of that on and move it along, Your Honor.

On -- on a general matter we heard you loud and clear that -- that we'll proceed with the master ballots and that you expect firms that submit master ballots to submit a 2019 statement, either before or -- or -- or when they submit that master ballot.

THE COURT: No later than contemporaneously.

MR. O'NEILL: Okay. Thank you for that clarification, Your Honor. We'll get to work on that, but I think just for the wake of completeness, there were two more objections on the chart. One is Ms. Wolff, and I think this is number 68 at page 115.

And I believe this is moot, Your Honor,

because it's -- it's about the (inaudible) plan.

THE COURT: Okay. Is Ms. Wolff on the phone? I haven't seen her today.

MR. O'NEILL: Okay. We'll -- we'll move along, Your Honor, and then 69 was from a pro se claimant, and I'm not sure if that person is on the phone, pro se claimant 242. And this was Docket Number 6027. And this is about the bar date notice by publication in the Prison Legal News.

I think, you know, our view is that the bar date noticing procedures were -- were sufficient. I think we've taken some counsel on this call from Mr. Buchbinder, which is good counsel about prisoners and their unique needs in terms of receiving materials.

So we'll endeavor to -- to make the packages that they get going forward marked with something that -- that notes the urgency of the contents, Your Honor, so hopefully that fixes this going forward.

THE COURT: Which objection was that?

MR. O'NEILL: This is Number 69, Your Honor, on Page 115.

Oh, you know what, Your Honor, it's been pointed out to me that this is listed number 70 as well, and it's been resolved.

THE COURT: Was it resolved?

MR. O'NEILL: Apologies, again. This piece that I'm talking to you about has not been resolved, the part under Number 70 miscellaneous has been resolved. But you've heard the debtor's position. I'm not sure anyone is on the phone on this topic.

THE COURT: Okay. Was our -- the pro se claimant who filed the objection, did he use his name?

MR. O'NEILL: We might have it, but we think it was redacted, Your Honor.

THE COURT: Okay. If there is a pro se person, someone representing themselves who filed this objection with respect to notification to men in prison, I'm happy to hear from you. I'm not hearing anyone. Mr. Lucas, I see your hand.

MR. LUCAS: Thank you, Your Honor. I -- I'm sorry for the -- sort of the process question, just going forward with respect to the Court's ruling about the 2019 statements, but I -- I just sometimes foresee some of the -- nothing is simple, I think, sometimes unfortunately.

Should the counsel presume that they can file the list of their client's names under seal, or just file the list of the proofs of claim numbers or something like that to identify the list of their clients?

THE COURT: Don't we -- do we have -- didn't we go through this before in this case about 2019 statements.

MALE VOICE: This is (redacted name).

THE COURT: (Redacted name.) Yes.

MALE VOICE: I am Abuse Claimant 242, and I -- I mentioned this objection to re-publish the bar date notice in Prison Legal News in my filing.

THE COURT: Okay. And your concern I take it is that certain men in prison did not receive the previous notice?

MALE VOICE: That's correct. I cited a letter to Your Honor that was previously on the docket to that effect. And so I don't know how widespread that actually is, but it -- I -- based on the filings and other public discussion it seems plausible that it may have happened.

THE COURT: Thank you. I do recall receiving at least a couple of letters with respect to -- from men in prison with respect to notice issues. I'm going to say this, that to be effective notice, it may be that it needed to be received by a man in prison. And there may be an argument that, in fact, notice wasn't appropriate. And there might not be that would have an effect. Let's put it that way.

Claims may not be channeled. They may have outstanding claims post reorganization. It will depend on the circumstance and their particular notice issue.

I probably would not be the first judge to recognize that persons who are incarcerated have difficulty getting notice, and I would suggest that the debtor consider along with others here whether any further or different notice might be preferable so that they don't end up post-confirmation with any significant number of notice issues.

So I appreciate your bringing that forward, (redacted name). And as to whether there should be any kind of notification if the -- if -- which I assume, but I don't recall, that you're going to do publication notice of confirmation hearing, et cetera, you might consider publishing that in the Prison Legal News.

MR. O'NEILL: Thank you, Your Honor.

MALE VOICE: Thank you.

THE COURT: Thank you. Thank you, (redacted name).

I thought I saw another hand before. Mr. Patterson?

MR. PATTERSON: Your Honor, I'm just not

sure where we ended up with certification. I gather the debtor is going to work on it, but I thought it might be helpful just to round out that discussion with a couple of other views. It -- it really seems to us that, one, because the certification is going to cover voting potentially settling the claim with the $3,500 election, potentially opting out or not opting out of a release, this certification now covers a number of very important decisions and it really seems to us that the appropriate way to deal with it is to require a power of attorney specifying that the attorney has the right to make -- vote with respect to each of those three issues in order for it to be valid.

There are -- there are -- the way the certification is worded, it is self-certification, but it's also self-certification in the sense that the person represents that they -- they have the authority. And I can see situations where people say, well, I thought I did have the authority. I thought I had it under applicable law, or I had it under this argument or that argument. And now we're sort of in a situation where the Court is upset because the person didn't have the authority. They're upset because they thought they did. There's a question about it, and it

just seems to me that the proper way to deal with this to seal it all off is to just require up front that master ballot requires a power of attorney from the applicable client with regard to each of the three items.

MR. O'NEILL: Yeah, Your Honor, this is Andrew O'Neill for the debtors. We think that -- we appreciate Mr. Patterson and his ideas about ways to -- to beef up the certification.

Rule 9010(c) does not require a power of attorney to vote. The -- the -- the election of your treatment under a plan is tantamount to part of the plan voting process. So is giving releases. This -- this strikes me as something that we don't need. Furthermore, we already have, which I described earlier, the audit available to the debtor, where we can request authorization to see the power of attorney or authorization that attorneys have to vote on behalf of their clients. So we think we're already covered here, Your Honor.

MR. GOODMAN: Your Honor, this is Eric Goodman. I don't know if you can see my hand up or not.

THE COURT: Yes.

MR. GOODMAN: I just wanted to point out

again I'm back to my favorite paragraph 5(a)(a), and, again, I'm annoyed that it doesn't go 5(a) and then (1), but it is what it is.

Firms that are reporting, sorry, under section B to have the authority to vote, which, again, is very different than authority to cast a vote that the client is making, would require a power of attorney. That's already in the procedures, but if a firm is simply transmitting the vote as cast by the -- or as made by the survivor client serving as sort of a voting hub if you will, that that does not require a power of attorney. Nor do we think that it should under the procedures.

The other thing that I would like to just call to the Court's attention, these -- these procedures were put together back in the -- I think in the May/June timeframe, the coalition, the debtors, and the TCC all having input onto these issues. And I -- I think that on -- on this point we did get it right, that if you are simply communicating the vote to -- to Omni from the clients that that would not be something we required.

Mr. Smola?

MR. SMOLA: Your Honor, I'm just going to harken back to what I said earlier. A yes vote

compromises a client's rights against their local counsel, compromises a client's votes against a charter, and it waives, presuming they don't elect the $3,500 option. It -- it declines an offer, so a power of attorney is sort of a -- a -- normally in a conventional personal injury case, you would want that in writing.

You would want a release of the local counsel claim. You would want a release of the charter claim. Your client would sign off on that. You could never sign off on that as -- as the attorney for the client. The client has to sign off on that. Here we're in a different setting where a yes vote effectively waives those rights and sort of almost doubles as a release. I think a power of attorney is sort of a bare minimum here, and I think it should be required.

THE COURT: Mr. Schiavoni?

MR. SCHIAVONI: Yeah, I mean, Your Honor, to the extent we ever were to become a settled insurer, it would be very important for us to have a power of attorney to know that these releases have effect. And it -- it makes it more difficult to become a settled insurer without having that power of attorney. That's one.

Two, I -- like I'm completely mystified by this description in the solicitation procedures about how individual claimants provide the ballot to the balloting hub, and then -- and then they sign a master ballot. If -- to the extent they have it, I -- I just don't even understand what that means. If -- if they have a ballot from the individuals, that should just be -- like why isn't that just made part of -- it could be bundled up by the voting hub law firm and -- and given to the -- you know, to the claims agent as proof of the vote. It's like to -- to demonstrate it.

I -- I don't even understand what's contemplated by a communication of voting that doesn't get produced. I mean that would seem to be part of it, and then, third, this audit right, to make it like the only person who gets to see the audit is the debtor who is self-interested in the outcome, it -- like it would seem to me that should be transparent and part of the report by the -- by the agent, you know, what was found and -- and then those -- those results produced as part of the report.

[crosstalk]

THE COURT: I will tell you what I'm intrigued by is that the -- the parties that are suggesting and supporting the power of attorney are

Plaintiff's lawyers.

MALE VOICE: Right.

THE COURT: So they don't seem to have a problem with it.

MR. O'NEILL: Well, Your Honor, it's -- it's required under the certification. I just want to be clear because I think the waters got a little muddy here. It's -- it's required.

THE COURT: What's required?

MR. O'NEILL: A power --

THE COURT: A power of attorney?

MR. O'NEILL: We're just not requiring them to provide it with every -- as with respect to every vote that they're providing.

THE COURT: Oh, well, if it's required, why shouldn't they provide it? Why shouldn't it be in the backup?

MR. SCHIAVONI: Your Honor, it's not required. It's not what the order says. 5(A) says a power of attorney or other written documentation to that effect may be requested by the debtors in the debtors' discretion. It doesn't say it has to be a power of attorney.

THE COURT: Mr. Zalkin?

MR. ZALKIN: I would just like -- I -- I'm

just echoing what Mr. Smola said. I think this is too vital and too critical and as -- as an attorney representing the survivors in this case, I -- I agree. I think a power of attorney should be required, and we would have no problem with that.

THE COURT: Mr. Goodman?

MR. GOODMAN: Your Honor, I just wanted to point out something that -- it's obvious to me, and I just want to make sure that it's clear to the Court. There are a number of state court firms involved in this case that are supportive of the plan.

There also are a number of firms in this case that want nothing more than for the plan to be voted down and will be objecting to the plan, and will be taking whatever course of action they deem appropriate to prevent the Boy Scouts from confirming a plan that includes a channeling injunction for the benefit of the local counsels and chartering organizations.

The attorneys that you have heard speak in favor of this are all a part of the opposition to the plan. So I think, you know, the fact that they are speaking up in unison with the insurance companies on this issue I think speaks to sort of their collective interest and what they're trying to accomplish at this

point in the case. So I don't want the Court to be under the impression that the state court counsel that you haven't heard from necessarily agree with Mr. Smola on this issue.

THE COURT: Okay. Well, let me hear from anybody who disagrees. Mr. Goodman, does the coalition disagree, and if so, why?

MR. GOODMAN: Again, Your Honor, on the power of attorney issue, if law firms are purporting to be acting as the voter, if they are voting for the client, a power of attorney is unequivocally required under the procedures as proposed.

THE COURT: Show me where. Show me where that is.

MR. GOODMAN: That's in 5(A)(B).

THE COURT: Okay. So if it's required, but -- but -- but the discretion is simply to -- for the debtors to -- for the debtors to request it, and if it's required, then why can't we just have it attached as back-up to the master ballot?

MR. GOODMAN: Again, Your Honor, not all law firms who use the master ballot and I would say probably most of the coalition firms are not purporting to be voting for their clients. This is under the 5(A)(A) section. The firms that are simply

collecting and recording the votes that are conveyed to them by the survivors and filing out a master ballot that may say that 80 percent or 82 percent or 85 percent of their clients are voting yes, and the other portion of their clients are voting not, you know, the folks who are transmitting the vote, collecting the vote, communicating with their clients about what the plan means and offering the recommendation, answering questions, those people under 5(A)(A) in performing that function are not required to require every single one of their clients to execute a valid power of attorney in order for them to perform that function.

And -- and -- and, frankly, Your Honor, I think that the request to try to impose that obligation on the firms in these cases is really intended -- intended, that may be a little bit harsh. I think it would have the effect of potentially disenfranchising a lot of voters on these issues. And that's why I -- I don't think it would be appropriate in that context.

THE COURT: And why would it disenfranchise them?

MR. GOODMAN: Well, again, I -- I could back to the -- you know, just the -- the nature of the

claimants, the challenges that exist in terms of communicating with certain survivors.

I mean if you go back to the statements made earlier about survivors being in prison, what this would do is it would say, look, I can get my client on the phone. The client can tell me how he or she wants to vote on the plan, and I could record that. If I have to take the additional step of requiring that claimant to sign a valid power of attorney in order for me to record their vote, as it is conveyed to me as -- as the attorney, I do think that would have a chilling effect.

THE COURT: Okay. So what if the lawyer then had to keep a log of its communications so that it could show that, in fact, it had received instruction from its client?

MR. GOODMAN: Your Honor, you're speaking my language. As I -- I said earlier, we know what we're up against in this case. We know what the various parties' objectives are, and, you know, to think that someone would be coming into this without dotting every "i", crossing every "t" and maintaining an appropriate record, if and when this is challenged, I think you can definitely expect that a lot of firms are going to do that for -- for that very reason.

THE COURT: Mr. Smola?

MR. SMOLA: Your Honor, I was going to -- I was going to echo that. This Court will have affidavits from me and the lawyers in my firm about the communications we had with homeless clients. It will have the dates, the times, the instructions we provided them, the advice we provided them, the options they had, and it will say how they instructed us to vote on their behalf.

And for those clients that require that, we will have affidavits from lawyers. Otherwise, we will have power or attorneys.

THE COURT: Thank you. Mr. Stang?

MR. STANG: Thank you, Your Honor. Just -- I assume at some point we will go back through the order because there would be some miscellaneous things we pick up, but two things. I can't tell from 5(A) how the firm shows that it was the hub, using Mr. Goodman's terminology, or actually exercising, or -- or -- or voting? It -- it's not clear to me now one differentiates that so we know whether a valid power of attorney is necessary. That's point number one.

Point number two is it allows the firm to collect and record the votes through customary and accepted practices. We saw when the coalition went

back initially contacted its constituency that it did it on a negative notice. You're a member the coalition unless you tell us you're not.

So I don't know what each -- and I'm speaking about all the law firms. I am not picking on the coalition law firms. I simply don't know whether law firms say to their clients, I'm going to assume you're going to vote per my recommendation or vote no per my recommendation unless I hear from you otherwise. I mean I don't know what their custom and practice is.

So I laud Mr. Smola, not just because he has a client on the creditors committee, but because he's right. There needs to be a record here. There are references throughout this order that people can communicate with their clients by phone and record their votes that way, by talking to someone. Now, if it's a homeless person, maybe there needs to be an affidavit that you don't -- the person doesn't have an address, but I can't really on the firm's customs and practices, and a negative notice vote on this plan should be addressing and tell people, I think, today whether that's an appropriate way of soliciting votes.

THE COURT: Okay. Well, I did actually circle those words, through customary and accepted

practices. I don't know what means. I think there's a balance, and I'm not sure it's my place to interfere with communications that lawyers have with their clients in all kinds of different ways.

MR. SCHIAVONI: I -- I just think a negative (inaudible).

THE COURT: I do think there needs to be -- there needs to be because of this plan, which has multiple parts as Mr. Smola has said and as I said at the very beginning of this -- of today's hearing, that this has settlement authority for $3,500. It grants releases, not only to the debtor but to third parties if approved. There was something else I said in the beginning. I don't remember anymore, but these -- this isn't just a vote yes or no on a plan. It's, essentially, authority to settle a claim or not -- or not to accept an offer. I mean that's -- it's one of the other.

So if parties want to do it by power of attorney, that might be the appropriate way to do it. If they want to -- I think there needs to be a record. That's what this suggests. They're going to collect and record, collect and record is an affirmative obligation. I'm going to reach out to my client. I'm going to collect a vote, and I will therefore vote the

way my client tells me to do. I'm not voting for him with the power of attorney. And if you're going to reach out and collect and record a vote, I think it's an affirmative vote.

MR. GOODMAN: Your Honor, I'm sorry I didn't want to interrupt.

MR. SCHIAVONI: Your Honor, does --

THE COURT: Mr. Goodman?

MR. SCHIAVONI: -- affirmative mean expressed? Is that what you mean by an affirmative vote, an expressed vote, not negative notice.

THE COURT: I think they need to talk to their client. I think they need to talk or reach out to their client and find out how their client wants to vote.

Mr. Goodman?

MR. GOODMAN: Your Honor, just to clarify a few points, I think Mr. Stang's comment was inaccurate. There is no one who is a member of the coalition on negative notice.

THE COURT: Great.

MR. STANG: No, initially. Initially, Mr. Goodman, that's the way it was done initially.

THE COURT: I recall how this -- I recall how this played out.

MR. STANG: Yeah, I said initially.

MR. GOODMAN: All right. Well, so long as we're clear on that point. Your Honor, again, the -- the language that we inserted in here, and it's important from our standpoint it's clear that people have to make an informed decision on this plan. Survivors are entitled to make an informed decision, and that means to me that they are providing affirmative guidance to their counsel as to how they want to vote.

So I do not support and I would not support negative notice in this context.

THE COURT: Okay. It seems like we're in agreement. That's a first.

MR. SCHIAVONI: But -- but -- but, Your Honor, how is -- how is that to be documented? Is that like a document that gets turned over to the (inaudible) agent?

THE COURT: I think there should be some kind of backup to the master ballot that has some kind of chart that references how they got the affirmative vote from their client, that they are recording, or if they are voting on behalf of their client, their power of attorney.

MR. O'NEILL: Your Honor, I think we may be

able to accommodate that on the exhibit to the ballot, and figure out a nifty and thoughtful way to do that.

THE COURT: Yeah, I'm not going to get into the weeds on that. I think we have agreement now on how to proceed and I'll let the parties figure out how to document it.

MR. O'NEILL: Okay. Thank you, Your Honor.

THE COURT: Thank you.

MR. O'NEILL: Thank you for your time. I think we're at the end of the agenda.

THE COURT: I think --

MR. O'NEILL: Or am I wrong?

THE COURT: -- Mr. Stang had some concerns with the order --

MR. STANG: We were going to go back to the order.

THE COURT: -- we haven't gone through.

MR. O'NEILL: Oh, I apologize. I apologize.

MR. STANG: Your Honor, we may have touched upon them, but you had also done your own circling you just said a moment ago.

THE COURT: Yeah, I'm looking.

MR. STANG: So I think a lot of the things I was going to say have been picked up in the course of this. I just -- I don't know how you want to proceed.

MR. PATTERSON: Well are we also talking about the schedule at this point, Your Honor?

THE COURT: We haven't done that.

MR. STANG: Your Honor, we also had the issues about some discussion of confirmation issues, as they may relate to the solicitation going out. I know you addressed that in part, but you did say I thought late yesterday you would consider limited time argument on that. I don't know if people still want to pursue that.

MR. ABBOTT: Your Honor, Derrick Abbot. If I may be heard quickly. We had talked a little bit about hat at the beginning of the hearing. Obviously, we are at the Court's pleasure, but it is critical to talk about scheduling and how we get from now to confirmation in terms of discovery and those sorts of things. And I know Mr. Kurtz is anxious to address those, and I'm not sure which the Court would prefer to do first.

THE COURT: We're going to take scheduling, and I'm looking through the order.

MR. PATTERSON: The confirmation schedule, Your Honor, is at Document 6216 and the red line page 5 of 7.

MALE VOICE: Well, wait a minute, are we on

scheduling or are we on the solicitation order review as a final kind of recap?

THE COURT: I think let's finish up with the solicitation order and the solicitation procedures, which I think also include the timing. I know I reviewed it somewhere. It's here on page 5 of the order.

MR. SCHIAVONI: You had suggested that you might entertain an hour or something of argument on the -- the legal merits, Your Honor. It's like we do think there's a direct link between some of the legal merit issues on what's going to be done, what findings are going to be pursued, and the -- the schedule. Like the two things are linked, just like how you addressed with what ended up being a sort of core issue with the RSA, that, you know, it's like where you admonished us and we probably should have listened to you about let's focus on what we're doing here, so to speak.

I don't know you probably have a more articulate way to put it, I'll hand it to you, okay, but I do think that maybe scheduling is not a 6:00 argument for tonight, that like if it would -- we could have that hour discussion after an hour on the legal merits. You might find that we -- like there's

a lot of efficiency built into it. It's -- it's not a delaying measure, but it's like I do think there's a link between, you know, how broad like what we're doing is and what -- what time we need to do it. So, you know, doing the two together might make some sense.

Ms. LAURIE: Your Honor, this is Jessica Laurie (phonetic) if I may step in for just a moment with a couple of thoughts on that. One, the reason we encouraged the Court to raise the scheduling today is because the debtors' schedule that we put out, and we understand that Your Honor is inclined to grant a 60-day solicitation period, so there may be some adjustments to that. But the schedule that the debtor put out does contemplate that document discovery requests I believe are due the 27th, so four days from now.

And I do think also in light of Your Honor's statements today concerning, you know, we need to get confirmation discovery up and running, it is -- it is open now that we provide some guidance with respect to that issue before we go into the weekend. So that is why we had suggested that confirmation scheduling be -- be addressed today. I think as Mr. Abbott said at the outset of today's hearing, we have a lot of work

to do still on the disclosure statement, including communications with parties, including working through some of the plain English disclosures.

We do envision ourselves coming back before the court. We would love to have Tuesday with potential overflow for Wednesday. But I do think we're not suggesting that we're closing things out tonight. We just wanted to address some issues that are particularly timely.

MR. SCHIAVONI: But, Your Honor, it begs the question to know what discovered issue as to what -- what is going to be at issue. It's like the two things are directly tied. This is like a friend of mine as a trial lawyer once said if I had a little bit more time to pack, I would pack less, and, you know, having this argument four days from now or three days from now, it's like I just think you're more likely to get a more efficient. We can send out blunderbuss discovery as fast as possible, I suppose, but it's like I think just we're talking three or four days here to have a discussion that might make it a lot more logical about what discovery is sought.

MS. LAURIE: And, again, Your Honor, I think that's my point. Right now we don't -- we may not need a deadline of next week with respect to

discovery, but we do think we should broach the issue from a timing perspective so that parties actually have the ability to refine discovery based upon the timeline. That's all we're suggesting.

MR. SCHIAVONI: But the discovery is driven by what the substance is, not by the timeline. It's like what discovery is going to be needed.

THE COURT: And you think that we're going to narrow the view on that? I thought the position was the plan should not go out or the plan should go out.

MR. SCHIAVONI: Well, Your Honor, I thought you made it clear that you were going to rule on solicitation, on the disclosure statement and to the extent you're going to issue it you're going to issue it. But you were going to entertain an hour on -- on argument about what was -- whether or not the plan should go out or not, and that would involve pure legal issues about what the -- what is really going to be in the plan, what findings are going to be sought and what not. You know, if you remember with the RSA, it's like as Your Honor focused the parties on this is what the -- this is what the finding would be, and as it narrowed, it lessened the discovery. There's some issues here about the findings that are required that

would -- would -- would require tremendous amounts of discovery and that if they're going to be -- it's like I think we would want to be heard as part of that hour discussion, substantively on whether those are appropriate or not. But if they're deemed not to be appropriate, I think you ought to hear as part of that argument the discovery associated with them because the -- the two are tied together.

It's like if, in fact, it's like as in the coalition's pleadings all insurance issues are going to be decided in this case and that, you know, broad and comprehensive findings are going to be made in that regard, you know, no surprise we're going to need a lot of discovery. Okay? And we're going to need some time for that. If it's going to be narrower than that, and, no, contrary to what the coalition has said in its papers, we're not going to be seeking -- they're not going to be seeking findings on binding us on all insurance issues, less discovery and less time is needed. And I'm not asking you to decide that issue right now in a five-minute back and forth.

But I am suggesting that hearing us on an hour on that would be use -- it ties right into what this discovery is and what the schedule will be. Otherwise, the scheduling discussion is just going to

be in the abstract. The Boy Scouts want to get out as fast as possible, and how can we do it before the year is done? It's going to be a discussion in the abstract and not tied to what actually needs to be done in the case.

THE COURT: Okay. I see Mr. Brown. I see your hand.

MR. BROWN: Thank you, Your Honor, and good afternoon. Thank you for staying long and late, a long day. Just contextually, I thought it might be helpful and Ms. Laurie (phonetic) referenced this. The -- the current scheduling order, and I also think there was -- there's a couple before you. The one that was referenced was 6216, but then there was an amended one filed, which is 6320. I think the debtor is proposing the later one, which has even shorter and more brutal deadlines, but we'll deal with that when we deal with that.

But in any event, the thing that I just wanted to highlight is what is -- is put an exclamation point on what Ms. Laurie (phonetic) said. These were all -- all the dates in the debtor's proposed scheduling order for plan discovery and the like were based on a much shorter solicitation period, which I think the Court has already indicated is not

going to pass muster. So right now the current scheduling for the solicitation date is October 4, and the voting deadline is November 16.

So we're already completely blown out of what the debtor is proposing just based on the solicitation timeframe alone. And so I think that's -- it's important to view what -- what's being said here in terms of the wisdom of understanding what's going to be at issue and how taking a little more time to consider that is really a non-issue in terms of the overall timing of this because we're already not anywhere, we're already out of the land of the debtor's proposed order.

THE COURT: Mr. Kurtz?

MR. KURTZ: Thank you, Your Honor. I think you put your -- your finger on it when you said don't we already know what they're going to be seeking in discover? The plan is the plan. Everybody knows what the objections are. We've been hearing about them for a long time. We've been hearing about them for a week. Mr. Schiavoni has confirmed their ability to get their requests out. If they believe by something that happens next week that they can limit some of that discovery, we would be very pleased to hear that. I don't really expect to receive a call like that.

The schedule is really critical at this point, and before I address what the schedule should be and why we think it's more than enough time because it will be modified. What's on record will be modified based on the 60-day solicitation period here. I just want to highlight why the timing here is so important, and that's that the debtors are running out of cash.

By the end of the first quarter, the debtors are projected to no longer have the cash necessary to fund a full financial contribution to the plan. If we had a December 31 emergence, and I realize that's pretty aggressive at this point, but maybe still achievable, the debtors contribute $59 million in cash.

By the time we get to March, the end of March, the contribution drops to 26 million. By the time we get to May 1st, the contribution is at zero. So delay here impairs recovery for abuse victims and also may render the plan not feasible without adjustments that would require further concessions to a deal that was lengthy in achieving, difficult and hard fought, in -- in mediation.

So the schedule is basically case critical here, and although I am sure that the parties

legitimately would like to have some more time to engage in discovery notwithstanding their request that we delay this discussion until next week. I'm also sure that delay is a goal for the objectors because if the objectors can get delay and they can time out the plan, they don't have to win on the merits.

So delay is -- is -- is -- is also a goal in and of itself. Now, I recognize that the plan that we have the schedule on the plan that we had proposed, was not maybe overly generous with the calendar, and the good news is it's going to get longer based on the Court's remarks about a 60-day solicitation. I think we're going from two and a half months or so to approximately three and a half months. So everybody gets more time without even having to fight about it.

And -- and those objecting to relief almost always want more time, but I know that everybody always completes the work they have to complete within the time period that's provided. That's true in every case. That's certainly been true in this case. The objectors have repeatedly told this Court that they didn't have enough time to object, only to file absolutely comprehensive objections and argued absolutely comprehensive objections within the scheduled time, and without failing to raise any one

of their objections. So we can get there.

It's important to note we're not starting from scratch. The debtors have provided a substantial amount of discovery in this case. We've produced a lot of documents. We've provided depositions. The objectors have been working on their objections. Frankly, for months, we've heard about them. We've heard about them this week. And we are confident that the objectors will mount the same challenges in the same way on any schedule, whether it's two and a half, now three and a half months or two and a half or three and a half years, we're going to see the same challenges.

And we believe that the three and a half months or so that we would be proposing now coupled with the discovery they've already had, and the fact that they have been free to seek confirmation discovery and, in fact, they have done that to some extent is adequate.

It will keep the cases on track to paraphrase Your Honor from this week, and, frankly, when parties have deadlines, they tend to get to resolutions leading up to or at the date of the deadline. And that tends to mean that matters will resolve faster if we have a tighter schedule than they

will otherwise. So I would submit that maybe some pressure here would actually help, but in any case I understand why the objectors would want more time even without the interest in delay. But I would submit that when you balance the relevant interests and consequences to a delay, it is -- it's better to have the lawyers work hard than it is to -- to -- to have reduced recoveries to abuse victims and potentially a step backwards where we have to restart with a plan.

We had suggested a number of interim dates that were directed towards a confirmation hearing on December 9. That's no longer, I think, on the table. We would reset those interim dates working backwards from a confirmation hearing that we would hope to get as soon as we could after the -- after the solicitation period. We can talk to everybody about it. We tried to have a dialog about interim dates before. We got no, no, no -- we got objections to the timeline but no suggestions on how to allocate the work within the timeframe we were proposing. But we'll give people another crack at that. We'll try to be flexible. We think we -- we know the best way to sort of leave enough room to get it done, but we think there's more than enough time. I think everybody on this hearing has probably tried a confirmation case on

less than three and a half months even without getting all of the discovery they've had so far. And given the cash drain here, we think it should be set, and it should be set as soon as it can be.

THE COURT: Okay. Well, Mr. Kurtz, are you -- I heard two things there I think at the end. One, we'll work with everybody to come to a schedule, and, two, we should schedule it as soon as possible. So is there -- is there a proposal? And I will confess I don't have the right document in front of me so I'm going to need to take a break if I need to get it. But I'm -- I guess I need clarification on where you were there at the end.

MR. KURTZ: Right. So -- so what I -- what I would like to impose, in effect, on the objectors, is a confirmation hearing date from which we can work backwards. Where I think we can work with people if they'll work with us this time, they didn't last time would be to populate the dates between now and then.

THE COURT: On the interim dates.

MR. KURTZ: So as to allow for the -- the work to be done in a productive way.

THE COURT: Okay. Thank you.

Mr. Ryan? It's frozen to me. I'll come back.

Mr. Rosenthal?

MR. ROSENTHAL: Yes, Your Honor. I think Mr. Plevin is going to talk about the -- the scheduling issues, but I -- I do want to correct the record. Mr. Kurtz spends a lot of time talking about delay, delay, and how he gave the insurers an opportunity to participate, the objectors, and no one said anything. I -- I asked him a very specific question. Is your December 9 date inflexible? And he said, yes, it's inflexible. That period of time, Your Honor, at that point it was just a question from his perspective of moving an already impossible schedule and moving things around that already impossible schedule.

We need more time to do discovery, and just because the debtor delayed in filing the plan and is where it is in the case does not mean, Your Honor, that the Court can ignore the due process rights of the objectors and prevent the parties from taking the discovery they need to present their case. So I'll leave it there because I know Mr. Plevin wants to address the specifics of the schedule.

THE COURT: Mr. Plevin?

MR. PLEVIN: Your Honor, my first question is whether we're talking about the schedule now or

whether we're talking about when we're talking about the schedule because I'm a little confused about which we're doing.

THE COURT: I guess we're somewhat -- we're somewhat talking about the schedule.

MR. PLEVIN: Because one of the -- the reason I ask that is we have -- if we're going to dig into the schedule and talk about the debtors' schedule, as compared to the schedule that we proposed in our papers, and by the way I never heard from Mr. Kurtz even though I sent in the brief that had the insurer's proposed schedule.

So I don't know who he was wanting to have dialogue with, because I never heard from him, but we proposed a very specific schedule keyed to the approval of the disclosure statement, and I can walk through our proposed schedule and the debtors' proposed schedule and explain why theirs is not workable and ours is. And I'm prepared to do that now, but I do know it's 6 p.m. and I don't think this is going to be over any time soon. And I really don't see what the difference is between arguing this today or tomorrow.

I do agree with Mr. Schiavoni that one of the things I was going to say is it's important to

know what we're litigating here, and there were some comments made yesterday by Your Honor that suggest we may have a lot more litigation on our hands than we hoped and that has ramifications for the schedule. So if the Court can give me some guidance as to whether I should just dive in for the next half-hour or not, I'd appreciate that.

THE COURT: Okay. The question with respect to what discovery is necessary, and I guess what I'll need some more input on is probably around the findings related to the insurance that the debtors seek in the plan, and whether they're really legal issues we're talking about because some of them I view that way, and -- or whether they're factual issues. And I say that because, for example, and I don't have the findings right in front of me -- well, but I probably do, but not in the way that I marked them is -- and I think we've had this discussion before, you know, whatever the words, magic words are, fair and reasonable around the -- the values in the TDPs, whatever that finding is.

There's an argument as to what one should be able to do with that finding, right, but that's more a legal issue to me than an actual factual issue. So I would want to understand why people think that's a

factual issue rather than a legal issue because I'm not, as I said, going to be interpreting someone's policy that says here's the loss language in their policy and, in fact, whatever number I come up -- whatever number's in the TDP is -- equates to whatever the definition is in the policy that says here's what the debtor bought. Okay?

So those are the kinds of things I'm trying to get my head around, but that's an easier one for me because an insurance policy is here is the insurance the debtor wants, here's the insurance the debtor got. That's what they bargain for. It's the contract. If someone has a contract that says, for example, what I'm covering is the distribution amount in a bankruptcy proceeding and not the allowed -- not the full value of someone's claim who doesn't get paid. Well, then that's the insurance that the debtor bought. They bought a product, and that's what it was.

So I'm not going to be making those decisions. So I'm at somewhat of a loss of what people think those findings mean and what they think that they're going to then equate to. So those are the kinds of things I've been thinking about in terms of the findings that people are asking me to make, and

I am not on a policy-by-policy basis going to be making those decisions. I don't see it. Maybe I could be convinced that I'm misunderstanding something, but those are the kinds of things I don't see. And I don' think that either increases or decreases the coverage that's available. I think it's what it is.

And that's my goal, what it is. I don't call that insurance neutrality. Forget that term. I think it's been misused. I recognize I'm a newcomer in this field, but I think it's confusing and it's been misused. And I look at it, and I see, yes, can I decide, perhaps, that the values for confirmation that are contained in the TDP are appropriate? Yeah, I think I can decide that.

If you want to morph it into something else, I'm not sure I get to do that, or that that's appropriate. So those are the kinds of issues I'm talking about. Probably shouldn't talk off the cuff, but that's the easiest one to -- to talk about, and now all the hands are raised. So that's -- there's some thoughts.

Here's what I'd like to do. I'd like to take a few minutes break here. I'd like to get the relevant document in front of me with the scheduling

order, which for some reason I don't have. My apologies. I'd like to make sure I have, which I thought I did, Mr. Plevin's filing, because I do remember seeing an alternate schedule.

So if you could tell me what docket item that -- the two documents I need are to have in front of me, I would like to get them during the break so I can be more intelligent on the scheduling. But in that context, broader context of these findings, what are the factual issues that are really in dispute versus the legal issues?

MR. SCHIAVONI: Your Honor, can you see why we wanted to tie this to our one-hour argument on the legal merits of the plan. It's like that's really the reason. It's to tie the two together. We just thought it would be more efficient, and it's -- and maybe not doing it when everybody is, you know, tired. But that was the thought. It wasn't going to delay -- like we weren't looking for a lot of delay on that. It's just we though the two would tie together.

MR. ROSENTHAL: And I think, Your Honor, it -- I'm sorry to bug in, but I think it will also give you a sense of the answer to the question you just asked because the findings are one thing, but some of the other arguments relate to whether -- whether the

TDP values and criteria are actually fair and reasonable and/or improperly inflate the value of the debtors' abuse liability, which is -- which is somewhat of a factual issue. And so I think if you understand the full scope of what we're trying to say, whether you decide that it's patently unconfirmable or not, I think you've already given us your -- your -- your initial perspective on that.

But I think we were trying through some of these -- some of the argument that you said you would listen to, to set a framework for you and provide some -- some guidance on things that would relate to these scheduling issues.

MR. PELVIN: Your Honor, while I agree with both Mr. Schiavoni and Mr. Rosenthal, I can I think try to answer your question on a go forward basis when we come back. One question I can answer quite easily for you is that our scheduling brief with the proposed schedule is Docket Number 6060.

MR. KURTZ: And, Your Honor, Glen Kurtz. I can direct you to our schedule at Docket Entry 6320.

THE COURT: 6320 and 6060.

MR. KURTZ: Yeah, 6320.

THE COURT: Okay. Let's take -- let's take ten minutes.

MR. RYAN: Your Honor, can I make one suggestion for the break?

THE COURT: Mr. Ryan?

MR. RYAN: Is we also look at Your Honor's calendar. We've already added 17 days. I think 17 days is a December 26th trial start date. That's not going to happen. So I think a rational discussion about a -- what our schedule is also involves Your Honor looking at her calendar and it's in January at this point.

THE COURT: Yeah, which is not a good calendar, but I'm going to pull it out.

Okay. Let's take ten minutes. We're in recess.

(A recess was taken from 6:15 p.m. to 6:26 p.m.)

THE COURT: Okay. This is Judge Silverstein. I've got the two different schedules now, which, obviously, are nowhere in harmony and or for that matter close.

And if we weren't virtual, I'd have you in chambers to have a discussion. But that's not an option. I'm -- I had thought maybe -- maybe just wishful thinking that from the discussion earlier today that maybe we weren't going to be meeting

tomorrow and that we were going to be continuing until sometime next week and take up further issues with the exception of the scheduling issue and et cetera. Maybe that -- maybe that -- as I say maybe that was wishful thinking.

I think I probably need to hear argument on some of these issues, and provide some preliminary thoughts on them, and I'm not going to start that tonight. The -- but I also think it's necessary to get this matter scheduled for confirmation, and it's not going to be in -- let's see.

MALE VOICE: December 7th.

THE COURT: Well, it's not going to be on December 7th. It's not going to be --

MALE VOICE: 9th, 9th.

THE COURT: It's not going to be 217 days after approval of the disclosure statement either, which is what I think is in the insurer request.

MR. KURTZ: Your Honor, I don't know if you have any -- any room in your schedule for January. That would leave some substantial time and we can -- I don't want to -- I don't want to argue right now about the time --

THE COURT: Right.

MR. KURTZ: -- but we all know that people

can get the work done with whatever time period we have but we have to work backwards.

THE COURT: I do agree that people can get stuff done in the amount of time that you give them.

MR. KURTZ: Right.

THE COURT: Believe it or not, I have an insurance coverage trial in January, which some of you are involved in, which quite frankly I had moved to accommodate where I thought Boy Scouts might fall when we were looking at this many months ago. So it's been moved once already, and I've got to give this some thought.

What I'd like the parties to think about, and I think every party has acknowledged that this is one of, if not the, most complex cases that they've probably dealt with in their bankruptcy careers, as it brings together many issues, many challenging issues, each one of which on their own would make any case complex. And to the extent that people are adding on sort of the wish list of what they would like to an already complex case, it not only adds that many layers of complication but increases, quite frankly, the time that the parties and the Court need to prepare for the case, as well as ultimately to decide it.

And while I'd like to give you some guidance on every issue because -- and try to narrow things down before we get to confirmation, because some of these issues don't get decided every day, because they are complex, it's hard to do that and still permit people to make appropriate arguments on issues, which could go either way.

So I think people really need to think about what it is they need to accomplish from the bankruptcy, and -- and I'll see if there's some guidance that I can give you on issues.

The third-party release issue alone, we all know, we've heard the arguments, it's challenging enough. But it's been a crux of this case from the beginning. Everybody knew this was going to be an issue.

When you start adding to that already very complex, and it's both factual and legal issues, and we have very able lawyers here that are going to be arguing it and putting on the evidence. And when you glom onto that issues that perhaps are not regularly decided in the context of confirmation and maybe don't need to be decided in the context of confirmation, then it takes longer time.

So I don't know. Were people planning on

coming back tomorrow/ What was the -- what was the thought, Ms. Laurie (phonetic) when you thought about this, or Mr. Abbott at the beginning of the day?

MS. LAURIE: I'll tell you what our original vision was, but, obviously, we'll take guidance from Your Honor. I think we had hoped to get through solicitation and scheduling issues today. We've heard other people's views on that. I think our view had been we would work on the documents and then come back subject to your schedule on Tuesday, split Tuesday between the confirmation-type arguments that you may need to hear and then clean up on the disclosure statement document itself to the extent that there are lingering issues.

THE COURT: That's kind of what I thought.

MR. SCHIAVONI: Judge, could I plead for Friday off?

THE COURT: Well, that's what Ms. Laurie (phonetic) had thought we -- and that's where I thought we were going to so.

MR. KURTZ: I mean, Your Honor, I don't think the debtors have any dire need for -- for -- for Friday subject to getting some schedule plugged in. I think if there's some way that Your Honor can find time in your schedule for a confirmation hearing, we

can probably then at least have a dialogue with -- with the objectors on how to populate the interim dates. We'll either get somewhere or we won't, and we can resubmit. But, you know, I don't know that we have to tie them. I think we need a schedule no matter what happens, no matter what kind of guidance we get, which we'll appreciate, of course, but it's a little -- we're probably sort of in a standstill until we know what we're working against.

MR. PLEVIN: But, Your Honor, I would ask you not to pre-judge at this point when the confirmation hearing is going to be until you hear the arguments about the discovery that's needed and the sequencing of events. Obviously, you can have a date in mind, but I would urge you to have an open mind and not tell us what that date is so we can argue to you how much time we need and why.

MR. KURTZ: I mean the debtors are burning cash. It just doesn't work to --

THE COURT: I understand that. I understand that, and there's more people that want the debtor to pay for them, so you know.

MR. KURTZ: Right.

THE COURT: Maybe that shouldn't be the case. I don't know.

MR. KURTZ: With or without those numbers the cash is going out the door. So the calendar matters, and I know that there's an interest in delay but it's not in the interest of the estate. And all we're looking for is dates. If it has to move because somebody convinces Your Honor of something, so be it, but I don't think that's what's going to happen.

MR. RYAN: Your Honor, with all respect, it's not about delay. Mr. Kurtz is just inflaming everything. There's no reason -- a schedule is a schedule, and it leads to a confirmation hearing. You may not agree that it should be a 200-day schedule. You may agree that it should be, you know, whatever, somewhere between where the debtor has proposed and -- and -- and -- and where the insurers have proposed.

But at least hear the various arguments about how to effectuate a timely schedule that -- that -- you know, that doesn't put -- it's not about making the lawyers work too hard. I mean the lawyers will have to work as hard as they have to work, but some of these things are just unrealistic deadlines that -- that need to be changed to accommodate an orderly process.

MR. BROWN: Your Honor, this is Ken (inaudible). Not to get into the weeds --

MR. KURTZ: Your Honor, I've literally tried cases.

MR. BROWN: -- on this, and if I could speak, Mr. Kurtz, because you've been saying a lot in generalities and you've been casting some aspersions about people doing this just to slow down the process. Your Honor, just by way of example, and there's a reason that Mr. Kurtz is only speaking in generalities and hasn't referenced a single actual thing that the debtor is trying to impose on folks here, but just as an example, the order that you have in front of you, the one that the debtor was trying to get you to impose on everyone sets the last date to serve written discovery as September 27, and then the last day to respond to that discovery four days later on October 1.

That is just one example of the breakneck, nauseating pace that the debtor is trying to impose on everyone. This is not about scheduling, as much as it is about not allowing people to have the time to do what they need to get due process here. All you have to do is look at this order to see the multiple -- the multiple examples of just completely unrealistic deadlines. But four days after you propound discovery to respond to it? That's heading one.

MR. KURTZ: Your Honor, it doesn't take four days to take your prior objections and reintroduce them into a new document. It's a little silly to talk about due process. I've literally tried cases from complaint to trial in 20 days, and I'm sure other people have as well. Chrysler was a major case. I think we went -- in 18 days we had that trial. We were in the Second Circuit within a few days after that and the Supreme Court after that.

It's not hard, and there's no generalities. I put in all the dates that seemed appropriate when we work backwards from a confirmation hearing date. I said we'll resubmit with new interim dates working backward from a new confirmation hearing date, but these are all doable, and primarily the discovery is going to be coming from the debtors and we'll comply with it.

MR. PLEVIN: Your Honor, the discovery won't all be coming from the debtors. It will be coming from other parties. We're going to propound discovery on other parties, and just by way of one other example in addition to what Mr. Brown said, we're supposed to have rebuttal experts reports submitted nine days after the affirmative reports.

The idea that you can get a -- you can get

an affirmative expert report, review it, decide who to -- what kind of rebuttal you need, recruit a rebuttal expert and have that rebuttal expert turn a report and do all of that in nine days is just not -- it's not feasible. It's not practical. It doesn't happen that way.

MALE VOICE: Can we -- can we resume on Tuesday? Because I think the weekend, cooler heads will think about this over the weekend about how if you glom on less, less discovery is necessary. It's like I think we have some guidance on that, and Tuesday may be we have a-- you know, a little bit more time, we pack less, more efficient. It's like we're going to achieve something on Tuesday.

THE COURT: Okay. I'm -- can tell you at this moment in January I don't have three days for this confirmation hearing. So I cannot give the debtor something in January today.

What I'm going to do is assuming you guys can still hear me because I can't see anybody.

MIXED VOICES: We can hear you.

THE COURT: Okay. What I'm going to do is I'm not going to give a schedule, a date today, because, debtors, I can't give you what you want.

I'm going to look at my schedule. I'm going

to consider the filings, and I'd like the parties to think about, again, what kind of findings they need because I think that can make a difference in what the discovery is going to be.

So we're going to resume -- I also think parties need time to take a look at what we've done to date on the disclosure statement and get all of that resolved.

So looking at my schedule, on Tuesday I can have you back here. I do believe I have a couple -- well, I do have a couple of things schedule. I will see if I can move them. One might just be a status conference. We'll take a break, but I'll have you back here at 10:00 on Tuesday, and we can carry over on Wednesday probably starting around noon.

I have something I do not think I can change that morning, and then I do understand that you guys are in mediation, some of you, Thursday and Friday. So I would suggest you use that time well. That's what we're going to do.

I will entertain argument, I guess, first, and --

MR. PLEVIN: Your Honor, argument on the scheduling or on the --

THE COURT: On the issues that you think

that I can resolve and get out of the way for confirmation or that will convince me that I should not send this plan out at all.

MR. RYAN: Understood.

THE COURT: So I'll take that first, and I'll have ideas on scheduling assuming you don't convince me.

Mr. Rosenthal, I will keep an open mind.

MR. ROSENTHAL: Thank you.

THE COURT: Mr. Patterson, I see your hand.

MR. ROSENTHAL: But I think, Your Honor, one thing you said is very -- is -- is -- is interesting, and I would hope the parties would think about it. I think you're absolutely right, if you can still hear me.

THE COURT: I can.

MR. ROSENTHAL: You're kind of frozen, but to the -- that one of the things that drives the schedule are the findings. And if those findings weren't required there would be less time required, and so, you know, fairness and reasonableness are evidentiary issues about the TDPs and the values, and the like, and they -- they will take required discovery. And that's one of the things that is driving the longer schedule.

THE COURT: Okay. Mr. Patterson?

MR. PATTERSON: Your Honor, I just wanted to say that we're kind of new to the litigation fight here. We have not taken substantial discovery from anybody. We haven't received any, although my guess is that something will come our way, so we just hope you'll keep an open mind that we -- it's not that we're sitting here with reams of information that we've, you know, deposed people or had document discovery from anybody. We'll do the best we can, and we -- we appreciate, Your Honor.

THE COURT: Thank you. Mr. Harron?

(crosstalk)

THE COURT: Oh, I'm sorry.

MR. BROWN: It's Ken Brown.

MR. HARRON: I think Mr. Rosenthal is suggesting a false premise, which I just couldn't let sit. Implicit in his comment is absent the findings and with some form of neutrality this case resolves quickly. And Mr. Rosenthal and I both know that we have a case exactly like that in North Carolina, completely insurance neutral, claims are passed through to the insurers and Mr. Rosenthal is taking stuff to the Fourth Circuit. Eliminating the fight over the findings will not eliminate the insurers

fights.

MR. ROSENTHAL: Well, obviously, we disagree with that, Your Honor, but that's for another day.

THE COURT: Okay.

MALE VOICE: (inaudible) Circuit apparently.

MR. HARRON: We couldn't be more neutral in that case, and we're at the Fourth Circuit.

THE COURT: I'm really worried about what's going to be in front of me and what parties are going to request that I have to decide.

Mr. Brown?

MR. BROWN: Something, again, we can pick up on Tuesday, but one of the things that we're very concerned about in terms of the timing here is, you know, the debtor has referred to all the documents that they've already produced and why normal discovery timelines don't matter because of that. The thing that is important to keep in mind as we go through this is that that was produced in the context of, much of it, in mediation, and there's a data room. And virtually everything in the data room has been designated confidential.

We have been trying since last week to go through the process with the debtor to get this stuff undesignated so it can be used in some practical way,

but we haven't gotten anywhere. And you would think that a debtor who is trying to impose breakneck deadlines would be going out of its way to deal with things like that. And we feel like all we're getting is stone-walled. Right now, we can't use any of the so-called, you know, discovery that has thus far been propounded. (inaudible) is going to be filed under seal and we're going to have a sealed courtroom.

MR. SCHIAVONI: Well, let's take a break for the day.

THE COURT: Okay.

MR. KURTZ: Your Honor, that's -- that's just not true. We didn't produce the discovery. My understanding is we've been requested to help facilitate a discussion with other parties that may have designated materials as confidential. We said we would do that. They then sent us literally hundreds of pages of documents that we haven't yet had an opportunity to even go through. The debtors have not done that, and it's just an inaccurate statement that was just made.

THE COURT: Okay. We're going to adjourn until Tuesday at 10:00, and parties should use the time well to turn documents that the disclosure statement and other documents that need to be turned,

and I know people are worked around the clock to do that. And should consider what we can achieve.

I, last August, not this past, the year before, had two complete valuation trials with parties had about three weeks to prepare for. On the other hand, I've got some cases where the discovery disputes get in the way, and they prolong things. And that's not bad faith discovery disputes. That's just regular old discovery disputes. So we're going to find a happy median. We're going to recognize that this debtor is burning cash, and I have no reason at all to believe that Ms. Lauria or whoever told me that, it's probably Mr. Kurtz, is inaccurate in what they're saying, no reason to believe that.

And I don't think that benefits anybody, so we're going to balance, clearly the due process rights of all parties against what's necessary in this case. And that's where we're going to leave it.

So thank you very much. Enjoy your Friday away from here. I will see you Tuesday morning.

MALE VOICE: Thank you, Your Honor. Have a nice weekend.

THE COURT: Thank you.

MALE VOICE: Thank you, Your Honor.

THE COURT: Thank you.

MALE VOICE: Thank you, Your Honor.

(Whereupon the hearing adjourned.)

CERTIFICATE

I, Wendy Sawyer, do hereby certify that I was authorized to and transcribed the foregoing recorded proceedings and that the transcript is a true record, to the best of my ability.

DATED this 24th day of September, 2021.

WENDY SAWYER, CDLT

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 20-10343 (LSS)
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,	(Jointly Administered)
	Courtroom 2
	824 Market Street
Debtor.	Wilmington, Delaware 19801
	Tuesday, September 28, 2021
	10:11 a.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Derek Abbott, Esquire
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 North Market Street
16th Floor
Wilmington, Delaware 19899

- and -

Jessica C. Lauria, Esquire
Glenn M. Kurtz, Esquire
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020

(APPEARANCES CONTINUED)

Electronically Recorded By: Madaline Dungey, ECRO

Transcription Service: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
Telephone: (302) 654-8080
E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording: transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Debtors:	Matthew E. Linder, Esquire WHITE & CASE, LLC 111 South Wacker Drive Chicago, Illinois 60606
	-and-
	Adrian C. Azer, Esquire HAYNES & BOONE, LLP 800 17TH Street, NW Suite 500 Washington, DC 20006
For the Tort Claimants' Committee:	John W. Lucas, Esquire Kenneth H. Brown, Esquire PACHULSKI STANG ZIEHL & JONES, LLP 150 California Street 15th Floor San Francisco, California 94111
	James I. Stang, Esquire 10100 Santa Monica Boulevard 11th Floor Los Angeles, California 90067
For AIG Companies:	Michael A. Rosenthal, Esquire GIBSON, DUNN & CRUTCHER, LLP 200 Park Avenue 47th Floor New York, New York 10166
For Century Indemnity Company:	Tancred Schiavoni, Esquire O'MELVENY & MYERS, LLP Times Square Tower 7 Times Square New York, New York 10036
For American Zurich Insurance Company:	Mark D. Plevin, Esquire CROWELL & MORING, LLP Three Embarcadero Center 26th Floor San Francisco, California 94111

APPEARANCES (CONTINUED):

For Pfau Cochran Vertetis Amala and The Zalkin Law Firm: Thomas E. Patterson, Esquire
KTBS LAW, LLP
1801 Century Park East
26th Floor
Los Angeles, California 90067

For the Future Claimants' Representative: Kami E. Quinn, Esquire
GILBERT, LLP
700 Pennsylvania Avenue SE
Suite 400
Washington, DC 20003

-and-

Edwin J. Harron, Esquire
Robert S. Brady, Esquire
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street
17th Floor
Wilmington, Delaware 19899

For the Coalition of Abused Scouts for Justice: Eric R. Goodman, Esquire
BROWN RUDNICK, LLP
601 Thirteenth Street, NW
Suite 600
Washington, DC 20005

David J. Molton, Esquire
Seven Times Square
New York, New York 10036

-and-

Kenneth M. Rothweiler, Esquire
EISENBERG, ROTHWEILER, WINKLER,
EISENBERG & JECK, P.C.
1634 Spruce Street
Philadelphia, Pennsylvania 19103

APPEARANCES (CONTINUED):

For United Methodist Ad Hoc Committee:	Jeremy W. Ryan, Esquire POTTER, ANDERSON & CORROON, LLP 1313 North Market Street 6th Floor Wilmington, Delaware 19801
For the HMM Claimants:	Evan M. Smola, Esquire HURLEY MCKENNA & MERTZ, P.C. 20 South Clark Street Suite 2250 Chicago, Illinois 60603
For Claimant Sexual Abuse Victims:	Paul Mones, Esquire PAUL MONES, PC 13101 Washington Boulevard Suite 103 Los Angeles, California 90066
For The Church of Jesus Christ of Latter-day Saints:	Jeffrey E. Bjork, Esquire LATHAM & WATKINS, LLP 335 South Grand Avenue Suite 100 Los Angeles, California 90071

INDEX

INDEX

INDEX

(Proceedings commence at 10:11 a.m.)

THE COURT: Good morning. This is Judge Silverstein. We're here on the continued disclosure statement hearing in Boy Scouts of America; Case 20-10343.

I would remind everyone who is not speaking to please make sure your audio is muted. And I will turn it over to debtor's counsel.

MR. ABBOTT: Thank you, Your Honor. Derek Abbot of Morris Nichols Arsht & Tunnell for the debtors.

Your Honor, we appreciate the break we had gotten in the hearing. I think the parties had been hard at work. I'm going to turn it over to Ms. Lauria to detail that for you and get the hearing started if I may.

THE COURT: Thank you.

Ms. Lauria?

MS. LAURIA: Thank you, Your Honor. Jessica Lauria, White & Case, on behalf of the debtors.

Your Honor, we just wanted to provide you with a brief update of what the parties have been up to since we last saw you on Thursday of last week. In particular, as we indicated at that hearing, on Friday afternoon we circulated to the objecting party's revisions to the disclosure statement as well as disclosure statement exhibits that were intended to address the court's statements on the record last week as well as various concessions and agreements that were

made during the course of last week's hearing. That was Friday.

On Saturday we circulated to the parties the plan English chartered organization summary that had been discussed at length last week. Then on Sunday we distributed to the parties revisions to the solicitation procedures.

We received comments from parties on Friday, throughout the weekend. We were on the phone with the TCC until very late last night in an effort to try to continue to narrow the issues that would show-up back before the court. We did, in fact, as you probably saw, filed a number of documents in the early morning hours this morning. Again, we had wanted to file those earlier, but also wanted to give folks the opportunity to comment on them and try to reflect those comments as much as we possibly could.

Walking through, sort of the, what I will call, baskets of documents that are left with respect to the disclosure statement we believe we have substantially resolved the objections to the disclosure statement. I believe we saw an email from the TCC early this morning or maybe it was late last night indicating that we still have four or five issues outstanding with them. There may be some cats and dogs with other objectors. Your Honor, it's our intention to work during the breaks today and, frankly, throughout the course of today to try to narrow those even

further so that we can minimize or eliminate what comes back in front of the court.

On the chartered organization plain English document I know Mr. Ryan is still reviewing that document. We also received a number of comments from insurer parties. I don't believe that all of those have been incorporated as of yet. So we will continue to work today on addressing those comments and making sure that we communicate with Mr. Ryan during breaks to get all of his feedback.

Finally, Your Honor, on the solicitation procedures you may have seen the TCC filed an emergency motion with respect to one change the debtors are proposing there. So we do have one significant issue outstanding that will likely need to come back in front of you at an appropriate time today or tomorrow and that's pertaining to the $3,500 expedited distribution.

I think after listening to argument last week and having a greater understanding of the complications that would present to particularly individuals that represent hundreds if not thousands of claimants in terms of advising those claimants whether to accept a settlement in the context of a ballot. We thought it made sense to remove it, but you will be hearing argument, I'm sure, on that point either, again, later today or tomorrow whenever the court would like to hear that argument.

Other than that the TCC did file their own alternative version of the solicitation documents. I hope I am not going out on a limb by saying I don't think that so much reflective of the distance between the parties other than the point I just noted versus the fact that there was a lot of material being passed back and forth yesterday and we just didn't have the opportunity to drill down on all of the issues on solicitation procedures.

So I think we're also hopeful that we can narrow the issues on the solicitation procedures. So what comes before the court ultimately is something much less then may have been reflected in the filings. So that is where we're at on the documents.

As far as today goes, I mean, we heard the court last week I think we have, sort of, three big things coming up.

One is to the extent the court would like to hear a preview of some of the confirmation objections I think we heard you last week, Your Honor, to suggest that certainly with respect to insurance issues you would like to hear some argument around that because of the impact that may have on the confirmation schedule. We think that many, if not all, of the other confirmation objections were teased out during the course of our three days together last week. So it's really the insurance ones that the court will need to hear,

but, obviously, defer to Your Honor on what would be useful for you to hear today.

We also have scheduling. We would propose to go to that after the confirmation objections, again, simply because we're still working through some of the document issues and would like to close out some of that before we come back to the court.

Finally, whatever remaining document issues and certainly the expedited distributions placement on the ballot or not and the classification issues will need to be addressed at some point.

So that is where I think we see ourselves this Tuesday morning.

THE COURT: Okay. Well, I appreciate the work that has, obviously, been done over the course of the last few days. I have not had an opportunity to review everything that was filed last night. I have quickly run through the redline of the plan and disclosure statement, but that is about it.

So I think we should start with the confirmation objections, in particular the insurance issues. I don't know if the insurers have coordinated. I would say that in looking at some of that over the weekend it seemed to me that the insurers were not necessarily aligned on all issues. I could be wrong, but I think there were a few cross issues.

So I think I will hear from insurers, hopefully have coordinated some.

Mr. Lucas, I see your hand.

MR. LUCAS: Thank you, Your Honor. I just wanted to confirm one thing that Ms. Lauria said that the TCC did file its alternative version of the solicitation procedures, but after reviewing the debtor's markup that was set late last night I just wanted to let the court know that the issues have been narrowed substantially and that if there is a break today hopefully we could resolve the rest of them.

As Ms. Lauria said, there is the 3013 issue which does go to the procedures to some extent and that is still outstanding. But a lot of the issues have been narrowed and I haven't been able to confirm that with White & Case yet today, and wanted to, at least, convey to the court and to White & Case that there has been progress.

THE COURT: Fabulous. Thank you.

Mr. Rosenthal?

MR. ROSENTHAL: Good morning, Your Honor. Michael Rosenthal of Gibson Dunn for the AIG Companies.

Your Honor, in response to your question the insurers have coordinated to a great extent. I think that what you are going to hear is a presentation from me followed by one from Mr. Schiavoni, and then Mr. Plevin; however, there may be others that want to lend their voice. We

have -- hopefully we won't be duplicating for Your Honor.

THE COURT: Okay, thank you.

Let's go ahead then and get started.

Mr. Rosenthal?

MR. ROSENTHAL: Thank you, Your Honor. First, let me say we appreciate all -- can you hear me?

THE COURT: Excuse me, yes.

(Off record discussion)

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: Thank you. Your Honor, we appreciate all the time Your Honor has devoted to this case, not just last week but since the inception of it. I have to say I agree with Your Honor, the statement you made last week that at least from my perspective and over 40 years of bankruptcy practice I haven't seen a case as complicated and also as gut wrenching as this case.

We are truly witness to an American tragedy. The abuse of children by trust Boy Scout leaders across the country. We agree with statements that Your Honor has made that scouting is a mission that should be preserved, but that doesn't mean, Your Honor, that the debtor gets a free pass to ignore the requirements of the bankruptcy code or applicable law. I know it's tempting to approve the disclosure statement and move this case along, but there are some factors I hope that you would consider before you do that.

First, Your Honor, as a prudential matter, we don't believe it's wise for the debtors to send out a vote on a plan that does not represent anything close to a global consensus. This plan is opposed by the insurers, most of the insurers, the TCC, many of the chartered organizations, and a significant number of claimants.

There is just too much uncertainty including about the vote at this point. This may result in the debtors have well less than the requisite support they need to obtain acceptance of the plan and the entry of the channeling injunction. If that is the case the debtors would have wasted tens of millions of dollars in administrative fees and months on an overall confirmation process.

The ultimate resolution may be a new plan, but it also may be a liquidation of the debtors; therefore, it's a scheduling matter. We believe that it might make sense for the court to delay approval of the disclosure statement for two to three weeks to allow further mediation to occur. That mediation might result in additional settlements perhaps, Your Honor, in light of guidance you may be willing to provide today or tomorrow or in a more comprehensive deal with chartered organizations.

Importantly, though, those deals may require amendments to the plan and additional disclosures. And if solicitation has already begun re-solicitation may be

required which will delay the process further. And, Your Honor, we do not believe that a short delay on entry of the disclosure statement order will actually delay the case.

Even if you took the disclosure statement order under advisement for a couple of weeks we could begin discovery now so it wouldn't delay the overall confirmation hearing. And even under a January or February confirmation hearing scheduled, and you will hear more about the schedule later, there still would be ample time for a 60 day voting window that Your Honor indicated was appropriate.

Second overview point, Your Honor, is I know you don't believe that you are ruling on the terms of the plan at this time, and I heard your statement that you don't intend to decide coverage issues even at confirmation, but the proposed plan findings you are being asked to make by the debtors and the supporters of the plan tell a different story.

These findings, coupled with the criteria for allowance of claims by the trust, are an attempt to alter the insurance contracts and obtain awards through this bankruptcy far in excess of what could be expected in the tort system. We will talk more about that later.

I fully realize, Your Honor, that this is your courtroom and you can allow the disclosure statement to go forward without telling us whether you will make the required

plan findings, but in doing so you should understand that, among other things, its sending a clear message to the claimant professionals that you might enter these findings and that will embolden them to take even more unreasonable stances in this case including in mediation.

One of the principal reasons for that, Your Honor, is that the plaintiffs' representatives see in this case the opportunity to use Your Honor to overturn decades of insurance neutrality precedent which they can then trump not just in this case, but in every subsequent mass tort case. That strategy, Your Honor, makes it extremely difficult to reach a global settlement because many insurers like AIG are only willing to do a deal that is both economically sensible and insurance neutral. It doesn't create a precedent that could be used against them in other cases.

In order to put these Chapter 11 cases back on track toward a global resolution, Your Honor, we believe the claimants representatives need to hear a clear no from Your Honor on your willingness to enter the findings. We will talk about the findings more.

Third, Your Honor, allowing the debtors to move forward with a plan that contains the disputed findings will alter the confirmation timeline. Mr. Plevin will talk about how that will extend the timeline. Basically, Your Honor, the debtors and the other supporters of the plan have chosen

to put this before you and that has consequences. One of the consequences is that additional discovery will be necessary.

Finally, Your Honor, I can get to the crux of what, you know, I told you I wanted to talk to you about. I had hoped to be able to persuade you that approval of the disclosure statement is sending us all down a futile and expensive path which is exactly what the Third Circuit's decision in American Capital Equipment sought to prevent.

I recognize this is likely to be an unpersuasive argument today, but alternatively what I'd like to do, Your Honor, is provide you a roadmap for what to look for when reviewing the plan. And when considering this roadmap ask you to keep an open mind about what you can tell the parties today about what you are willing or unwilling to do at confirmation.

So let's talk about the principal confirmation defects of the plan. They fit into three buckets.

The first is the coalition fees. The plan contemplates, as we discussed last week, without requiring any showing of substantial contribution, the payment of the coalition's fees. Your Honor said that this was inappropriate when you denied the RSA, the RSA provisions that dealt with it. The plan proponents have chosen to ignore your ruling and a question that I would ask Your Honor is how does one evaluate duplication of effort and substantial contribution

where the coalition and the TCC both have incurred fees on behalf of the same constituents, but in furtherance of countervailing interests.

Second principal defect, Your Honor, relates to third-party releases. There are a number of issues concerning the discharge of non-debtors such as the propriety of the channeling injunction and third-party releases under Section 105 in the Third Circuit's Continental Airlines decision which will require close scrutiny of the non-debtors contributions to the trust.

Among other things, in this plan there are not only the usual issues with third-party releases, but also the unusual issue that the abuse here occurred not at the hands of the debtors, but by perpetrators who were directly overseen by the non-debtor local councils and chartered organizations. So really the debtor's abuse liabilities are derivative of these non-debtor entities as opposed to the other way around which is the usual way this arises in mass tort cases.

Third, and getting to the heart of the insurers' objection, the plan impermissibly alters the contractual rights of the insurers and requires you to decide coverage issues at the confirmation hearing as it attempts to bind the insurers to liability for abuse claims now despite Your Honor's repeated statements that you would not be deciding

coverage issues, despite the fact that this court has no jurisdiction to determine personal injury claims, and despite the fact that the actual determination of the claim values is going to be made way down the road by the settlement trustee applying in his sole discretion and within wide ranges the criteria and values that you are being asked to approve.

The attempt to alter insurance contracts and binding insurers is accomplished in three ways; by assigning non-debtor insurance interest, by inflating the debtor's abuse liability, and through the insurance prejudicial findings.

Turning to that first aspect the plan requires the assignment of non-debtor rights under insurance policies in violation of any assignment clauses in those policies. We are not aware of any case law or rule that permits this assignment absent consent. The debtors haven't sited any.

In Combustion Engineering the Third Circuit plainly held that the assignment of such non-debtor contractual rights is not permitted under Section 1123(a)(5) or any other code section over any assignment clause. The debtors have cited Federal-Mogul, but in Federal-Mogul the Third Circuit expressly distinguished Combustion Engineering because unlike in Combustion Engineering, Federal-Mogul dealt with debtor insurance rights only.

The debtors claim that they have fixed this with a

savings clause that allows the non-debtor insureds to retain their insurance and pursue their rights on behalf of claimants and then turn over the proceeds to the trust. But to the extent that these work at all, and it's unclear they do, this is merely a de facto assignment of insurance rights and an impermissible work around that contravenes the applicable Third Circuit law.

THE COURT: Why is that? Why would that be an impermissible workaround?

MR. ROSENTHAL: Because we think it accomplishes the same thing, Your Honor. It's the same -- its effectively assigning the rights to the insurance to the trust. It's just a different way to do it.

THE COURT: Well sometimes there are different ways to do things that make them permissible. And if we're talking about a technical assignment versus a workaround assignment if a party decides that they are going to go and pursue the insurance and then provide the proceeds to the trust what is wrong with that workaround?

MR. ROSENTHAL: Your Honor, I think it gets us to the same goal, but I hear Your Honor's statement and it may be that the way it ends up being structured may actually be an acceptable workaround.

The final issue, Your Honor -- the second point I want to raise, Your Honor, in addition to non-assignment of

the -- the assignability of the non-debtor rights relates to the inflation of abuse liability.

The TDP's are expressly designed to inflate the debtor and local councils abuse claim liability and then pass those inflated claims onto the insurers for payment. This strategy was rejected by the Third Circuit in Global Industry Technologies which expressly found that by inflating claims well above historical norms the debtors were, effectively, modifying their prepetition insurance policies by altering the debtor's risk profile.

The insurers aren't attempting to limit their liability, Your Honor. Rather, their argument is entirely different. Their argument, consistent with GIT is that bankruptcy doesn't expand their liability and that a plan that does so is unconfirmable. I want to give you some examples of how the TDP's inflate the liability.

Let's start with the expedited distribution. The expedited distribution has now been increased from $1,500 to $3,500 and it's available simply by signing a proof of claim without any additional showing of proof and most importantly without any of the ability of the settlement trustee to go behind and investigate the proof of claim. That is a process accepting a claim at face value with absolutely no party having the right to contest it, that's wholly inconsistent with Section 502. Even the trustee, even the settlement

trustee, Your Honor, doesn't have the right to object to these claims.

THE COURT: So let me ask you, Mr. Rosenthal, is your objection there, and I realize you may have some points on that, that the $3,500 is being offered or that the $3,500 would be binding on the insurance company in some future coverage action?

MR. ROSENTHAL: It's that it would be binding on the insurance companies in a future coverage action. So what we're basically saying, Your Honor, is that these claims are subject -- should be subject to objections. Some of these claims may be fraudulent claims. They shouldn't be paid the $3,500.

What is happening here is that the trust may be paying tens of thousands of claims that would not be compensable in a tort system at all and that this court would disallow if there was no -- you know, if an objection was filed and the court found that there is no basis for the claim.

THE COURT: But from a practical perspective perhaps paying $3,500 for a claim, a no look claim, might be less expensive then evaluating that claim for the trustee to evaluate that claim, and make a determination, and then pay the valid claims, and then not pay the not valid claims. So this is, I view it, through convenience class kind of issue.

MR. ROSENTHAL: Perhaps, Your Honor, but giving the trustee even a right to object to the claim, even a right to object to the claim would have some -- would have value in terms of causing people to be, I think, more honest about the claims that they assert.

You know, one of the things that we talked about before were the fraud prevention measures in Maremont. So those measures aren't applied to every single claim. The -- you have to prove some things, you have to provide some information when you file your claim, but the value of the measures is that there are audit rights.

So to somebody who gives you information and if you randomly check it and you find out that it's not appropriate you can actually -- you have remedies -- you have an audit right and you have remedies. Here, the failure to allow the objection means that all those claims just get paid.

THE COURT: I think it's a fair comment. What I am trying to tease out from it is, I guess, two things. One, I hear the antifraud concerns. That is something I am concerned about. So I hear that. Second, what I think I'm also hearing is the insurers don't want to be stuck with $3,500 times 10,000 claims for which the settlement trustee is going to seek coverage and argue that you are bound by the $3,500 -- your client is bound by the $3,500 figure.

MR. ROSENTHAL: That's correct, Your Honor. And it gets even worse with the next example I am going to give you.

THE COURT: This example, though, I think is a fair comment to say, I think it would be hard-pressed to, for me to say that $3500 is recoverable absolutely under an insurance policy on -- it might be a fair settlement. I don't know.

In that sense, I suspect I would be approving this because of the convenience class factor, and whether a convenience class factor could bind an insurance company, you know, you may get a fair and reasonable finding, but I don't see how that binds an insurance company down the line, given the basis on which I think I would approve that. So, I think there are two issues there that the insurance companies are fairly raising.

MR. ROSENTHAL: We'll talk about some of that with the findings.

THE COURT: Uh-huh.

MR. ROSENTHAL: Let me go to the second example of how the TDPs lead to inflated claim amounts. And it relates to what must be shown to have an allowed claim, and we're talking not about the $3500.

So, in the tort system, BSA sex abuse claims would require a showing of negligence on the part of the debtors or

another protected party. That would mean that if this Court were reviewing the claim under Section 502, you could not allow it without a showing of negligence. This follows from the uncontroversial bankruptcy principle that, by and large, bankruptcy relies on underlying state law to determine whether a claim should be allowed or disallowed.

Not so under the TDPs. Under the TDPs, a showing of negligence is not required to obtain a base recovery. And, remember, base recoveries can be significant. So, the base recovery for a penetration claim, for example, is $600,000.

Instead, under the TDPs, a claimant receives an enhanced recovery from the base if it's capable of showing negligence. When combined with the requested finding that the TDPs are fair and reasonable, based on the evidence presented, how can this not be an attempt to alter the insurance contracts?

Effectively, this makes the TDPs a strict-liability TDP when the underlying tort is not a strict-liability tort; it requires negligence.

Before the debtors entered into the agreement with the coalition and the FCR, the debtors -- the TDPs actually required the settlement trustee to disallow a claim if he found that the evidence submitted does not support a viable claim against a protected party in the tort system. The

coalition and the FCR completely re-drafted the TDPs so that now a showing that a claim would be compensable in the tort system is no longer a threshold requirement.

Instead, the trustee must now pay claimants, even if they can't demonstrate negligence. And what had been a requirement for a claim is now an aggravating scaling factor, which would increase recoveries.

The next area in which -- and if you have questions, Your Honor, let me know.

THE COURT: Well, somewhere over the weekend, I had written down a note to myself that said, well, what do the insurance companies want that will get them to not object to this plan?

Is this the list that I'm getting or is this just the objections that I'm going to hear, but even if you get all this, you're still going to object, your clients are still going to object to the plan?

MR. ROSENTHAL: Your Honor, I can't --

THE COURT: Maybe not a fair question to ask --

MR. ROSENTHAL: I can't commit --

THE COURT: -- but this is the sort of a lens for which I'm hearing objections.

MR. ROSENTHAL: I hear that and I can't commit to that now; obviously, that's a client decision.

THE COURT: Sure.

MR. ROSENTHAL: But also obviously, what you're hearing from me are the principal concerns of my, you know, of my client and of other insurers.

THE COURT: Fair enough.

MR. ROSENTHAL: And to the extent that those concerns are addressed, I think, you know, the client will have to evaluate what their position is.

THE COURT: Fair enough answer.

MR. ROSENTHAL: So, the third area, Your Honor, deals with the treatment of claims that are barred by the statute of limitations. Under the TDPs, the trustee is not permitted to zero out time-barred claims. This is despite the fact that the debtors' claims expert, Bates White, believes that approximately 59,000 claims are presumptively barred by the statute of limitations and not entitled to a recovery.

Again, Your Honor, I want to draw the difference between the TDPs and Section 502 and how would you apply it. You, Your Honor, I think, would be duty-bound not to allow a claim that was barred by the statute of limitations. Here, those claims are allowed.

Federal District Court Judge Watson of the Southern District of Ohio just ruled last Wednesday in a case involving abuse at Ohio State University that although there was no question that unspeakable abuse had been inflicted on

over 300 victims, the cases could not move forward because the statute of limitations had expired.

So, the allowance of claims that are otherwise time-barred, effectively, allows claims that would not be compensable in the tort system and that would not be allowable by Your Honor if you were reviewing these claims.

THE COURT: Did Judge Watson do that on an aggregate basis or did he do that on a claim-by-claim basis?

MR. ROSENTHAL: I think he did it -- I don't know, Your Honor. I don't know. But I know it was 300 claims that were the subject of that.

Finally, Your Honor, separate and apart from the, you know, allowance of claims that would not be allowed in the tort system, the insurers have an issue with the broad discretion granted to the trustee to increase claim values based on aggravating factors. Now, he can also decrease factors, based on mitigating factors, but there's a nuance, but important difference in the trustee's discretion in this regard that, effectively, will result in increasing the claims, more than in decreasing them.

In the case of aggravating factors, the trustee is almost directed to increase this claim value somewhere between an established range. So, you have to increase it by somewhere between X and Y.

With respect to decreases, however, the trustee

has almost unlimited discretion to decide not to decrease the claim value at all from the base matrix value. There's no recommended -- you know, there's no range that he has to decrease a certain amount if this mitigating factor comes into play.

The only instance where there is a range relates to statute of limitations. So, there is a recommended range for a decrease with statute of limitations, but in some states, the reduction based on a "statute of limitations" bar is as low as 30 percent. So, while there's a reduction, he's still allowing the claim at a considerable amount.

In one of the --

THE COURT: Do you think there can be no scaling factors for the statute of limitations at all for states which currently do not have an open window?

MR. ROSENTHAL: I think that there, I think that the proper way to handle those claims is to defer them, the way this plan does, to see if the window opens. If the state passes survivor legislation.

If, however, it does not, I think the proper way to handle it is either to disallow them entirely or to allow them with a significant reduction, a very significant reduction, over 90-percent reduction. And I think a claimant --

THE COURT: And I haven't, and I'm not sure it's

in the disclosure statement, to know the basis upon which each state was placed in a category, but -- and that's, I assume, information that I would get at confirmation, but I hear you on the "statute of limitations" issue, which is why I asked if it's a binary yes-or-no or if there could be some kind of scaling factors, but I hear you on that.

MR. ROSENTHAL: One of the mitigating, scaling factors the trustee can consider is allocating responsibility between protected parties and other responsible, non-protected parties. This is really sort of an apportionment issue. You know, these -- it's sad to say, but some of these claimants have suffered abuse unrelated to Boy Scouts and applicable law would apportion liability so that claimants are not paid more than once for the same claim.

Here, the trustee has discretion to apportion, but no requirement to do so. And at least so far, there is no provision that actually requires a claimant to certify what other defendants the claimant might have recovered from or have a claim against, so that the trustee can even attempt to determine BSA's allocable share.

And this is, Your Honor, one of the crux issues in the asbestos context, where claimants file claims against a debtor and they have also filed claims against other non-bankrupt defendants and against other trusts created by debtors who previously went into bankruptcy, and it's the

failure to disclose those which makes it difficult to appropriately value the share of the debtor.

So, all these factors, Your Honor, we believe will expand the quantum of abuse liability well beyond the actual abuse liability and any of the projections produced by Bates White. So, they value abuse liability between 2.4 billion and 7.1 billion, based on their opinion that only roughly 20 percent of the claims filed to date are entitled to a recovery at all, much less than the 100 percent that are entitled to recovery under the TDPs.

And under GIT, this inflation of plans alters the debtors' risk profile and is clearly a modification of insurance contracts, which this Court does not have the power to approve.

THE COURT: So, I thought I had the Global Industrial case out here with me -- I don't -- but my recollection of Global Industrial is that at the circuit level, the Court was looking at appellate standing. No, I'm sorry, the Court wasn't looking at appellate standing; the Court was looking at Bankruptcy Court standing and the Bankruptcy Court had determined that the insurers did not have standing to raise certain confirmation objections.

And the Third Circuit, looking at bankruptcy standing, said a couple things, but the quantum of liability raised by the silica-based claims, which had increased from a

couple hundred to 6,000 or something like that, meant that the bankruptcy judge should have permitted the insurance companies to participate in confirmation and raised issues regarding whatever they wanted to raise issues on, but, in particular, I think there were fraud issues, and remanded for that purpose, notwithstanding that the bankruptcy judge apparently had made extensive findings, based on other parties' objections, very similar objections.

I don't think the Third Circuit said that the potential for an increase in liabilities means a plan is not confirmable or that, or necessarily that -- well, I don't think they said it was not confirmable. I think they said the insurance company had to be able to participate and raise the issues and then Global Industrial doesn't end up in front of the Third Circuit again, so I think the insurance companies end up settling, as I recall. We did take a look at what the subsequent history was to see what happened, because it would have been interesting.

So, I think the insurance companies are using Global Industrial a little bit differently than I read it. I read it to give the insurance companies bankruptcy standing to raise the issues they were not permitted to raise below in Global Industrial, but it doesn't mean that there's no confirmable plan out there simply because there may be some increase in quantum.

But I view that differently as I think what you're going to argue to me on findings, so where am I wrong on that, Mr. Rosenthal?

MR. ROSENTHAL: Well, I think on the point that you were just raising, one of the statements you made the other day was you think insurance neutrality is a misused term or maybe a misunderstood term.

You know, I conflate two concepts. I conflate standing, and I think I've said this to you before, I conflate standing with the principle that you are altering the insurers' rights, and that if you -- and that what was really happening in GIT was that the Court said you're increasing the quantum of liability. In that case it was silica.

In this case, the increase is from 1700 claims to 82,000 claims, something like that.

But it's not that increase that we're complaining about. It's actually not that increase. Those are claims filed (indiscernible) bankruptcy, right.

It's more the alteration of the contracts, the standards by which claims are evaluated. And so, it goes to the specific points we were talking about when we were going through the specific items of allowing items that are time-barred, of allowing claims that don't prove the essential elements of a cause of action: negligence.

THE COURT: Okay.

MR. ROSENTHAL: Okay. Now, let's talk about insurance findings. Your Honor, however the Court defines "insurance neutrality," we think the plan turns it on its head and requires the Court to make confirmation findings that, (A), are unnecessary to confirmation, and, (B), strip away key, contractual rights and coverage defenses of the insurance.

Quite simply, Your Honor, the findings seek this Court's blessing today for inflated claim determinations that Mr. Green or some other settlement trustee will make down the road with respect to each abuse claim. These findings will be used to support the inevitable argument by the settlement trustee to the coverage court that this Court effectively entered a judgment about the validity and amount of each claim, a judgment that, as you know, you are not making -- you told us that -- and that you're jurisdictionally incapable of making about a personal injury claim.

You know, so I would (indiscernible) the finding issue or the CliffsNotes version of that is that none of the findings are required and all alter the insurers' rights, which this Court has no authority to do.

So, let me go over the three insurance findings that are problematic.

THE COURT: Yeah, let me get my ...

(Pause)

THE COURT: Where can I most easily find them?

I had them marked in my RSA, which I don't have here.

MR. ROSENTHAL: In the plan --

THE COURT: Uh-huh.

MR. ROSENTHAL: -- if you go to the conditions preceding the confirmation and then --

THE COURT: Okay.

MS. LAURIA: Your Honor, if you have the blacklines that were filed last night, I can give you the precise page preference if that would be helpful.

Sorry, Mr. Rosenthal.

It's Docket 6385-1.

THE COURT: Uh-huh. Okay.

MR. ROSENTHAL: And, Your Honor --

MS. LAURIA: In the PDF, it's 107.

THE COURT: They're in the conditions preceding.

(Pause)

MR. ROSENTHAL: So, the first finding, Your Honor, if you've found it, is Finding R. I think it's R. It's a finding that the TDP allowance procedures are fair and reasonable, based on the evidence presented to the Court and, specifically, the finding is, you know, the procedures including the trust, the TDPs, pertaining to the allowance of

claims and the criteria included in the TDPs pertaining to the calculation of the claim amounts, including the claims matrix, base values, maximum matrix values, and scaling factors are fair and reasonable, based on the evidentiary record offered to the Court.

To us, at least, it's clear how this, that this finding alters the insurers' rights and how it will be used against the insurers. The settlement trustee will bring a State Court coverage action and argue that the Bankruptcy Court, based on evidence presented to it, because it's got to be based on the evidentiary record, found that the procedures and criteria for allowance are fair and reasonable and that, therefore, the determination of claim amounts that flow from those procedures and criteria, you also blessed and bind all non-settling insurers to whatever number the settlement trustee has determined is the appropriate amount of a particular claim.

This finding an effectively a determination that every personal injury claim allowed by the trustee has your stamp of approval, because you've approved the procedures, the criteria, they're fair and reasonable, you've had a record.

But, Your Honor, as you know, you don't constitutionally have the jurisdiction to do anything of the sort. And it's also clear why, even if you were inclined to

make this finding and had authority to make it, substantial discovery would be required.

They're asking you to make the finding based on the evidence. At a minimum, you can't possibly make the evidentiary finding without, as a matter of fairness and due process, giving objectors a reasonable opportunity to gather and provide their evidence in opposition to the evidence that we know will be presented by the coalition and the FCR.

If you move to the next finding, Your Honor, this really fortifies; Finding S fortifies the first one. That finding is that an abuse claimant's right to payment is the amount at which such abuse claim is allowed under the TDPs.

And in my outline, I have highlighted "is the amount at which is allowed." So, effectively, this finding confirms that from your perspective, the claimant's right to payment is the amount determined by the settlement trustee; that's what it says, "claimant's right to payment is the amount at which it is allowed."

And you made it a point to say, last week, that you weren't going to be evaluating individual insurance policies in determining whether an insurer right or might not have to pay a, as a result of the bankruptcy. But if you look at this finding, Your Honor, it's asking you to make precisely that determination. It's asking you to determine now that a claimant is entitled to be paid the amount at

which its abuse claim is allowed under the TDPs.

THE COURT: Well, don't I have to find that? Don't I have to make a finding that relative among claimants, at least, right, that the amount that the settlement trustee determines is the allowed amount of their claim -- "allowed amount" is, I guess, a loaded term -- is the amount of the claim so that, in fact, a *pro rata* distribution can be made?

MR. ROSENTHAL: I don't think you have to, Your Honor. I don't think you have to make that as a confirmation finding. I think this is an agreement -- what the TDP is, is an agreement among the claimants and the FCR as to how they're going to allocate whatever value comes into the trust. And I don't think that your stamp of approval on that can be -- is inappropriate and can be terribly misused.

THE COURT: Well, this is the Fuller-Austin issue, right, this second one here?

MR. ROSENTHAL: This is the Fuller-Austin issue, but the way the finding is structured, it's more than the Fuller-Austin issue, because it's not just -- because the way it is structured, in conjunction with the first finding you're talking about is, you know, is the amount at which it's allowed under the TDPs.

It really does -- let me give you an example, and there's another -- T is a different finding, you know, that the plan and trust distributions procedures were proposed in

good faith. But what I really want you to focus on, I think, is if you suspend reality for a second and you take yourself off of this bench and you put yourself on a --

THE COURT: Can I do that? Can I really do that?

MR. ROSENTHAL: Well, you may not want the second part of my assumption.

(Laughter)

THE COURT: Okay.

MR. ROSENTHAL: And you put yourself on a state coverage court bench --

(Laughter)

MR. ROSENTHAL: -- where, you know, you are looking at bankruptcy. And what you see in bankruptcy -- because you're not a bankruptcy lawyer -- is a confusing amaze of Code provisions that is, you know, overseen by a bankruptcy judge, a thoughtful bankruptcy judge.

Now, from that seat, Your Honor, can you honestly tell me that after reviewing the findings that you would have entered if you agree with the proponents, you would not be inclined to conclude that the Bankruptcy Court had stamped its approval on the claim values. I think you would conclude that you stamped your approval on the claim values.

And that's precisely why the coalition and the FCR, with the support of the debtors, want these findings. And it's also why the insurers think it's important not only

that the plan, you know, be insurance-neutral, but that you give direction to that Court to say, yes, I am confirming the plan. I am doing my job. I am approving the plan under the confirmation requirements, but I am not, I am not determining whether any insurer is liable for them. I am not actually determining the claim values. I am not finding that the TDPs represent judgments.

Remember that Mr. Zalkin told the Court that he had been told by the claimants' representatives that what they were trying to do is, and what they thought they would get out of this case, is get Your Honor to issue findings and orders that effectively represented judgments, with respect to the claims.

THE COURT: So, what do you think I can do?

MR. ROSENTHAL: I think you can approve the plan. If you believe it's appropriate, I think you can confirm the plan. And, you know, say the plan has been proposed in good faith, the plan complies with the provisions of the Bankruptcy Code that are in 1129, but not bless the claim determinations that come out of the TDPs. You know, that, Your Honor, is something that should be reserved for -- the TDPs can do whatever they want, but when they go to collect from insurers, they will have to demonstrate that those claims are entitled to be covered under the policies. And they shouldn't be able to rely on your findings in any way,

shape, or form, to make that argument.

Now, you raised a good question. Is there an intermediate position that you might be able to take, the plan treats everyone the same, you know, that treats substantially similar claimants the same?

Maybe. But I think if you did that, you would have to make it very clear that that was the extent to which you were going. You were not putting your stamp of approval on the amounts that came out of those TDPs or that they were covered by insurance.

I'm not even sure you need to do that. This is not a 524(g) case. You don't have to make 524(g) findings. That would be required in 524(g), but this is not a 524(g) case.

THE COURT: Well, I have to say that I don't know that sitting here, I know every finding I need to make to confirm a plan, because I don't know exactly what objections are going to be posed to me in what fashion, and that's hard to know until we see them, until we know what the vote is, until we see what issues are raised. And so, that's why it's hard to anticipate -- I wouldn't say there's a vacuum -- I've heard a lot of confirmation objections, but I haven't heard them in the context of a solicited, voted plan that's in front of me.

And I can anticipate that I would need to make

some findings for confirmation purposes and on a record that's built at confirmation with respect to the TDPs and maybe the values in the TDPs, depending on the objections that I get.

MR. ROSENTHAL: If you are going to make the findings, I would think you would need to consider all the evidence, but, I mean, this goes to the point that, you know, we don't think that these findings truly have anything to do with confirmation and they bring with them, a total, in terms of timing and cost. And, you know, they put you, frankly, right in the middle of claim determinations, with respect to personal injury claims, which I don't see how you can do.

I mean, if you make a finding that the, you know, that $600,000 is the appropriate base amount and that the range for -- and that that should be allowed, notwithstanding no finding of negligence, and that the range for a demonstration of negligence should increase that by X or Y, and you're giving the trustee full discretion to determine whether it's X or Y or somewhere in between, Your Honor, I think you are effectively putting your finger on these claims in a way that certainly a coverage court may very well think you've made the determination now, even though the actual determination of the amount is not going to be made later by the trustee.

And I think that's the opposite -- I think that

alters the insurers' rights, to -- that alters the insurers' rights, and it is something that Your Honor cannot do in bankruptcy and does not need to do.

THE COURT: Well, I don't see how I would be determining and fixing the amount of any particular claim, but I do think, again, depending on the objections I get, that I may have -- that I have to determine that the TDPs set up an appropriate process for the settlement trustee to exercise his discretion within. It's not grammatically great, but okay.

So, because we don't send the claims to a trust with no guidance on how to evaluate them; there has to be guidance on how to evaluate them, so that all of those claims are evaluated consistently and share appropriately from the pot. So, I can't just say, hand them over and say, figure it out, with no guidance; with no guidelines, nobody understands.

Well, maybe I could -- I don't know -- I guess that's what a judge does all the time, but I don't think that's the way this is historically done.

MR. ROSENTHAL: I don't think courts get down into the weeds and say -- I mean, are you going to get down and say that the base value should be X for this kind of abuse and Y for the other kind of abuse? Are you going to make a judgment about the amount of the uplift or down lift that

occurs for certain factors?

Because if you get it, if you think that you can or should get into that, I think you're, with respect, Your Honor, I think you're going far beyond what you are -- not just what you're permitting to do, because I -- but I think -- not what you're constitutionally permitted to do, jurisdictionally permitted to do, but what you're permitted to do under the Bankruptcy Code.

Because you said it a couple times, you can't alter the rights of the insurers. The insurers have the right, you know, under their contracts they have many rights, including the right to, you know, participate in settlements and approve settlements, the right to take over the defense of these claims. You know, they -- what you're effectively doing is forcing them to come, because they don't know what effect a State Court will have, based on what you rule, but they have a strong suspicion. My example is exactly what a State Court would do. They have to come here and litigate not only the appropriateness of what you're being asked to do, separate and apart from the values, but also the values.

THE COURT: Well, would you agree with me that I may have to determine an aggregate number, an aggregate value for the claims in some context at confirmation?

MR. ROSENTHAL: Why do you think you need that? No one has asked you for that.

THE COURT: I kind of thought somebody had.

MR. ROSENTHAL: They had before, but I don't think there's anything currently on the table for that.

THE COURT: Okay.

MR. ROSENTHAL: Look, I think --

THE COURT: This is why it's hard to have a discussion in the abstract.

MR. ROSENTHAL: Do you know how the TDPs, how most TDPs work?

Most TDPs, well, I'll -- most TDPs, you know, they apply similar criteria. Most TDPs that we know recently are asbestos-related, but, obviously, you know, there are other mass torts that have become more prominent in terms of cases.

So, what the TDPs generally do is they do treat everyone similarly situated in a similar manner. That's something that 524 would require. But, at the same time, they do that and they don't need, necessarily, to have estimates of the overall value, because they pay to the claimant, they do an assessment of what the assets are at the time, and they pay to the claimant a payment percentage -- not the full amount of the claim -- but a payment percentage, based on the assets at the time.

And if they subsequently collect additional assets from additional insurance or if they had other real property assets and they sold that real property and they subsequently

are able to pay a supplemental distribution on account of that claim, then they would make another assessment three months down the road or a year down the road and say, okay, we paid the claimant 10 cents on the dollar, because that's all we had on day one. We thought we were going to have, you know, 80,000 claims. We had a claims expert. We thought we were going to have 80,000 claims and based on the information that we got from the claims expert, we were able to make an initial distribution of X percent on the dollar. As further monies come in, we can supplement that distribution.

So, while there are determinations made by the trust from time to time about what the claims would be, and those are used for determining the payment percentage, primarily, so, you know, in some cases, Your Honor, courts do make estimates of claim values. In other cases, they do not.

In that, you know, Garlock case from six or seven years ago, and it turns out to be a lot longer now, the parties, there was a huge fight about what the claims estimates were, because the parties were worlds apart. And the debtor pressed for an estimation and there was a lengthy estimation process in that case. The result of the estimation actually led to a settlement, but that's not the case in every case.

So, Your Honor, let me just -- I thank you for your time. I know it's taken quite a bit of time, and I am

happy to answer any more questions you have, but I will just say in closing, we agree with the debtors that further mediation may very well bear fruit, but, unlike the debtors, we believe that so long as the possibility exists that Your Honor might embrace the insurance prejudicial provisions and findings, the claimant representatives have every incentive to be, frankly, unreasonable, even at the expense of outcomes that would be better for everyone in the case, because their desires, and I mentioned this at the outset, I believe their desires exceed the four corners of this case. They want to make new precedent that they can use in other cases.

But without a true global settlement, these cases will drag on for months, possibly years, through appeals, and during that time, legitimate claimants will suffer the consequences as they wait for meaningful compensation.

So, we believe that approval of the disclosure statement and commencement of solicitation, without at least a strong admonition that the proposed findings render the plan unconfirmable, not only imposes an obstacle to a global resolution and a quick exit, but it leads the debtors down a costly and expensive path to solicit votes on a plan that's not confirmable, in our view.

Your Honor, thank you for your time. I appreciate your thoughtful questions.

THE COURT: Thank you.

Mr. Schiavoni?

MR. SCHIAVONI: Your Honor, I was candidly going to rely upon, stand on my papers, but if you could just hear me for 10 minutes, I would appreciate that.

THE COURT: Okay.

MR. SCHIAVONI: There is an overlay I would just like to put on Mr. Rosenthal's comments. I would like to bring Your Honor back to my argument about Combustion Engineering and the reversal that took place in Combustion Engineering, because I think it's important in how one looks at this case as one goes forward.

Your Honor, in Combustion Engineering, what the Court -- there's a key phrase in there, from my perspective, that the Court talked about, and what it talked about there in giving guidance on how to look at these kinds of cases is it looked at the elaborate steps that the debtor had taken with this group of claimants that had, as it terms, either stub claims or weak claims or potentially non-compensable claims, in order to sort of jimmy up a majority vote for a plan.

And what the Court said in there was something to the effect -- I don't have the exact quote in front of me -- was that one could, by, you know, individually, you know, take steps that look like they comply with the Code, but overall, those steps combined, were -- in that case, the

Court was concerned -- were really intended to avoid the purpose of the overall Code. And in there, what they were focused on was the importance of an affirmative vote by an impaired class and whether they really had an impaired class there or not; in other words, an individual, if you just looked at it step-by-step, they might comply and on other things, not comply.

Your Honor has earned a well-founded reputation as a balls-and-strike judge who takes each issue presented to her and tries to call it fairly, and that's appreciated by everyone. But if you look at how these different steps over time combined, and then you look at the result on the back end, which is what you hear from the TCC talking about a hundred-billion-dollar payout here. And you see it in various other papers and it's inflamed the claimants.

It's like, and then you compare it to with what we started here, which was a Defendant in the tort system, which had definite problems and, you know, even if there was only one abuse claimant, it was a horrendous problem, but when they filed, they had 275 claims and a thousand alleged, and within just a few months, they generated 80-plus-thousand claims through the use of these, you know, for-profit aggregators.

And now, we're on a path where they're saying they're going to get a -- it's like they think they've got a

plan where they're basically saying they're going to hand it to a trustee at the end of the case and he's going to prove-up claims and, you know, you've heard it from the TCC, there's a hundred billion dollars that's going to come out the back end. And if that happens, that will cause enormous damage, enormous damage beyond the scope of this case. The notion that one can just print money and it not have an impact is wrong. It will have tremendous damage.

But let's just look at some of the components on how we got there. But as a starting point, just in some of the exchanges that you had with Mr. Rosenthal, I want you to think about how this term "TDP" evolved and really what it is, okay. It's a trust distribution procedure. It's just that. It's how a settlement trust, you know, allocates money out among its claimants.

It's not too different from in regular District Court litigation where you have class actions, money is paid, and then the settlement trust makes and allocates out the money. And the Plaintiffs' lawyers can have wide discretion in sort of how they make those allocations, how they spread the money around among their various claimants.

They can, in that sort of situation, if that's all that's happening, they can have the trustee, you know, make various presumptions in their favor and, you know, they have wide discretion on how they might allocate money.

What these are, and what the word "TDP," it means trust distribution procedure. It doesn't mean trust adjudication procedure.

It's like the findings that Your Honor is being asked to make and what's embedded in the TDP, itself -- and, you know, there's various texts in there that they want you to approve -- converts this into just that, from just an allocation procedure among the claimants about how they're going to allocate the money among their claimants, into a trust adjudication procedure where, effectively, you know, a gentleman selected by the claimants with procedures picked by the claimants is then going to, quote, determine the liability of the debtor.

And it's utterly and completely at odds, that process, with what's contemplated by the insurance contracts here. In large measure, it explains the entire difference between why there were 275 claims in the tort system when the case started and why there's 80-plus-thousand claims right now.

In the tort system, and under the policies, there was a process, whereby, someone with a stake in the game would first make an assessment about, you know, whether or not the claim should be settled or not. If it wasn't settled immediately, it would be, then, presented in the tort system, where the burdens of proof would be placed on the Plaintiff

and various levels of proof would be required and good claims would be, you know, vetted out from bad claims. That's a process that's tied to, and built into, how the insurance contracts work.

This trust distribution procedure, if all the Court is approving is, look, this is how they're going to pass the money out among the claimants -- fine -- but if it's converted into a trust adjudication procedure, it's completely different from the tort world. No amount of presenting evidence about what a particular claim might get or might not get in the tort system changes the fundamental nature of this, which is, there is not an independent, you know, judicial official with the Rules of Evidence and the burden requirements set in the tort system, making an adjudication of what the claims are worth.

The TDP specifically, basically, makes the -- flips the presumptions and the burdens of proofs on their head. There's even a provision in the TDP that says that if the trustee effectively determines that there's no evidence at all supporting a claim, the claim (indiscernible) be dismissed; instead, the claimant shall be given an opportunity to sort of rummage through the Boy Scouts' files that are turned over to try to, then, come up with some evidence to make a claim out of what he finds in the files of the Boy Scouts.

It's utterly and completely a different procedure than in the tort system. It's not an adjudication procedure at all; it's an allocation procedure. And what the claimants have tried to do in drafting these TDPs is flip it around into an adjudication procedure.

Now, when I say Your Honor calls balls and strikes going through, I think you did, you know, and let's walk through some of those. When the bar date order was presented to the Court, the Court, you know, looked at that order, I think, strictly under the Code and Your Honor made decisions and approved the proofs of claim as it went forward.

But what happened?

It's like the proof-of-claim form, in fact, only has a few questions about the claims. There's a number of -- you know, there's like 15 questions in total. There may be a little more, you know, I'm not -- I don't want to bind myself to 15, exactly, right -- but the bulk of the questions, numerically, are things like: Where did you go to college? Where do you live? Things like that.

The questions about the claims only come down to a couple. As we argued then and we've argued on appeal, there was no requirement in the proof of claim that sufficient facts be laid out in order to establish the elements of the fact a claim against the debtor in the various states in the union.

And as you heard from Mr. Rosenthal, it's like, that's not insubstantial because there is not strict liability for these types of claims. One has to establish in the different states, different levels of evidence, including negligence, and there's not strict liability.

I think what Your Honor, in a show of your further diligence, I think you said at one point you looked at, you pulled some random proofs of claim to look at yourself. And, you know, I have every sense that you looked at a variety of them. They tell different stories and different levels of detail, but the bulk of them really just lay out that the person, you know, to the extent they do this -- by the way, many don't even assert abuse by Boy Scouts or in Boy Scouts. There's a whole package of claims that just talk about abuse in their families.

But the ones that do talk about Boy Scouts or say something about it, you know, many of them just laid out that, in fact, the person was abused and not much further. So, the proofs of claim, themselves, you know, provided the most bare-bones, you know, setout of what the claim was about.

Overlay on that, that there was, you know, extremely comprehensive confidentiality put over the claims so that, you know, one is effectively, completely prohibited from -- there's no way that we can take the information even

in the proof of claim and we can't speak to spouses or family members or others, you know, referred to in the proof of claim, because all of the contents of the proof of claim are deemed confidential.

So, the ability of third parties and the debtor to, you know, but mostly third parties, to investigate the claim, based upon what the proof of claim, you know, the contents of it, which, to begin with, are incredibly bare-bones, is incredibly restricted. You know, we tried, Your Honor.

You know, even if the proof of claim said that I was abused, you know, in a public spot where others were witnesses, we couldn't take the proof of claim and send a private investigator to speak to other people and say, look, this was asserted in a proof of claim that this happened on this day by Mr. Johnson, did it happen?

We would breach confidentiality under the proof of claim to, you know, even pursue that investigation. So, the ability to investigate the claims on this very sketchy proof of claim was incredibly restricted.

We tried to deal with that in a responsible manner by the 2004 motions that we brought before the Court and trying, selectively, to get at groups of claims, how they were prepared and to get at individual claimants, you know, to establish, you know, some of the *bona fides* of the proofs

of claim.

We've not been able to take depositions. And, you know, I've got it, Your Honor is sort of suggesting perhaps maybe now we can do it, but it's like we have not been able to do any testing of the proofs of claim directly and the ability to test the proofs of claim for what they say is incredibly harshly restricted by the confidentiality provisions.

So, what do --

THE COURT: Let me ask this question. Let me ask this question, Mr. Schiavoni: Isn't the insurance companies' involvement with the proofs of claim inconsistent with the position that the trust distribution procedures don't matter, that they shouldn't matter to the insurance companies, because they should be insurance-neutral, that I shouldn't be making any decisions.

Because if I'm not making any decisions with respect to the trust distribution procedures, why do the insurance companies care about what's in a proof of claim?

MR. SCHIAVONI: So, Your Honor, I think I'm sort of building to that kind of -- to give you the answer to that question.

THE COURT: Okay.

MR. SCHIAVONI: Because the bottom line, is the proofs of claim are completely untested at all. It's like,

we then -- and this goes to, again, Combustion Engineering, that each step along the way might, might have been proper, but in combination, what does it give us, okay?

It's like, so the next step here is the Court, you know, decides to send these out, you know, with each claim, with each proof of claim getting one vote without any of them tested. And a key element of 502, the whole thought on how 502 would work was that if proofs of claim are out there and then people vote based on it, that, in essence, there's some validity to the vote because all parties in interest would have had an opportunity to kind of test who's voting, so to speak, right. That's like a core element of 502 was that the reason why you get a vote, like, votes would be allowed is because people could object to the people voting, okay.

But if there's been no ability to test the votes and then, you know, we then have the vote going out without any of these, it's like without really knowing whether this is a good vote or not, because no one has really been able to test the votes.

And what's happened is like what's happened, I think, in Combustion Engineering. The debtor has aligned itself with a group that purports to, you know, bring about the majority vote and it's then an untested vote, based on the proofs of claim, because we didn't have the ability to test it.

And what, then, is embedded in that?

Exactly what the Circuit was sending back for discovery in Combustion Engineering; a plan comes out that has incredibly loose distribution procedures. Again, I don't think they're adjudication procedures; they're distribution procedures.

The claimants didn't embed in here, and the debtors certainly didn't, requirements that, you know, strongly encourage the vetting out of good claims and bad claims. That's not -- it's like you'll hear evidence on what these proofs of claim do, but that's not what they do.

It's not like they've appointed, you know, a former head of the FBI to run the trust; they've appointed someone who you'll hear evidence about, and if it's somebody else, it's someone still, nonetheless, who effectively is going to be controlled under these governance procedures by the so-called TAC in how they're going to make decisions.

This is -- it's -- the procedure that ends up coming out of the plan, you know, is one that approves these lesser claims. And again, this is the complaint, fundamentally, that was being made by the Kazan claimants, who prevailed in Combustion Engineering, that the plan process then was hijacks by who was being allowed to vote. And you know, so that's the sort of -- I don't know if we're on the third of fourth step here that combines together on,

you know, a path where one might have said -- again, each one of these was, you know, in good faith, decided by the Court. But where does it leave us, you know, ultimately, and sort of where the result takes us.

So, you know, then what happens is the debtor also, as part of the plan, in agreement with the coalition, to get their vote, agrees to assign their -- all of their rights to object under 502 to the -- to this trustee. They do it without the consent of the insurers. And that -- you know, in an insurance coverage court, like that would be like a really, really important, you know, right of ours.

In writing these contracts, the contracts directly tie the consent to settle, you know, to -- you know, to the -- it's an essential right to the contract. It's like, when folks issued insurance policies, they didn't issue a blank check machine to their policy holders to settle cases willy-nilly, any way they wanted. It -- they said, to the extent they took on a defense obligation and an indemnity obligation, it was -- it's absolutely tied in the contract that it's we would get -- it's like we can make a decision to settle or we get to defend the case.

We didn't say you can -- you could settle eighty -- you could create a system where you could get out from your liability and create a system where you have -- you could then willy-nilly, you know, settle 82,000 cases for any

dollar volume you have. But that's embedded in the plan, that, without our consent, they're assigning all of their objections to the claimants, to the claimants' appointed trustee, to impose and -- or decide.

And how is he doing it? Well, I don't think anyone can look at those trust distribution procedures, at the end of the day -- and again, I don't think the focus, frankly, should be whether X amount for this kind of claim or Y amount is a fair amount. I think it ought to be on how the decision is made to determine that, if it's going to -- if it's going to, you know, bind us and apply to us because it's -- the procedure is not any -- you know, again, it's nothing like what's in -- we would anticipate in the tort system. It's simply the plaintiffs themselves basically applying procedures that they have blessed, agreed upon, I would say drafted if we had the evidence, you know, to confirm that, that the trustee presumptively will give them a claim for almost anything.

Even on the statute of limitations, by the way, he's given really sort of wide-ranging ability to basically deem the statute of limitations as set aside. You know, and it's not just a scaling factor down. It's like he can set it aside, but -- in very -- you know, based upon the exercise of his judgment. That's not at all what would happen in the ordinary course.

And it's like -- now there's two other things I'd just like to build into this before we come to the end. And it's like, yeah, you're going to be asked to make good faith findings in connection with the plan itself and how the debtor and local councils acted. And we did talk about this a little bit in connection with the disclosure statement. But look at -- it's like you will get evidence that you will see about what -- when they were negotiating with their money on the line -- and they had money on the line because the policies for half the period of time have significant retained limits and/or deductibles, where they were directly liable, the nondebtors, the nondebtor local councils and the Boy Scouts.

And what's the deal they struck? The deal they struck that they was at arm's length was they settled the -- they settled this volume of claims somewhere -- if you -- I don't think this is a fair way to sort of analyze like how the money is changing hands, in some ways. But it's like three to $6,000 a claim, if you just -- if you spread it equally. And that's what they paid, that's what they negotiated at arm's length when their money was at issue.

And you saw it when we walked through for the individual local councils that many of them are not even contributing a single retained limit/deductible -- whatever one wants to call it -- for, you know, even one policy that

falls in those periods. It's like that would reflect what they thought the claims were really worth.

But when they turned the pen over and gave it to the claimants to say go draft a TDP, okay, it's like they generate something that, you know, theoretically, from what they say, generated a hundred-billion-dollar outcome. That's not consistent with -- it's in no way consistent with, you know, looking at those TDPs as, quote, an "adjudication" of their liability.

It's like I -- you know, you'll hear evidence from this on us [sic], but it's like I don't think one can say that, if the local councils settled for $3,000, and as part of that capped its liability, and then turned around to the trust -- the claimants and said, okay, draft a TDP and pick your trustee to decide what the insurers should pay, that the Court can turn around and enter a finding that says that that trust adjudication procedure represents what the debtor is liable for or what the local councils were liable for. If it was, they should be putting a lot more money in.

And you know, you heard some argument before that this was us arguing out of, you know, two sides out of our mouth about what they all ought to pay. Hopefully, you've heard a little bit more about this and you understand now what I'm talking about. It's like they can't be saying that, if they paid not even a full deductible or retained limit,

you know, to resolve their claims in total, that somehow it -- you know, what they're giving the trustee represents their, quote, "actual liability."

So, yes, that finding is completely toxic to us because of how we think the plan here has, step by step, you know, abused what the Code is really intending. And there's a series of bankruptcy objections that are built into how these steps sort of combine, you know, including that we think the vote will fundamentally be bad at the end of the day, but that make these findings just terribly toxic.

And they do something else. It's like it's created this specter you have in front of you of not just the insurers objecting, okay, because of -- like it's made the case virtually impossible to settle with the claimants if they are to think that they, themselves, will decide what all the claims are worth. I mean, one can imagine, you know, what that kind of discussion would be like.

And Judge, God knows we've tried -- we have worked to settle this case. I mean, Mr. Ryan and I worked very hard in the Blitz case and we settled a very difficult case together. And as I know, your patience with me as an adversary has been epic, and I appreciate that. But I just -- trust me that we've -- you know, we've worked very hard to try to resolve the case. It's made almost impossible by this dynamic.

And it's not just us, it's the claimants themselves are at each other's throats over this because there's no process by which -- you know, none of them -- neither constituency is able, really, to stand up and say we need an aggressive procedure here to whittle down the claims or to focus the money on the more high-value claims. They're almost institutionally -- and I'm not -- in some ways, I'm not even faulting them for this. But it's against -- you know, it's like they'll be called traitors by their own constituency if they do it, but it's like they're unable to do it.

The U.S. Trustee we've reached out to on this. And I mean no fault, the U.S. Trustee is doing a fine job. But they're not going to step forward into that role. You know, so there's no one else in that role in the tort system. It would be us doing that.

And to be clear, the debtor had that option. All right? You know, you heard in Imerys how, at one point, Imerys -- J&J stepped forward and said, you know, lift the stay, let the cases go forward in the tort system. There were CIPs before the debtor. You know, you heard, I think, even some evidence during the RSA how Hartford put forward, you know, a claims procedures that just passed the claims -- the tort system. All of those were rejected because this is just more favorable, letting the claimants decide what their

own claims are worth and having the Court issue a finding that hey get to adjudicate -- that that adjudication then is binding on the insurers.

And yes, it's like will a subsequent state court case -- court be confused about that? Absolutely. It's like absolutely. And that was -- you know, in some ways, it's one of the teachings of that Fuller-Austin decision is just sort of, you know, how the trial court there was confused in the first instance by, you know, 1129 findings, you know, without any description of really what they were about being presented to the, you know, court there.

So, look, that's an overlay on what Mr. Rosenthal said. I -- you know, it's -- it makes -- all of this infects, you know, what's necessary for discovery because, you know, it's like the claimants are asserting that basically all coverage issues need to be side -- decided here. It creates a nest of complex evidentiary issues. It -- you know, for instance, like the complete blocking of us from getting any evidence at all about how the TDPs were negotiated, if that's even, quote, the right word to be applied here, when they otherwise were going to seek findings on the -- you know, that they were not in good faith. It's like we'll have motions on all of those issues and just -- it's just making it incredibly difficult to deal with this in a three-month period.

I mean, in three months, to package these issues, for them to them come out and say there's a hundred billion dollars' worth of liability on the back end, it's like these findings are just utterly unnecessary. They're unprecedented, really, because other courts have looked at this as distribution procedures and not adjudication procedures.

And if you go back through most of the mass tort cases that have been decided, yes, it's true that like, by the time they got to confirmation, the cases -- more or less, many of them had resolved themselves to the extent appeals were taken. You know, not many of them got through to like post-claim, you know, adjudication.

What's made this one just particularly difficult to -- you know, to reach any settlement is that the claimants are taking a strong run at like having this Court decide that these are adjudication procedures. And it's like just made it impossible for folks to decide things. So that's an overlay.

I have one brief argument I'd like you to consider on -- you know, on -- I do think some of the findings should be dropped, you know, or the Court should have encourage them to be dropped because it's going to infect discovery going forward. We'd ask you to -- perhaps to keep an open mind on that until you hear the discovery schedule argument.

But there's just one other thing that I think -- and it's not really an insurance issue, per se, but this thing about the coalition fees. I know Your Honor probably feels that all of the issues we've talked about can be dealt with at confirmation. You know, you've heard, respectfully, why we disagree on that. But you know, we -- you know, we all listen to the Court very closely.

But there's an issue that can't be -- the bell can't be unrung on, that I would suggest that there -- you know, it might make sense to address, you know, now. We might even try to bring a summary judgment motion to do it -- if that's what Your Honor wants, before solicitation. But that is, again, this issue about the fees being put back into the plan.

I just think having those -- the coalition fees in the plan is -- it's going to raise issues about tainting of the vote, one way or the other, no matter what, and that -- it's like, consistent with your pre -- the Court's prior order, as I seem to -- as I understood it, was that basically the coalition would be free at the end of the case to bring a motion on to seek its fees, and that that motion would make its -- you know, present its case on whether they had, quote, "made a substantial contribution" or not, and that they would present evidence, et cetera, along those lines.

I see no prejudice to the coalition being to --

you know, that that's the way to do it and that it shouldn't be in the plan. It's like having it in the plan, you know, creates this whole specter that the vote is tainted by what we believe to be a conflict associated here. And we will argue that there is a conflict because of how the majority of the coalition clients declined to be Brown Rudnick paying claimants. And now Brown Rudnick is imposing, in essence, those fees on them through the plan itself.

And we think, as we've said, that that's tied directly to the master ballot issue and how they're trying to, you know, basically, you know, get the claimant lawyers themselves, who are, in fact, taking 40 percent of the money here, to, you know, bring about that master ballot vote. So we think that should come out because it can't -- that bell can't be unrung.

We also think that's -- although it's the tail that's wagging the dog, it's one that is just -- is encouraging the case not to settle because it's promising them another $900,000 every month that they litigate the case, instead of trying to work to resolve the case, so I'd ask you to consider that.

And thank you very much, Your Honor, otherwise, for hearing us.

THE COURT: Thank you.

Mr. Plevin.

MR. PLEVIN: Your Honor, I will be very brief, and I'm not going to veer into scheduling at this point. I just want to tie together a couple of things that Mr. Rosenthal and Mr. Schiavoni said.

Mr. Schiavoni said the policies here are not check writing machines. And why is that? If Your Honor were to look at the actual policy language, you would see that the insurers have to pay in only two circumstances:

First, when there's a judgment after an actual trial. Obviously, "actual trial" means a trial, an adversary event with people on both sides putting in evidence. There's case law that says that a settlement by a debtor with its creditors is not an actual trial. That should be self-evident, but that's the first time that an insurer has to pay. And obviously, a judgment after an actual trial carries certain -- it shows that it's a real result because a jury or a judge has made a decision based on evidence presented in a contested proceeding.

The other instance in which an insurer has to pay under the policy language is where there is a settlement in writing, agreed to by the insured, the claimant, and the insurance company because, as Mr. Schiavoni pointed out, the insurers have the right to defend claims, and that includes the right to settle claims. And so, if an insurer settles a claim, it takes on an obligation to make a payment pursuant

to a settlement agreement.

Those are the only circumstances in which an insurer has to pay. And when you talk about what Mr. Schiavoni called the "trust adjudication procedures," versus trust distribution procedures, you see that.

Now how does this play out in the coverage context? You asked Mr. Rosenthal a question about this. What would happen outside of the bankruptcy context is, if an insured settles without the consent of the insurance company, often they'll do so because they'll say the insurer isn't defending or the insurer is not -- hasn't accepted a reasonable settlement offer and is hanging the insured out to dry.

But if they settle on their own and then seek insurance coverage, the insurer has the opportunity to litigate in the coverage case whether the settlement was reasonable because courts will often allow an insured to settle, notwithstanding the insurer's right to be involved, if the settlement is reasonable. And then, in that case, the coverage case -- the coverage court looks at how the settlement was entered into, was it at arm's length, how does it relate to the amounts being sought, what were the defenses that were being asserted, and can make a determination as to whether the settlement is actually reasonable.

That's not the situation that we would have here

because, in that litigation, it's the -- the arguments are being made by the insured on the one hand and the insurance company on the other hand. And the insured says I think this is reasonable and here's why; the insurance company says I think it's not reasonable and here's why.

But the one thing that the insured doesn't get to do in that circumstance is to say, not only do I think it's reasonable, but here's a confirmation order by a Federal Judge, a Federal Bankruptcy Judge, who says she thinks it's reasonable, too. And that gets presented to the trier of fact in the coverage case.

What they're trying to do, Your Honor, is have you put your thumb on the scale and allow the insured, in that context, to make the argument to the jury or the trier -- or the bench, depending on how the coverage case is being litigated, and to say we think this is reasonable, and part of the reason is because the Bankruptcy Judge said so.

And remember, as Mr. Rosenthal pointed out, you're being asked basically to make decisions about the reasonableness of determinations by the settlement trustee, who hasn't been appointed yet, who is going to be make those -- going to be making those decisions after confirmation of the plan. And so that illustrates, I think, why, as Mr. Schiavoni put it, these findings are toxic and they're prejudicial. And you know, we just can't abide them.

And with that, I'm going to just say I have lots of things to say about scheduling, but I'm going to defer those until later. Thank you.

THE COURT: Thank you, thank you.

Okay. I'm going to give the plan proponents an opportunity to respond -- not the plan proponents, I'm sorry -- the debtor and/or the FCR or the coalition an opportunity to respond to these arguments. But I really do want a focus on why these findings are necessary and appropriate, the import of them as to how they will be used, and why aren't the trust distribution procedures just an intra-creditor -- and by that I mean intra, I guess, abuse claim creditor -- allocation mechanism.

And that goes along with questions I've had and somewhat posed, probably not in this case, about the genesis of the trust distribution procedures and why there's even a trust advisory committee made up of plaintiffs' lawyers and why the settlement trustee is often chosen by those lawyers and why -- I understand why the FCR, certainly in an asbestos case, gets a role because I think it's required in the statute. But given how these procedures, the trust distribution procedures -- I don't know if they've evolved or they've always been that way.

But it does seem curious that the beneficiaries of the trust influence the procedures under which they receive a

distribution, if it's binding on others. And if you go back to just general trust law, a settlor chooses a trustee, a settlor decides the provisions of the trust, and the beneficiary is just a beneficiary.

So I'm -- we're going to take a break, we're going to take about 15 minutes, and I'd like to hear a response.

But I think I said back in May I don't anticipate making any coverage decisions, and I still do not intend to make any decisions that are properly decided in a coverage action. And perhaps juxtaposed against this is that this is a collective procedure. And I don't have however many days of a hearing and then it has no impact, right? It has to have an impact. But it shouldn't have an impact beyond what's necessary for me to decide confirmation issues. So I want to see that.

Mr. Patterson?

MR. PATTERSON: Your Honor, before you turn to the debtor, I wanted to address some of the issues that Mr. Rosenthal and his colleagues addressed, and it might be helpful if I do that before that. I'm happy to do it right after the break. It should be about five or ten minutes, Your Honor.

THE COURT: Yes, I'll hear people in response, and that can go beyond the debtors and the FCR and the coalition. I'm happy to hear from others.

MR. PATTERSON: Thank you.

THE COURT: But those are the -- those are the issues that I see, the big picture issues. That's apart from, I guess, the initial comments Mr. Rosenthal made about some uncertainty we still have in this plan. But I'm more interested in the bigger picture issues of the trust distribution procedures.

So we're going to take 15 minutes. I don't know what time it is. It's 12:06. Come back at 12:20. We're in recess.

(Recess taken at 12:06 p.m.)

(Proceedings resume at 12:22 p.m.)

THE COURT: This is Judge Silverstein. We're back on the record.

Ms. Lauria.

MS. LAURIA: Thank you, Your Honor.

I was just going to briefly outline how we had allocated responsibilities on the debtor/FCR/coalition side of the ledger, so that you're not hearing repeated arguments.

With respect to the insurance and trust issues that you raised, Ms. Quinn, whose hand is up, as well as members of the coalition, will be taking the lead role on those arguments, so I'm going to pass the podium off to them or the virtual podium.

I also heard issues from Mr. Rosenthal and

Mr. Schiavoni concerning the timing uncertainty point, coalition fees, the third-party releases, thirty-five-hundred-dollar expedited distribution, "liquidation of claims for voting purposes" -- those are my words, not Mr. Schiavoni's, but I'm trying to boil that down -- issues with the proofs of claim and good faith. All of those types of issues, I will be taking on in responding to those.

But Your Honor, my sense was you wanted to dive right into the insurance issues. So, if it's okay, I'll table that laundry list that I just mentioned. I would like to come back to those and respond to those, to the extent you think it would be helpful. And in the meantime, I'm going to hand it off to -- I see Ms. Quinn, Mr. Molten, and Mr. Goodman, so one of them I think are going to take the lead on the insurance issues. Maybe Ms. Quinn is first up.

THE COURT: Ms. Quinn.

MR. STANG: Your Honor, I'm sorry. I thought Mr. Patterson was going to address the Court.

THE COURT: Mr. Patterson, the only thing I want a response to is -- right now, is the insurance issues. So I don't actually really care, in particular, what order they go in, but that's what I am -- the findings and the insurance issue.

MR. PATTERSON: I can limit my remarks to that topic at this point, Your Honor.

THE COURT: Okay.

MR. PATTERSON: Thank you, Your Honor. Tom Patterson.

Our concern with the findings is that they do lie at the heart of the architecture of the plan, and one of the principal reasons for that is because of the involvement of the local council settlements.

Mr. Rosenthal alluded to the Combustion Engineering case, which dealt with the assignability of nondebtor insurance under a plan and said that the Bankruptcy Code powers do not extend to that extent. And the Court asked whether or not the savings language that has now been introduced to the plan would be sufficient to eliminate that defense on the part of the insurers. And the answer is, for a couple of reasons, that it's not.

One reason is the reason that Mr. Plevin articulated, which is that, even apart from assignability of insurance rights, the local council settlement and contributions represent -- has the potential to trigger a variety of coverage defenses, including consent to settlement and the cooperation clause.

And the risk is that entering in a settlement without consent can, in some jurisdictions, limit coverage or void coverage. It can limit coverage to the amount of the settlement that was paid -- in this case, that could be the

amount of the local council contribution -- or it could void coverage in other circumstances.

Second, Your Honor, the savings language provides an additional coverage defense that is not otherwise present because -- and by the way, I mean, it -- I have a full appreciation for the irony that I'm articulating coverage defenses, but I am articulating ones that the insurers have passed on to me, so I do not feel that I am providing any insights that they don't have.

But with regard to the assignment issue, if a debtor -- well, a nondebtor in this case -- channels its liability to a trust, then you have separated the liability on the claim from the insurance, and there is a significant coverage defense that the insurer has at that juncture, in fact, if sued by the local council, that the local council no longer has an indemnity right because it no longer has the liability on the underlying claim.

And so, you know, our feeling is that these coverage defenses are significant, at a minimum. They would take a considerable amount of time to resolve through, likely, appellate decisions in more than one jurisdiction, and that they provide an incentive, given the architecture of the plan, for those who are advancing this plan at this point to settle insurance at almost any price to avoid the flaw that the settlement has a tendency -- has had a tendency to

create.

So I had other comments that I wanted to make that keyed off things that Mr. Rosenthal and others have said, but Your Honor asked me specifically with regard to insurance, and so I'm limiting my comments to that at this point.

THE COURT: Okay. Thank you.

Ms. Quinn.

MS. QUINN: Good afternoon again, Your Honor. Kami Quinn, insurance counsel for the FCR. And I am going to respond to some of the insurance issues that were raised this morning.

First, very briefly on neutrality, because I think it's very clear that Your Honor has heard this, has read the briefs, has read the cases, has considered this issue very carefully. There is no requirement that any plan be, quote, "insurance neutral." Insurance neutrality is a standing doctrine that just has no relevance in a case where insurers are being heard on every issue.

In the case -- in the neutrality cases, debtors and plan supporters voluntarily made a strategic choice to carve out insurers from otherwise generally applicable provisions, but that sort of choice is not mandated anywhere. And as an aside, Your Honor, remembered the GIT case and the holding there exactly correctly. So neutrality isn't an issue that needs to be reached in this case because no one

has sought to deny the insurers standing.

Instead, because of that, the insurers have pivoted to the idea that these findings impermissibly alter their contract rights. They don't. But Your Honor has expressed some concern about these findings and we -- and the insurers have raised them today, and so we can talk about -- let's talk about these findings one by one.

And I don't intend to argue the truth of the findings. I just want -- this argument is to make clear that, if we are able to convince you of their truth through evidence and legal argument between now and confirmation that these findings are appropriate for you to make in this context and that they are not coverage determinations.

So I will start by being very clear. We have heard you. We do not intend to issue coverage rulings in this case. The findings do not ask you to. They don't ask you to interpret a state law coverage issue, to review a single policy, to single out insurers for any particular treatment. They don't ask you to determine the impact of your findings on subsequent coverage litigation, nor do they ask you to determine what impact or rulings will not have. And they don't ask you to determine that any insurer has an obligation to pay any particular claim.

All of the arguments about what the policies cover or, as Your Honor has characterized, what product the debtor

bought, including all of the issues raised in pre-petition litigation, remain wholly unaffected; issues like the number of occurrences, whether and for which carriers the first encounter is the appropriate trigger, whether SIRs and deductibles apply, whether there's intentional conduct related limitations to the policies. All of those are preserved for coverage litigation.

But the honor -- but the insurers have characterized these findings as "coverage findings." Indeed, Mr. Schiavoni went so far last week to say that the findings require you to find that there is coverage for the claims. And today, you said that all coverage needs to be decided here. These findings unequivocally do no such thing.

So I will take each of the findings that Mr. Rosenthal raised in turn, and we can go through them. And the first is the assignment -- is the insurance assignment. This is -- courts in this circuit have been making this finding in the context of mass tort cases with respect to debtors' coverage for almost a decade now. It is settled bankruptcy law and uncontroversial on the point of the debtors' coverage.

The insurers have argued that it's not appropriate to extend this finding to nondebtors. Your Honor noted that the finding actually only requires you to find it -- to find that the assignment is appropriate to the extent of

applicable law, that there is a savings here, to the extent that applicable law -- which we're not asking to determine -- doesn't permit this finding, doesn't permit this assignment.

And so we think it's an appropriate finding. We think that there is no question that findings about the validity and the applicability of a transfer of the insurance rights under a plan is the appropriate finding for a Bankruptcy Court to make in the context of confirmation. And we either will or we won't convince you that this assignment is appropriate, or that the finding is appropriate to make to the extent that -- of applicable law and to the extent that a nondebtor policy can be assigned under applicable state law (indiscernible)

(Participants speak simultaneously)

THE COURT: Excuse me. Please check your audio.

Ms. Quinn.

MS. QUINN: Okay. So that's assignment. Unless Your Honor has any questions on that, I'll go on to the TDPs.

THE COURT: No. I will confess that I hate these provisions in an order that say "to the extent of applicable law" because it just leaves issues open. But I take it the arguments that would be made are the ones I've seen in the papers about being able to -- the conduct has already happened.

MS. QUINN: Correct.

THE COURT: Okay.

MS. QUINN: That is exactly correct, yes.

THE COURT: Okay.

MS. QUINN: Okay. So the TDP. The TDP finding says:

"The procedures included in the trust distribution procedures pertaining to the allowance of abuse claims and the criteria are fair and reasonable, based on the evidentiary record offered to the Bankruptcy Court."

So we spent hours this morning listening to arguments which boiled down to the insurance position -- the insurers' position that the TDPs are not, in fact, fair and reasonable. I'm not going to address whether or not they are fair and reasonable because that is a question that we need evidence, as it says in the finding. We will get -- we will find -- we will get evidence, we will argue these issues. If we can't convince you of the truth of the finding, then, obviously, you won't make the finding. But that's a different question than whether or not it is appropriate to make this finding in the context of your confirmation order.

So I'm -- and on this one, I think you put this exactly right last week, when you said that of course Your Honor can find that a settlement embodied in a plan is fair and reasonable in the context of a confirmation order. Of course you can. But that you -- but that you will not be

finding whether the insurance policies that the debtor bought, whether the product that they purchased covers that settlement. That's perfect. That's -- and we agree completely.

THE COURT: So is the -- what's the 1129 standard? Is there an 1129 standard that these findings go to or is this -- you're considering this a settlement?

MS. QUINN: We're considering this a settlement.

THE COURT: So it's not an 1129 standard, not part of the 1129 standards. So this is a settlement. And who is it a settlement among?

MS. QUINN: It is a settlement among the abuse claimants and the debtor and the local councils and, to the -- and potentially others, to the extent that there are separate provisions relating to chartering orgs, such as TCJC, who have their own issues.

THE COURT: Okay.

MS. QUINN: So -- and I will point out that Mr. Rosenthal raised the issue of, you know, these will create all -- this terrible precedent. Unfortunately, the horse is out of that barn. These findings that a TDP is fair and reasonable have been made in Brower, Christy, Western Asbestos; all of them included those findings. This is not -- this is not brand new.

And because it's a recent case, where confirmation

findings were disputed by insurers in a mass tort case, I can talk about, if you're interested, the findings that Judge Drain just made in Purdue on these issues, I can compare and contrast a little.

Judge Drain made a finding that the settlements reached between the debtors and the opioid claimants, as embodied in the plan, are fair, equitable, and reasonable, and were entered into in good faith, based on arm's length negotiations, and the various intercreditor allocation agreements and settlements are fair, equitable, and reasonable. And that's essentially what we're asking for here.

Judge Drain went on to say some more stuff, including that such negotiation, settlement, and resolution of liabilities will not operate to excuse any insurer from its obligations under any insurance policy, notwithstanding its terms, including consent to settle or pay first or other provisions in non-bankruptcy law. That's not in our finding, not what we're asking Your Honor to find, and an issue that will be determined in the coverage litigation.

What the insurers are asking you to -- go ahead.

THE COURT: Is that in the form of order? Is that where those findings come from?

MS. QUINN: Judge Drain's?

THE COURT: Yes.

MS. QUINN: Uh-huh, yes.

THE COURT: Okay.

MS. QUINN: What the insurers are asking you to do is prejudge how a coverage court will use a finding that the TDPs are fair and reasonable. They're asking you to determine what their -- what the rights to defend under a policy -- insurance policy are, what circumstances they get to exercise those rights. And they are asking you to say what a coverage court can and cannot do this -- with that finding.

Mr. Plevin said, well, in the tort system, we would get to litigate whether the settlement is reasonable in a coverage action. But nobody is precluding Mr. Plevin from litigating whether this settlement is fair and reasonable. I mean, we're just saying he only gets to do it once. The insurers are definitely going to litigate whether these TDPs are fair and reasonable; indeed, I think they started today. They just don't get to do it twice.

But this doesn't -- but a finding of fair and reasonable TDP doesn't require you to determine that that's the standard by which insurance policies pay, that insurance policies pay fair and reasonable settlements entered into without their consent, that fair and reasonable means the same thing here that it means in a coverage court. All it's -- the findings say what they say. And all of the

insurers' concerns about how they might be used are just that.

I mean, they're free to make those arguments to the coverage court about why it would not be appropriate to use that finding for that purpose here, or why that findings doesn't mean that they have a coverage obligation. Nothing about that finding says insurers have to pay any claim. It says the TDPs are fair and reasonable.

THE COURT: For purposes of 9019. Is that the right -- is that the right standard of 9019?

MS. QUINN: I think so. I think fair and reasonable with respect to all parties.

If the insurers come in and -- if the insurers come in and litigate for days in front of Your Honor about whether the TDPs are fair and reasonable as to them -- which is what they will litigate, which is the issue they're litigating, right? Then they should be bound by the results of that litigation. They don't get to try it once then and then determine -- and then, if they lose, try again somewhere else.

THE COURT: Well, but I thought I heard you say -- well, I guess the question is: Does the 9019 standard -- assuming I approved a settlement, does the 9019 standard meet whatever standard one would use to determine if there was a coverage obligation?

MS. QUINN: I don't know. I mean, that's an issue I think that will be decided by a coverage court, right? Because the standard doesn't require you to define -- to find that it meets the standard of an insurance policy,. It requires you to find that it's fair and reasonable.

THE COURT: I don't know if that's the 9019 standard or not, but I'll take a look at the 9019 standard. I think that's the standard, the four-part Martin standard. I'm not sure it's fair and reasonable. It's sort of the same question I asked with respect to the RSA. What does "good faith" mean in this context? Is that part of the standard?

And that's why I asked you what part of the 1129 standard is this because I'm going to be deciding confirmation issues at confirmation. And I don't know that I have to determine what effect my ruling has down the line. I don't know --

MS. QUINN: We --

THE COURT: -- that I could --

MS. QUINN: We agree.

THE COURT: -- or that I should.

MS. QUINN: Right.

THE COURT: But I'll be looking at the settlement standard then --

MS. QUINN: Right.

THE COURT: -- because that's what you're telling

me this is, a settlement.

MS. QUINN: Well, I think that -- I think that it may be the case -- and I'll defer to some of my bankruptcy lawyer colleagues on the coalition who are going to talk next about, you know, whether or not there's other bases for this finding of fair and reasonableness. But the finding is fair and reasonable, and it is not a finding that fair and reasonable is a coverage standard or that fair and reasonable means that an insurance company has to pay.

THE COURT: Okay.

MS. QUINN: And the same goes, essentially, for the third finding, which is the right to payment. And I can -- I will, again, you know, defer a little bit to my bankruptcy brethren to talk about the specifics of this. But this is a statement of what the right to payment is under the Code. This is -- what this is, is a statement of how claimants' claims will be liquidated. And Your Honor mentioned that this is something that goes to how assets will be distributed amongst these claimants.

And this finding is -- it's necessary for the plan. And the reason why that it -- the reason why it's necessary, to be clear here, to make this finding is in order to describe appropriately what the settlement is that's being reached in this plan.

Let me just take a step back here. The debtors

here, they -- in the negotiation between the debtors and the claimants, the debtors looked at this big liability and said we think insurance coverage covers most of it, so we will give you, trust claimants -- you have the right to pursue coverage for the claims, the same as we would have had, because, absent this bankruptcy, we think insurance would have covered most of this, and then we'll negotiate with you, you know, based on our ability to pay and a whole bunch of other factors of, you know -- and the insurance has some holes and, you know, gaps and whatever, and we're going to negotiate with you a number 200 million or so, and that's the amount we're going to give you to fill those holes and gaps and that should work. And that's the settlement that was reached.

Absent this finding, there is a danger that the settlement is interpreted as something else, which is that the debtors paid $200 million to resolve what is, by their own estimates, almost seven -- up to potentially $7 billion in liability, and according to the -- you know, to the victims' representatives, a whole heck of a lot more. And the -- so they settled the whole liability, the whole billion -- multi-billion-dollar liability for 200 million and maybe the right to pursue their reimbursement claim for that.

And that's not a deal that the claimants would have agreed to. And so what the need, the necessary for this

finding is, is to make clear what deal was reached in this court. And we think that this is the only -- this is, of course, the Court that is appropriate to make clear what the nature of the settlement in the plan is, the plan settlement that is reached in this Court.

Again, it does not require the Court to say that the policies cover any of this settlement. If, as Your Honor posited last week, the policies say we only cover the amounts contributed by a debtor to a trust in bankruptcy, they still say that and a coverage court will enforce that. That's what it says that they pay. If the policies don't cover any of the claims at all, they don't cover any of the claims.

But this is a clarification of what the deal is, which is that the debtors are transferring their rights to pursue coverage for the claims, not their right for reimbursements of the amount paid and not limited to their right to pursue reimbursement of the amounts paid to the trust, that they paid to the trust, because that wasn't the settlement of the whole liability, and that's it. Those are the -- those are the three findings.

THE COURT: Well, isn't there an easier way to say that, that doesn't use words like "allowed" and things like that, that get interpreted certain ways?

MS. QUINN: Is there is an easier way -- well, I mean, there -- is there -- there's an almost infinite number

of ways to say it, so possibly yes.

(Pause)

THE COURT: Yeah, I think this one is an -- well, this is interesting because I would think this should not be so controversial, but it is, apparently, relative to insurance coverage issues. And this is not the only context in which we see this issue arise; and, yet, it seems to -- it's an issue for insurance coverage. Cases are coming out different ways on it, not bankruptcy cases, non-bankruptcy cases. Okay.

(Pause)

THE COURT: Okay. Ms. Quinn?

MS. QUINN: And that's all I've got, unless you have additional questions for me. I can turn it over to Mr. Goodman, who's going to talk some more about the bankruptcy basis for some of these and the need for discovery.

THE COURT: Okay. Thank you.

Mr. Goodman.

MR. GOODMAN: Good afternoon, Your Honor. Eric Goodman, Brown Rudnick, counsel for the coalition.

To answer the last question, the standard under Bankruptcy Rule 9019 is fair and equitable. This comes from the 1968 Supreme Court decision in Anderson, which held that the rule that plans of reorganization be both fair and

equitable applies to compromises in a bankruptcy case. We can quibble over "equitable" and "reasonable," but I think the import of both words are roughly the same in this context.

With that answer provided, Your Honor, I would like to come back to a question, beginning -- that you posed at the last hearing because, frankly, that's what I'm prepared to talk about first, which is: Which of the findings are legal issues, which are factual issues, and what discovery is necessary, and how does all of this relate to plan confirmation? And I'm going to try to do my best to answer those questions very directly.

There are five findings in the plan that were in the restructuring support agreement. They appear on different paragraphs in the plan, in Article 9(a)(3). I'm going to refer to them as "Findings 1 through 5," for the sake of simplicity.

Two findings that I'll discuss in a moment are purely legal issues, two are obviously factual issues, and the third is hybrid because it has to do with appropriately documenting or clearly documenting what our settlement is.

I'll start with the two legal issues, and I'm not going to spend a lot of time on the first because I think this has been already discussed at length, which is:

Finding 1 appears in Article 9(a)(3-Q), which is

that the plan be binding on all parties-in-interest. This finding, obviously, does not require this Court to interpret any insurance policies or make any coverage determinations, nor does it require the Court or even ask the Court to rewrite any insurance policies. This finding is about basic principles of res judicata and collateral estoppel, as they have been applied in bankruptcy cases for years.

Judge Drain did address this exact issue last month in Purdue. He held, and I quote:

"There is no concept or requirement that a plan be insurance neutral."

I presume that Judge Drain read Combustion Engineering and Global Industrial because the same insurance lawyers in this case cited those cases to him and argued that issue in front of Judge Drain. Obviously, they lost.

I would go further and say that, because the bank -- because of the Bankruptcy Code, the plan here actually has to be binding on the insurers. The insurers, including Century, claim that they are creditors. Section 1141(a) mandates, therefore, that they be bound by the confirmation order. So, as to Century, there's just simply no way that they could not be bound.

In addition to that, the insurers here have notice. They are active participants in the case. If we were to pull all of the transcripts at the end of this case

and see who spoke the most, I would put my money on Mr. Schiavoni. Third Circuit case law requires that, when a party appears, litigates, objects, and an order is entered, that order is binding on that party. This is a legal issue, not a factual issue, so I don't think there is any discovery needed for this.

So that moves on now to Finding Number 2, that is the insurance assignment must be authorized. This is in Article 9(a)(3-J) of the plan. And this also is a purely legal issue and one that does not require the Court to interpret any insurance policies or make any coverage determinations or rewrite the terms of any insurance contracts. Parties are free to argue that the insurance rights are or are not assignment at plan confirmation. I think we have the better argument under Third Circuit law that this is a legal issue on which discovery is not necessary.

Before I move on, I want to make a very keen observation, which is this:

As the Court well knows, sometimes parties change their mind during a bankruptcy case. You hear counsel for AIG and Century say last week and again today that their clients simply cannot settle unless they get finality. Finality. That is an important word, "finality." Let me explain what I think they mean by "finality."

Many of the insurers want to settle. The BSA policies that they issued years ago have multiple insureds. In some years, it's the BSA and the local councils; in other years, it's the chartered organizations are also insureds. That's why 1976 is so magical, not just because it's a bicentennial year, but chartered organizations are not additional insureds under the BSA policies pre 1976.

The chartered org proposal that you've heard so much about and will probably hear more about is entirely insurance driven. When the insurers say that they are settling, what they want is to buy back the policies, which means that you have to collect all of the rights from all of the insureds. It's kind of like a game of monopoly. You have to own all three properties before you can build a hotel. There are the BSA rights, there are the local council rights, and there are the chartered org rights. You put all three together, assign those rights to the settlement trust, and then you can settle with the insurers.

The insurers that want all of the rights -- there are insurers that want to settle and they want all of the rights to be assigned to the settlement trust. The insurers that have not settled may stand up today and say, Judge, you cannot approve these assignments. But they may be standing before you at plan confirmation saying, Judge, you absolutely have to approve these assignments, we consent, I changed my

mind.

I mention this today only because this Court does not know, right now, if any insurers are actually going to appear at confirmation and object to the assignment. We are here on a disclosure statement. This is clearly a confirmation issue and one that I don't even know how you sort out today.

Finding Number 3 is the finding that the, quote, "right to payment" that the holder of an abuse claim has against the debtors is the allowed value of the abuse claim. This is in Article 9(a)(3-F) of the plan. This finding is based on quotes from and is worded entirely based on the definition of "claim" set forth in Section 101(5) of the Bankruptcy Code.

As a legal matter, a survivor's right to payment from the debtors is not what the debtors can afford to pay. If that were true, no debtor would ever be insolvent.

Now I want to be clear on one point. We are not asking the Court to rule on what the insurers must pay. If you look very carefully at this finding, you'll see that the word "insurer" does not appear anywhere in this finding. I would very much like to put a finding like this in front of the Court that said the insurers must pay, but I think I know what the Court's answer would be.

This finding, the one that is actually in the

plan, as opposed to the one that is invented, doesn't say anything about insurers being liable. Insurers can and will argue post-confirmation that their policies do not require them to pay any of the claims determined under the TDP. What we are doing is making it clear what the terms of our settlement are and what we are agreeing to.

We believe and what the plan settlement reflects is that the debtors will fund a trust. That trust will assume liability for and will be responsible for paying abuse claims. The debtors are making a contribution to the trust. That contribution is not the same thing as the liability that the debtors estimate to be between 2.4 and $7 billion. Rather, it is just a contribution. The trust will pursue and liquidate the trust assets and the trust will make distributions to survivors based on their claims. And as the Court noted, those distributions must be made on a pro rata basis, based on the allowed amount of the claims.

The settlement that we support and will recommend to tens of thousands of survivors to vote in favor of is the settlement reflected in the plan, which does not wipe out or extinguish billions of dollars in liability for a mere $220 million.

We have to be clear about what we are agreeing to. I don't want anyone to say that we agreed to a settlement that we did not, in fact, agree to. Neither you, nor I can

control what a coverage court does with the confirmation order, no question. But I learned years ago from a veteran banking attorney at Sullivan & Cromwell that sometimes you have to use very clear language on issues that are obvious to you, in order to make aspects of a deal clear to parties that haven't lived it.

We have to be very clear about what we are agreeing to. I don't want anyone to say that the right to payment that the abuse -- holders of abuse claims have is the $220 million that the debtors are contributing to the trust, and I don't want anyone to say that we supported a plan or a settlement that meant that. Parties that settle have a right to know what the settlement is.

And I'll note this is a confirmation issue for us because we don't support a plan of reorganization that is intended to effectuate a discharge of the insurers' potential liability, whatever that may be.

I will also note that, if the plan is delivering or is intended to deliver a, quote, "Fuller-Austin result," I don't see how the Court could approve a channeling injunction under Millennium. Fuller-Austin, in my view, was incorrectly decided, but it was incorrectly decided because of ambiguous language in the plan and the confirmation order. That is not a mistake we care to repeat. This is a confirmation issue and it goes to the heart of the plan because of the

channeling injunction and our need to know what our settlement is, and it's clearly stated.

So that leaves Finding Number 5. This is that the TDPs are fair and reasonable based on the evidentiary record offered to Bankruptcy Code at the confirmation hearing. This is set forth in Article 9(a)(3)(R) of the plan. This is -- I call it the lightning rod. This is the one that gets all the attention, Your Honor, so let's talk about it.

This finding does not ask this Court to interpret any insurance policies or make any coverage determinations. And I'm going to be very, very clear on what I'm about to say. No one is asking you to find that the insurers must pay the $3500, we are not asking for that finding. No one is asking you to find that the insurers must pay any claim determined under the TDP; we are not asking you for that finding. And no one is asking you to find that the insurers must pay time-barred claims, we are not asking for that finding. Those are straw man arguments.

We want an evidence-based TDP. What does that mean? We want a TDP that is based on and mirrors the debtors' historical settlement practices and experience in the tort system. Under what circumstances did the debtors agree to settle abuse claims prior to the bankruptcy? And there are a lot of them. What did they agree to pay? What did the insurers agree was a reasonable settlement? What

evidence has to be produced by the survivors? That is what we're trying to do.

We want the Court to approve a process that's fair and reasonable and equitable based on the evidence. A couple things follow from this.

First, this is obviously a confirmation issue, not a disclosure statement issue. The evidence in question has not been offered. The insurers are entitled to produce their own evidence, we hope they do, but the Court cannot judge the evidence until we get the plan confirmation.

Second, discovery. The evidence needed on this topic is in the debtors' possession, custody, and control, and I know this because this evidence has already been produced. The debtors know their own settlement practices and they know how much they have paid to settle abuse claims. And the insurers have all of this information too because they approved the settlements and they also have been given access to the same information.

There was the discussion last week about the Bates White report and the TDPs. The Bates White report is based on an analysis of the settlement data. In terms of timing, in terms of which came first, the chicken or the egg, the Bates White report came first, the TDPs followed by several months. And the point of the TDPs was to reflect the debtors' own historical practices and settlement values. The

data the debtors have already shared and was used to create the TDPs doesn't need months and months of discovery, everyone has it.

And I'm going to make this point because I think it's obvious, but it needs to be said, discovery from survivors or law firms would not be relevant to this finding at all.

I want to be clear on another point: this finding does not ask the Court to determine how many valid claims there are. The findings and orders put the reasonableness and the fairness of the matrix values and the procedures before the Court, they do not put a --

THE COURT: Well, what 1129 standard does that go to?

MR. GOODMAN: This goes to the 9019 standard that Ms. Quinn mentioned, Your Honor.

THE COURT: Okay, so this is another 9019 issue.

MR. GOODMAN: Yes, it is.

THE COURT: And why -- and who is it a settlement among?

MR. GOODMAN: Again, it would be a settlement among the abuse survivors and the debtors.

THE COURT: Why is the debtor a party to that settlement?

MR. GOODMAN: Because they are the party who is

liable for the abuse claims and they are the proponent of the plan.

THE COURT: Well --

MR. GOODMAN: I also think it would be --

THE COURT: -- but -- but they --

MR. GOODMAN: -- I'm actually --

THE COURT: -- are providing a number, they're providing an amount, they're making a contribution and then they're gone, not unlike many debtors, mass tort or not, not unlike many debtors. The settlement with the debtors is their contribution. So how is this a settlement among the debtors and the abuse survivors?

MR. GOODMAN: Well, Your Honor, I think the Court could entertain the settlement of a claim under 9019. Here we have --

THE COURT: A claim.

MR. GOODMAN: -- here we -- yes. I mean, if there was a claim filed against a debtor, let's just say you had an ordinary trade claim filed for a million dollars, the debtors were to file an objection to that claim, the parties negotiated and agreed on a settlement of that claim, I believe that would be brought before the Court under 9019.

And I will amend my prior response, Your Honor. Actually, that also is 1129, because the 1129 fair and equitable is actually what informs the 9019 issue. So I

actually think that it's both 1129 and 9019.

THE COURT: I find --

MR. GOODMAN: We can get more --

THE COURT: -- I find -- I have said on any number of occasions that I do not believe a plan to be a settlement. The plan gets imposed on people, it's not a settlement. And I get asked to make all kinds of findings at confirmation that I don't find are appropriate. So far, nobody has been able to convince me I'm wrong on that one point, but that's why I want to understand what the finding is and who is the settlement among. I get the intra-abuse creditor nature of the settlement. I'm not sure I understand at this point how the debtor -- the debtors' interest in the allocation of funds that it has contributed and to which it has no more liability, it's contributed, it's done.

MR. GOODMAN: Well, the liability here is being assumed by the trust, so it's not --

THE COURT: Uh-huh.

MR. GOODMAN: -- disappearing, it continues on and that liability has to then be determined post-confirmation in accordance with the procedures. Again --

THE COURT: Well, an allocation does, yeah. An allocation does, which goes back to my question about why, in fact if the debtor was on the other side of this issue, why does it leave it to a trustee it didn't choose and a trust

advisory committee made up of plaintiffs' lawyers?

MR. GOODMAN: Oh, I see the issue. Yeah, I think the concern that you're raising is that, once this process goes into effect and the debtor steps away post-confirmation, the debtor can't really control what happens in that process. And, you know, the insurers have painted a picture of all of the tort lawyers in this case effectively settling with themselves and, you know, presenting inflated claims. No, I hear that point. I don't know, though, how this issue is really before the Court on this one. I mean, it's the debtors who have proposed the plan; it is the debtors who have put forth the TDP based on their own historical settlement practices and values.

So, given that the debtors are the plan proponent, I don't think that they can absolve themselves of responsibility on this one until the confirmation order is entered.

THE COURT: I hear you, but the concern I have I want directly addressed, the concern I have in this case and others, and it's how are these trust distribution procedures negotiated and who is it a settlement among or is it really just an allocation among claimants. And, again, it's really no different than any bankruptcy case in which the debtor makes a contribution and then they don't care how it gets whacked up, right? Here's -- I get to give this amount and I

walk away, I get my discharge, I don't care how it's whacked up.

This is -- the trust distribution procedures are in essence the whack-up, right? That's what it is. Maybe I have to rule on them and maybe I don't, but that's what I'm trying to figure out. And then, of course, what's going to be done with them later on down the line. Maybe I need to know, maybe I don't, but what 1129 standard is it that I have to make these findings on. And if it's not an 1129 standard, if it's a 9019 settlement, then who is the settlement among, for real. And those are the questions I have.

MR. GOODMAN: Your Honor, thank you, and normally I'm prepared for everything, but on this one I actually think I want to go back and do some more research and homework on this in terms of what 1129, 1123, and 9019 say on these issues.

But I would note this point, because I was recently dealing with a similar issue in front of the Ninth Circuit where a party contended that a specific provision in trust distribution procedures simply had to be struck down because the trustee could go rogue and not comply with it. And, you know, my response to that was, wait a second, you're not really objecting to the procedures, what you're claiming in advance is you think that people won't comply with them, you think people won't follow the procedures, and that's

really not fair. I mean, I think what you're doing is you're sort of prejudging or assuming ahead of time that the trust distribution procedures won't be followed, that the trustee won't do his job; that the parties administering the claims won't do so with integrity in regard to their fiduciary obligations.

I don't begin my day with those assumptions. I think that we have to assume that if procedures are propounded or put forth by the debtors in terms of what they think is fair and reasonable based on their historical settlement practices, if that is being imposed on the survivors here, because the survivors are not free to allocate among themselves how this gets divvied up, you know, here, Your Honor, it's different. It's not as though all of the tort lawyers are getting in a room and deciding how these funds get allocated among themselves and, you know, how the claims are allowed, that would be a negotiated TDP, this is an evidence-based one. This is where the debtors are coming in and saying these are our practices, these are the values where we settled claims, this is what we required before we would enter into a settlement with an abuse victim and they're imposing that process on us.

We're accepting it because the debtors have a need and I think they have an obligation to put forth procedures that are fair and reasonable, as opposed to ones that are

just arbitrary and capricious. That obviously wouldn't work in a bankruptcy case.

So I do think that the debtors have an interest in this. I will argue now and argue, I believe, in the future that the debtors are a part of this from a settlement standpoint because right now they have the liability for these claims and they are trying to resolve the abuse claims in this bankruptcy case. If we don't resolve the abuse claims, Your Honor, a lot of money has been spent here for nothing. That is something that we have to achieve and I think that this goes to the heart of that resolution.

And if I did not answer your question, Your Honor, I'll be back and I will read more cases.

THE COURT: I'm not sure it's in the cases. I've been looking for this.

MR. GOODMAN: I appreciate that.

The last finding, Your Honor, good faith. No one has talked about this, at least the insurers didn't. That's in Article 9(a)(3)-T of the plan. The Court obviously has to make a good faith finding in order to confirm a plan, that's what Section 1129(a)(3) says. This is also a factual issue. And I raise it -- you know, a few things.

First, we can't avoid this. This isn't really coming from the findings, this is also coming from 1129(a)(3).

Regarding discovery, my understanding is that the insurers want to pierce the mediation privilege and take discovery on how the TDP was negotiated; I think that would be wrong. Whether the TDPs and the plan were proposed in good faith I think follows from what those documents say. I don't think the mediation discussions would necessarily inform that, but that issue, the reason I'm flagging it now, is going to be one on which there are going to be discovery disputes. Obviously, there are things that the insurers are going to want that the debtors are probably going to oppose. If the debtors were successful in piercing the mediation privilege, there will be a lot of discovery that I'll want from the insurers that they probably will then oppose.

So I'm just flagging that issue, Your Honor, now because I know that one of the things that we are trying to get through for purposes of today or this week is an appropriate schedule going forward on discovery issues.

THE COURT: How does this finding -- and I think 1129(a)(3), good faith, is what the Third Circuit says it is for confirmation, not some other good faith standard that might be out there or not a general good faith standard, but good faith as the Third Circuit defines it in collection with 1129(a)(3).

But how does this, if at all, since you've brought up mediation privilege, how does this align with the position

that the -- that we just discussed with respect to finding R that the debtors' part of the settlement of the TDPs, that they were involved, is this involved with the good faith finding, is that something I have to be concerned about breaking mediation privilege on? How do those two -- and I don't know, I'm asking -- how do those two findings mesh, or are they separate?

MR. GOODMAN: My answer to the question posed is that those two findings are separate and distinct, but I do think that there is going to be some overlap, and I think that they are the two factual issues that will be before the Court at plan confirmation and, therefore, I think it follows that those are the two issues on which there's going to need to be discovery.

And I don't know that I can go much further than that at this point other than to flag those issues, but I will say this -- and we'll get there later when we talk about scheduling -- if you think in terms of are the trust distribution procedures reasonable based on the debtors' historical practices. If you asked the question, you know, about the plan itself being proposed in good faith, the discovery necessary to inform the Court and for the Court to rule on those issues I don't think is going to be this six-to-eighteen-month-long circus that would involve going out and deposing thousands of abuse survivors, because I just

don't know what -- I mean, I would -- I think the Court should hear from the abuse survivors at plan confirmation, I don't want to be glib on that issue, I think what they have to say is extremely valuable and important.

I listened to the hearing last week, Your Honor, and I heard Mr. Washburn speak. I thought he did so very eloquently and I appreciate the time that this Court afforded to him in listening to him and considering his views on these issues. So those are obviously extremely important. But in terms of the issues before the Court and getting through the 1129 issues, good faith and the fair and reasonable I think are what will -- what are and should inform the discovery that's necessary to get through plan confirmation.

And I hate the fact that I did not give you a direct answer to your question, it's just that I feel as though I need to give a little more thought to that before I come back with an answer.

THE COURT: Thank you.

MR. GOODMAN: Your Honor, I have nothing further, unless you have more questions for me.

THE COURT: No. Thank you.

MR. MOLTON: Your Honor, may I go next?

THE COURT: Do you have a separate topic from Mr. Goodman?

MR. MOLTON: I do, Your Honor. I didn't expect

to, but I didn't expect to be involved in this afternoon's discussion. But Your Honor has asked about trustee selection and TAC, which is something that I know a little about. So I'd like to talk about that, Your Honor, and address those issues, which are separate from the insurance and the findings issue. So I'm not going to repeat anything that you've heard from Ms. Quinn or Mr. Goodman, and I'm going to be concise, Your Honor, and I'm going to cut to the chase pretty quickly.

Your Honor, with respect to trustee selection, there's nothing remarkable or unusual with respect to how trustees are picked in mass tort cases. As Your Honor noted at the date of confirmation -- or the date the debtor emerges from bankruptcy, I think you just said then they're gone and that's true, and that's true of the debtors here and the local councils here.

This is not like a charitable trust, Your Honor, where the settler and the settler's wishes remain primary, and the settler needs to retain control over those wishes. Here, Your Honor, it's something even greater than that, it's Your Honor's confirmation order and the plan and the plan documents, which include -- and I'll get to this in a minute -- the trust agreement, which will be approved by Your Honor, and the TDP -- again, which will be approved by Your Honor.

Indeed, Your Honor, contrary here to settlement trusts or other assorted private trusts, family trusts, in the mass tort context it is usually the settler, the settler itself -- himself, itself -- that is at fault for the wrong for which the bankruptcy occurred and which led to the creation of the trust.

The beneficiaries here, Your Honor -- and here we understand we're at about 80,000 beneficiaries, at least as we count them now -- need to be assured and to be comforted that the person, he or she, that's in charge of the trust understand his or her job, have absolute independence -- and I'll use that again -- subject, subject to what I just mentioned, what I call the constitutional documents, because I do represent trusts, Your Honor, in major mass tort cases, and the constitutional documents for a trust and for the trustee is Your Honor's confirmation order and the plan.

So somebody that has independence with integrity, *bona fides*, expertise, and a reputation for getting these very, very -- in this case, as Your Honor remarked, perhaps one of the most challenging cases done. Your Honor should be advised that it's been my experience that never is a trustee selected for which the debtor doesn't have input, doesn't have a say, whether it be express, you know, conditional approval or otherwise. And this was a plan, Your Honor, that contains a trustee selection that is being put forward by the

debtor. So I just want to say that.

Some recent examples, Your Honor, you know, that show exactly what I'm saying is PG&E, where the Honorable John Trotter, appellate -- retired appellate judge from California, was named a trustee under similar circumstances. In Purdue, I know there are -- I won't say dozens, but a multitude of trusts that are in the process of either having been created or will be created that this process is undergoing.

In Takata, Your Honor, in this very court, the trustee came out of the TCC process, I think, with a nomination or selection in which the TCC participated and is operating those trusts.

I'm going to get back to the point, though. The point is what Mr. Goodman identified, is what's to stop a trustee, as Your Honor said or suggests, from going rogue, being in the bad, doing whatever he or she feels is appropriate under the circumstances. It's Your Honor's confirmation order and Your Honor -- and the plan, which contains the trust agreement and contains the TDP, which are approved by the Court after notice, opportunity to object, and a determination by the Court about what's right or what's wrong in it. That's as tight as it gets, Judge.

I think, you know, somebody used the word -- you know, I forget what -- it was (indiscernible) -- but this

whole issue on trustee selection, I'll use a French word, actually a Yiddish word -- I always say, here's a French word -- boogie monster, it's the boogie monster in the room -- because at the end of the day, Your Honor, if Your Honor takes a look and I've asked for -- I didn't expect to talk on this, Your Honor, at this length today, so I don't have the docket number of the most recent trust agreement that's been filed with Your Honor for Your Honor's consideration, but I do want to note a couple of things in it, Your Honor.

Section 1.7 of the trust agreement -- and these are really tight -- from my perspective, Judge, a lot of work went into this trust agreement and from all of the parties, and that includes the TCC -- paragraph 1.7, "Jurisdiction. The bankruptcy court shall have continuing jurisdiction with respect to the trust; provided, however, the Courts of the State of Delaware, including any Federal Court located therein, shall also have jurisdiction shall also have jurisdiction over the trust." That's our Stern v. Marshall *proviso*, I gather.

In any event, Your Honor, the ability to run rogue is proscribed by a -- what would be a court-approved trust agreement which contains at Section 8.5 -- and I hope I'm reading the most recent provisions -- "Modification. Material modifications to this trust agreement, including the

exhibits hereto" -- which are the TDP -- "may be made only with the consent of the trustee, a majority of the STAC" -- which is the equivalent of what folks call the TAC -- "and the FCR, which consent in each case shall not be unreasonably withheld, conditioned, or delayed, and subject to the approval of the bankruptcy court; provided, however, that the trustee may amend this trust agreement from time to time without the consent of approval or other authorization of, but with notice to the bankruptcy court to make minor corrective or clarifying amendments necessary to enable the trustee to effectuate the provisions of this trust agreement, provided such minor corrective or clarifying amendments shall not take effect until ten days after notice to the bankruptcy court," therefore giving anybody in the world who's following your docket an ability to put their hand in the air and say, no, no, no, no, no, that's not a clarifying amendment or a minor corrective change, that is a substantive modification.

"Except as permitted pursuant to the preceding sentence," it goes on, "the trustee shall not modify this trust agreement in any manner that is inconsistent with the plan or the confirmation order without the approval of the bankruptcy court. The trustee shall file notice of any modification of this trust agreement with the bankruptcy court and post such notice on the trust website."

Your Honor, that's the answer to your question, I

respectfully submit.

Second, the TAC, Your Honor asked about the TAC, what we call the STAC. If Your Honor looks at the trust agreement, you will see they have absolutely -- by the way, I'll go back a second. Judge, how many times in a week when I get a question on some of the other cases that I represent trusts on, which include Takata and include PG&E, I get a question and the first thing we do is let's go to the -- you know, not let's go to the videotape, let's go to our constitutional documents. That's the answer to your question.

Our trust agreement, Your Honor, prohibits, does not allow, does not contemplate, does not envision any of the TAC members from having a role in claims administration, that's not what they're there for. They're there to provide their experience, expertise, ideas, et cetera, in a cooperative, consultive way in order to make the trust work.

We articulate in the trust agreement, Your Honor, those matters requiring consultation by the trustee with the TAC, what's called the STAC in the FCR -- and that's paragraph 5.13, Your Honor, of the trust agreement -- stuff that folks who -- folks who have an overriding interest in seeing beneficiaries treated fairly arguably should be consulted on it.

And by the way, Your Honor, you know, I tried to

find it in the time, but my understanding is the trust agreement -- and I could come back to this because I know it's in others -- say that the TAC members have a fiduciary -- they don't become a TAC member without accepting this -- a fiduciary obligation to the beneficiaries.

So 5.13, "Matters requiring consultation. The trustee shall consult with the STAC and the FCR on the following: the selection or replacement of the claims processor; two, the forms of a release to be executed by a beneficiary; an annual estimate of the budget of trust-operating expenses" -- always an issue -- "and the administration investment of assets of and expenses to be charged against the future abuse claims reserve."

Again, all issues in which you would think that folks acting in an advisory fashion as fiduciaries for the beneficiaries might have views on and might help -- help -- the trustee with its, his or her, independent decision-making.

Section 5.14, Judge, then articulates the matters requiring the consent of the STAC or the FCR with respect to decisions of the trustee, "(a) the determination of the initial payment percentage and any subsequent adjustment of the payment percentage." That's the amount, the pro rata payment based on the corpus of distributable assets in the

trust that will go to claimants. Clearly, the bedrock rule of bankruptcy is pro rata, pro rata, pro rata, nobody wants to be in a position where too much money is being given, thereby leaving folks later on who are later in the submission of their claims, have more difficult claims, and their determination is made later from not getting the same pro rata amount.

So that's A, consent for that, consent of the TAC for any proposed modification of the indemnification provisions of the trust agreement. That's clear because they are indemnified parties as fiduciaries.

"(c) any proposed sale, transfer, or exchange of trust assets above bracket a certain amount," and that's going to have to be determined. Any proposed sale of trust assets below that amount shall not require the STAC or the FCR consent.

Next, 4, "Any apportionment, appointment, or retention of the special reviewer or any successful special reviewer in the event of a vacancies." The special reviewer, Your Honor, is a position -- and I don't want to get too much in the weeds but will have appellate-like overview of any what I call insurer -- post-effective date insurer or chartered organization settlements by the trustee."

And then also with respect to -- again, I don't want to get too much in the weeds -- there's various way in

which folks who -- beneficiaries can exit into the tort system whether or not they exit.

"Consent," item 5, "any proposed material modification to the trust agreement or the TDP, if and as required by the consent provisions set forth herein."

And of course, that would of course at the end of the day require Your Honor's final approval.

Next, "Any proposed increase or decrease in the size of the future abuse claims reserve," again, another unremarkable instance in which the TAC would have consent rights over the independence of the trustee.

And, lastly -- and this is the special situation I talked about -- "the commencement or continuation of a lawsuit by a direct abuse claimant against the trust pursuant to a tort election" -- and I'm not going to get too far in the weeds on that, Your Honor -- "and approval and execution of any global settlement subject to the terms of another provision of the trust."

All of those are pretty unremarkable. You know, it's the same thing, Your Honor, with respect to what I would call a non-ordinary course -- non-ordinary course sale by the debtor, it's going to -- the debtor just doesn't get to do it, it's going to have to require further approval here by the TAC, under certain circumstances and in accordance with the trust agreement. And there's specific provisions as to

how that happens and, again, it's pretty detailed and I'm not going to get into it.

So that's my, hopefully, not too long answer to Your Honor's questions. And if Your Honor gives me leave, I would just like to -- since I guess I'm batting clean-up here -- just address just a number of other points that were made earlier in the day that don't necessarily relate to those issues but relate to a few others. I promise, Your Honor, I'm going to be very brief. May I?

THE COURT: Well, I thought I was going to hear from Ms. Lauria on those. Let me hear from Mr. Harron on these specific issues, I want to finish this out.

MR. MOLTON: Okay. Thank you, Judge.

MR. HARRON: Thank you, Your Honor.

THE COURT: Mr. Harron.

MR. HARRON: For the record, Ed Harron for the Future Claimants' Rep.

I want to address three issues that Your Honor has been focused on: the specific issue of the structure of the trust and the trust administration, why the findings are appropriate, and why the findings don't render the plan unconfirmable.

First a simple point on the trust structure. This trust structure follows a structure with which Your Honor is well familiar, the non-mass tort cases. As Your Honor is

aware, in the non-mass tort cases where there's a settlement trust or litigation trust, it's almost always the case that the beneficiaries of the trust are the unsecured creditors and that trust -- that the trustee is selected by the creditors committee and the oversight of that trust is handled by an analog to the creditors committee comprised of the same or a subset of the members.

So, really, there's nothing different here. And the reason that you have -- the only real difference is you have an FCR and that's in part because of the long-tail nature of the trust. And really, for example, the payment percentage is a spot where an FCR is helpful to provide a counterbalance to the committee representing the interests of current claimants, when the trustee is forced to evaluate the payment percentage. The current claimants, obviously, always want the trust to pay out as much as reasonably possible as soon as reasonably possible. It's incumbent upon the future claimants' rep to make sure that the payouts are consistent with our view of the trust's future liabilities.

So, really, these trusts follow the same structure that you see in the non-mass tort cases except for the addition of the future's rep, which we think is appropriate based on the application of a payment percentage and the long-tail nature of many of the torts.

That's all I have on that topic, Your Honor,

unless you had questions.

THE COURT: No. I mean, I think that's a fair analogy, but I think it -- it's again because the debtor is out of the equation and you have a liquidating trust that's for the benefit of creditors. So, yes, I think it's -- you're right and I think it follows that.

MR. HARRON: But keep in mind, Your Honor, that it's not only the creditors that want the debtors to be out of the equation, the debtor wants to be out of the equation.

THE COURT: Yes.

MR. HARRON: The debtor wants to be fully and finally resolved of this issue and, therefore, it walks away, but as part of that walk-away the parties with a financial stake need some reasonable assurance that the trust is going to work and that the trust will operate in a way that it preserves the value of the estate assets, and that's all we're asking for here.

So, you're right, the debtor has a stake in making sure that the trust serves its purpose and obtains the support of the survivors and meets the requirements of the bankruptcy code, primarily because they want the finality of the injunction. But really during the case the debtor has a strong interest in making sure the trust is appropriate and satisfies all those concerns. It's not until the case is over on the effective date when the debtor really has -- no

longer has an interest in it.

So I don't think it's fair for anyone to suggest that the debtor has no interest in how these procedures work. The debtors want to vote and the debtors want the procedures to comply with the bankruptcy code. The claimants want the procedures to work in a way that maximizes the value of the assets or, at a minimum, doesn't diminish the value of the estate assets, and that takes me to my second point.

Your Honor, insurance is a significant asset, particularly for future claimants. Our future claimants primarily are those claimants right now who are under 18. In our view, they'd have full access to insurance to cover their claims -- and these are claims for which Century does not provide coverage -- absent the bankruptcy, they'd be paid in full. Even were the Scouts to liquidate, these future claimants could go out and sue the chartered orgs and access this very same coverage. We don't need the Scouts, we don't need the bankruptcy to get paid from insurance.

So, in our view, we want assurances that when this case is over the bankruptcy has done no harm to the ability of claimants to recover insurance, the Boy Scouts' insurance, to the very same extent they could before the bankruptcy.

For example, Your Honor, and as I've mentioned, it's important to the BSA that they kind of put this issue behind them. And one of the things for which they've

negotiated is that the claims will be resolved pursuant to a trust. Subject to some limited exceptions, claimants no longer will name Boy Scouts or other participating parties when they seek to get paid on their claims.

You may recall, Mr. Plevin mentioned earlier today that it's his view -- and, anecdotally, he's asking you to make a coverage finding when he suggests to you what the policies say, but it's his view that the insurers don't have to pay a thing until the Boy Scouts or other parties are named in a lawsuit. We have to reconcile these interests, the interests of the claimants in preserving the insurance asset and the interest of the Boy Scouts in no longer being named as defendants in lawsuits, and we have to do it in a way that doesn't allow lawyers like Mr. Plevin to argue in the future that, hey, because the injunction doesn't allow claimants to name the Boy Scouts, you no longer have coverage, that's what we're trying to do.

So, Your Honor, there's a fair and equitable component in Section 524(g). As Mr. Rosenthal noted, this is not an asbestos case, but I think even Mr. Rosenthal would concede that analogies are drawn from 524(g) in non-asbestos mass tort cases.

The 524(g) provision to which I allude is Section 524(g)(4)(B)(ii) where it talks about the relief -- "identifying the debtors and other third parties in an

injunction with respect to such demands, i.e. future claimants, is fair and equitable with respect to the persons that might subsequently assert demands."

And that's our point, Your Honor, we think this plan is only fair and equitable if it doesn't prejudice our ability to obtain insurance to the same extent we could access that insurance pre-bankruptcy. In our view, that's what the findings do. They don't expand the estate's rights, they just make sure that the insurers don't opportunistically utilize the bankruptcy to create defenses to coverage that didn't exist before the bankruptcy occurred. And, as I mentioned a few days ago, we believe that's consistent with Section 524(e) of the bankruptcy code, which makes clear that the discharge of the debtor shall not release co-liable third parties.

Your Honor, to my final point, you know, and essentially why this plan should go out with our proposed findings, the standard for denying a disclosure statement based on the terms of a plan is basically the plan could not possibly be confirmed. It's often referred to as un-confirmable on its face. Your Honor, I'd suggest to you that if you review the insurers' arguments in opposition to the findings, their premised almost exclusively on factual conjecture. They speculate about the plan proponents' motivations, they speculate about the quality of the claims

to be resolved by the trust, they speculate about the manner in which Boy Scouts resolved claims prior to the bankruptcy, they speculate that they're only liable if cases are taken to judgment when we all know that they paid plenty of cases in settlements and not judgments, they speculate about how we might want to use these findings in other cases. When Mr. Rosenthal told you that the only party that's conceded that they're opposing these findings for purposes of other cases is Mr. Rosenthal and his clients, when he told you we won't settle because of this precedent.

So, Your Honor, we'd suggest that if they need to rely on factual speculation that supports our suggestion, that we be allowed to make a factual record and that we'll refute each and every one of the things they said, and we'd like to do it at confirmation. As a matter of law, that would suggest that these findings are inappropriate, but we've explained as a matter of law why they are.

Now, Your Honor, one thing you did not hear from the insurers at all today was how these findings prejudice their interests as creditors of the estate, not one mention of it. They're here today arguing in their capacity as debtors of the debtors and debtors to the claimants.

And why do I mention that, Your Honor? Well, I get the sense that Your Honor is struggling with how best to move this case forward, how best to do it quickly,

efficiently, and in a manner that preserves Scouting, and you're wondering whether these findings will bring the insurers to the table or prolong confirmation. And I would suggest to Your Honor that with the limited time you have to hear from all of us and review our pleadings, you know, I'm very sympathetic, that's a tough position for you to be in, and I think the more appropriate route is just to defer to the law and the bankruptcy code and what renders a plan not confirmable on its face.

And I would also add, Your Honor, that the estate fiduciaries, the debtor, the future rep, we have no independent financial incentive, which is unlike the incentives of the insurers. The debtor; the future rep; the Coalition, to the extent they're a fiduciary, which I believe they are; and the TCC, who supported these findings when we negotiated the term sheet -- I'm not certain today whether Mr. Stang supports them still, but when he signed the RSA he did -- all of the estate fiduciaries view these findings as part of a package, which we believe is the most efficient and appropriate way to get this case to confirmation. And we would suggest that our role as estate fiduciaries should entitle us to more deference than what you're hearing from insurers acting in their capacity as debtors of the debtor.

Thank you, Your Honor.

THE COURT: Thank you.

Okay, we're going to take a break at 2 o'clock. Mr. Stang, you have the floor between now and 2:00 -- Eastern, because you're on the West Coast.

(Laughter)

MR. STANG: Thank you, Your Honor. I just -- this might in the nature of the cleanup. You had asked earlier in the hearing whether you were going to be asked or have you been asked to determine the value of the claims and will you be asked to do that. And I think you said, well, no one has asked me yet. And there was an allusion, it may have been by Mr. Rosenthal, to the aborted estimation motion. We do think that you're going to have to value the claims in the context of determining whether Master Mortgage has been met, whether the Hartford TCJC settlements are fair to meet the 9019 standard or whatever conditional standards may exist because they're in the plan, and also the best interests test.

We have filed an application to employ a valuation expert. That application is pending, that is why we sought to employ that firm, and we think that you will be asked to value the claims, at least in the context of those three matters, if not others.

Thank you, Your Honor.

THE COURT: Thank you.

Okay, Mr. Rosenthal, you have like 11 minutes.

MR. ROSENTHAL: Your Honor, I was wondering if you

wanted a response or if we wanted to take a break. I'm fine with --

THE COURT: No, let me hear from you, Mr. Rosenthal.

MR. ROSENTHAL: Okay. First, Your Honor, I tried to write down things as they were said, but I would say to Your Honor, just to address sort of the fundamental point, I have never thought of the TDPs as a settlement. I think what we have here is a plan. As Your Honor correctly indicates, the settlement between the debtor -- is between the debtors as to how much they will have to contribute to the plan, and that settlement is measured -- because that's what all plans do -- that settlement is measured by the 1129 standards.

As you were saying, it's not really a settlement with the debtor. What really happened here is that the claimants went out and they reached a deal with the debtor to resolve the debtors' liability for an agreed amount of money that the debtor thought was a pretty good deal and, in exchange, the TDPs and the -- you know, the drafting of the TDPs to the claimants, so that they could, as you were saying, whack up whatever money came into that trust in whatever way they thought appropriate. I don't think the debtors had anything to say about that, I don't think they had a dog in that fight.

One of the things that you heard people say is

that, you know, this -- these TDPs reflect what the debtor was doing in the tort system in historical norms. That is absolutely not true. There were very few cases in the tort system. The historical norms, on average, were substantially lower than what's being allowed here. This is no different than in an asbestos where the debtor -- you know, the debtor turns over, you know, the keys to the trust to the claimants and they figure out how to -- you know, how to distribute it. In some cases, for example, in asbestos, meso claimants, they don't get treated the same as other claimants in the trust, they get a disproportionately high recover because that's a negotiation that has occurred between the claimants' lawyers themselves.

So I think the appropriate way to look at this is as a confirmation issue, the appropriate standards are the 1129 standards.

There was some discussion, Your Honor, about a trustee, why it wasn't chosen by the debtors and why a TAC. So just a little background there. Obviously, this is -- this comes from, originally, from the bankruptcy context.

When the debtors struck their deal, they didn't really care what the deal looked like. They didn't care how the money was distributed, so they didn't care who was distributing it. I'm betting, Your Honor, that if you have cases where, in fact, the debtor has an ongoing or a parent

company has an ongoing obligation to fund, that they would be extremely interested in who the trustee would be.

In many of these cases we have three trustees to represent various interests that sort of play off of one another. Here, we have one trustee that has connections to the, you know, has connections to the claimants, including the FCR, and is given wide discretion to allow claims pursuant to these procedures.

The TAC is a typical, you know, the trust advisory committee is a typical mechanism for a trust. Their role is really to sort of be the watchdog of what the trustee does, and I think that's the same here.

One of the things that was pointed out, I think, by Mr. Molton, in terms of the modification, is that they have to come back to the Court for any modification. I would suggest to you that this is, again, this is exactly what Mr. Molton said. This is, again, the claimants wanting safeguards against themselves. They made this decision to whack it up a certain way and they don't want the trustee to change that decision, either without their consent or without coming back to the Court, and that's the purpose, in this TDP, of that provision.

Just briefly on Ms. Quinn's remarks, she had argued that the findings don't really make determinations; obviously, Your Honor, I disagree, and I think they can be

misused to imply that they, and suggest that you made determinations, and certainly can be done to do unless you clarify exactly what you're doing and what you're not doing.

And I think she or one of the others went on to say that the insurers shouldn't get two bites at the apple. I think this was made whether in response to one of my comments or Mr. Plevin's, but this is exactly the point I was making. This is intended to be determinative. Their view is she couldn't get two bites at the apple.

The first bite is this Court's determination, and then they're going to go to a coverage court and say, you already decided it, Your Honor. They shouldn't get two bites at the apple.

One of the things that was mentioned by, I think, Mr. Goodman is that I hadn't talked about the good faith finding. I was about to talk about that, but we got waylaid at the time. I agree that 1129(a)(3) requires a good faith finding, but it requires a good faith finding with respect to the plan, and they want to extend that finding to the trust distribution procedures, which we think is not appropriate, and it's inappropriate for all the reasons that I've been discussing, which is to say, these weren't negotiated procedures. And so, what went on while the claimants were deciding how they wanted to whack up these values isn't proper for this Court to consider or opine on.

There was a reference, Your Honor, Ms. Quinn tried to say -- and I knew she was going to do this because she was very active in Purdue -- she tried to argue that, you know, the horse is out of the barn, that Judge Drain had decided that, you know, a plan should not be insurance-neutral. I don't think that's what Judge Drain decided, Your Honor.

As Ms. Quinn, herself, argued to Judge Drain, the Purdue case was *sui generis* and didn't have a broader impact. There were, in fact, no findings in Purdue that approved TDPs or liquidations of values. What was involved there was a settlement, similar to the sort of the settlement between the estate and, you know, between the debtors -- with the debtors.

This time, though, it was a settlement, it was a third-party settlement with the Sackler (phonetic) family. So, I don't think that Purdue is analogous to this case, nor do I think that it opens the door. But if it does, Your Honor, I think it goes back to a point that I was making, that they're trying to use this Court to build on that case to change the insurance neutrality doctrine or the doctrine that you shouldn't -- in my view, that's the doctrine that you shouldn't be altering the contractual rights of insurers to something different, that you are able to alter the contractual rights of insurers.

You had mentioned something about one of the

findings, I think it was T, something like that, that the finding about, you know, is any amounts -- they use loaded words. In each of these findings they're using loaded words -- allowed -- whatever. Of course, the reason, I think, Your Honor, they're using these loaded words is because they want to squeeze them within the parameters of allowed claims.

You know, the normal way you might -- you would do something like this in an asbestos context, for example, is their treatment, the treatment would be, you know, the treatment of the asbestos claimants here, abuse claimants is the treatment they get in the TDP, period. That's the treatment.

Let me -- I have a couple more things and then I'll let us break. One of the questions you asked me was about expedited distributions and saying isn't this really just a convenience payment?

I don't think it is, Your Honor. First, we don't make $3500 convenience payments in these situations. We, generally, would make smaller payments, and, of course, this is in addition to the comment I made about no ability of the trustee to object.

But I think another equally important point is that these claims would never have been brought in the tort system. You know, for $3500 even, how many of these claims

would make it to the tort system?

It costs more than that to put the litigation together and bring the claims. So, these claims, and this is more of an observation, you know, many of these claims would never have been brought, and so this $3500 times 10,000 or 20,000 or 30,000 is a lot of money.

You had asked me on Ohio State, the Ohio State decision, whether it was decided on an aggregate basis and I got about a hundred emails from the insurers, some of the insurers over the last 30 minutes saying it was that the abuse was in, I think, 1998 and there was a two-year abuse statute relevant there, and, you know, this was 20 years later.

So, one more thing -- no, I don't think I have anything further. Thank you very much for the time, Your Honor.

THE COURT: Thank you. We are going to take a break, because, while I could continue, my staff needs a break and they're, as we know, the most important people that we have to be concerned about here, so we're going to take a break.

But let me ask you one question, Mr. Rosenthal. I mean, you would agree that the settlement that the debtor is making in this case is not just their contribution; it's also the assignment, contribution, whatever you want to call it,

their right to insurance or insurance proceeds or their whatever rights they have under the policy to the trust.

MR. ROSENTHAL: I would.

THE COURT: Okay. We're going to take a break. It's two o'clock. We're going to take a break until 3:00 and we'll be back.

We're in recess.

COUNSEL: Thank you, Your Honor.

(Recess taken at 2:00 p.m.)

(Proceedings resumed at 3:03 p.m.)

THE COURT: This is Judge Silverstein. We're back on the record in Boy Scouts.

MR. ABBOTT: Thank you, Your Honor. Ms. --

THE COURT: I --

MS. ABBOTT: Go ahead. Your Honor, do you have a desire about how we proceed from here?

THE COURT: So I have thoughts about what I've heard to date. Mr. Schiavoni, I see your hand is up. I'll give you five minutes.

MR. SCHIAVONI: Just, what if I just do it in a minute because what I'm --

THE COURT: Better.

MR. SCHIAVONI: Better, good. Here's what I'm going to suggest to Your Honor if you could, you know, please give some thought to in essence reserving decision or -- or

discussion here until you hear now argument on the schedule because I think you've gotten a flavor, like one of the things we suggested the other day when -- or I did when we talked about this argument was how together with the -- with the -- one informs the other so to speak. Okay?

Whether or not Your Honor determines that a particular finding can or could not be made, and you may well decide the more prudent thing to do is to await confirmation and make that decision. There's a secondary issue with regard to each one of these, but, you know, frankly, I would suggest that you've got to really look at them collectively.

And that is how they impact discovery, okay, and the schedule because I think you've gotten a flavor that this is -- these are not pure issues of law, that these are driven by, I think, intense analysis of what happened. The notion that you're going to make a finding clarifying what the deal is without having any of the documents before you of what the deal is, in fact, right that was actually discussed among the parties, how you're going to make findings that are very broad on good faith instead of limited without having the documents about the transaction, how you're going to make some sort of finding that these are procedures that would adjudicate 82,000 claims without actually having claimant discovery and what not, it all implicates discovery. And, you know, the flip side of all of this is that, you know, the

debtor is saying do this discovery. You're going to hear it in 60 days and that you serve one set of discovery requests and that's it. And it's like, you know, we -- we get it all done before Christmas. It's like when, you know, bottom line when this hits the circuit, it's like if, in fact, it's presented just because I got -- I'm almost at the minute mark, it's like what comes out is that like in some 60-day proceeding, we generated an adjudicated result for 82,000 claims, you know, exceeding $100 billion or $200 billion, or whatever the number is now. You know, that tells its own story. This is not -- this is -- it's com- -- this is off the rails as far as what the ask is for the findings and what the -- the -- the discussion is on the discovery.

THE COURT: Okay. Thank you. Okay. Well, let me give some thoughts and let me say this wasn't part of what I was thinking about, but in terms of the appellate process it's an important part of any case. And it is a part of a case. And I think my job is to do -- is to make the best decision that I can make, and then if parties disagree with that decision, they take it up, and that's part of the process. I've said this in other cases. It doesn't offend me. It's part of the process. It's how it works. My job is to make the best decision that I can make based on the presentations, factual and legal arguments that are presented to me.

But I do have some thoughts because I think these findings have clearly been a focus of many hearings before me, and they are a focus of the parties and not -- in terms of sending the plan out, not in the sense that a plan would be patently unconfirmable as a matter of law without these findings, but that people are telling me that -- people, the -- the -- in particular, I guess, I'm hearing it from the coalition, the FCR, are telling me that these findings are necessary for their clients to support the settlement.

That's what I'm hearing. It's not hearing as a matter of law there's some patently unconfirmable plan in front of me but that these findings are necessary.

So let me -- I'm not going to satisfy everybody, but let's walk through some of them and I will give you some thoughts.

The first one, and I am looking in the plan, Article 9, paragraph 3, J was the first condition precedent. The insurance assignment is authorized as provided in the plan, notwithstanding any terms of the policy or provisions of non-bankruptcy law and that the settlement trust is a proper defendant for abuse claims to assert the liability of the protected parties to trigger, I guess that's an insurance concept, such insurance rights, et cetera.

I will be making a decision on the insurance assignment for the debtor's policies, for sure. That's a

matter of law, and I believe there's law in the Third Circuit with respect to it. And I will respect that law and apply that law with respect to the debtor's policies.

And it strikes me that the settlement trust has to be an appropriate person to assert rights with respect to the debtor's policies or else we couldn't be here and no mass tort claim -- no mass tort case would work. It just doesn't make any sense.

With respect to non-debtor policies, I understand that that is a different issue, and the debtors have proposed a workaround. And we'll see if that workaround works. That's what people have suggested. It might. As I said, it's not a workaround that I particularly care for, generally, on principle, but nonetheless it's what's being put in front of me, and I think I can probably rule on that.

With respect to "Q," the plan, the plan documents, and the confirmation order shall be binding on all parties in interest, I will say there what I say oftentimes in the context of a confirmation order, a sale order, et cetera.

This provision really tells us who a plan binds, and the code and the case law tell -- case law explains it. Okay? That's who I can bind. I don't think I can do anything other than that, and that includes the code 1141, case law interpreting 1141, doctrines of res judicata, collateral estoppel, doctrines of a plan as a contract, et

cetera.

So mirror the code. Okay? Some -- some judges used to say, yeah, here's my two-page confirmation order. I confirmed your plan. Okay? And then all of the effects that it has, it has. But here is a mirror the code.

I'm going to skip down to T. The plan and the trust distribution procedures were proposed in good faith and sufficient to satisfy the requirements of 1129(a)(3). I'm going to apply 1129(a)(3) in accordance with Third Circuit law. Whether you can sweet the trust distribution procedures into that or not, I don't know. But I'm not sure I should be doing that. It's the -- the -- the requirement of 1129(a)(3) is with respect to -- let me make sure I'm right, the plan, which might encompass a lot of things.

The plan has been proposed in good faith and not by any means forbidden by law. That's what I am supposed to find, and what was interesting, when I went back and looked at these conditions precedent, is many of them contain a specific reference to a code section or 9019. They give me a frame of reference as to what I am supposed to be guided by. Some of these do, and some of these that we're looking at don't, but I think it's interesting that it highlights the fact that for certain of these findings there's no reference to the code or any provision of the rules.

Okay. I think those three are pretty, quite

frankly, easy, and they're within my -- the general bailiwick of a confirmation hearing. And I don't think those are different than what I would have to find, except for the insurance assignment, obviously. The insurance assignment is -- is specific to here, but the bindingness of the plan, 1129(a)(3), that is the same as any other plan that is put in front of me than where I have to contend with it on confirmation.

Finding or condition precedent R, the procedures included in the trust distribution procedures pertaining to the allowance of abuse claims, and the criteria, et cetera, are fair and reasonable. I'm still not sure what this falls under in terms of a plan confirmation standard.

If I have to find because it's contested, if it is, that the trust distribution procedures or the claims amounts in the matrices are appropriate, acceptable, I don't know, part of a negotiation. I don't know what I'm going to find out there, I may make that kind of a finding. But it's certainly going to be constrained by the type of hearing that I have and the purpose of the hearing. And that's the context in which I will make any such findings.

I don't know if fair and reasonable is the standard, nor, quite frankly, do I know how that could possibly impact anybody -- any insurance company's obligations under a plan -- under their policies. I don't

know if those are magic words or not magic words. I suspect they are not the words in the policy.

With respect to condition precedent S, the right to payment that the holder of an abuse claim has against the debtors, or another protected party, is the allowed value of such abuse claim, as liquidated in accordance with the distribution procedures, and is not the initial or supplemental payment percentage or the contributions made by the debtors. Again, I don't know what standard this would fall within, but I think there's some general things we can say about this.

A claimant's right to payment, and that does come, someone said this, right from the definition of a claim. Somebody has a claim. There are other contexts in which we look at what their claim is, which might be analogous here, I don't know. But if someone is adjudicated to have a claim for $1,000 and there's a bankruptcy distribution of 10 cents on the dollar, it doesn't mean their claim is $100. Their claim is still $1,000. Whether they will be ever able to collect that amount from anybody else is a different issue. Maybe there's a guarantor who will pay them the other $900. Maybe that guarantor doesn't have to pay them the other $900 because their contract of guarantee limits it.

But we know that there are bank -- we know that rarely do creditors receive 100 cents. They get some sort of

bankruptcy distribution, and I think anybody looking at a bankruptcy distribution would not say that that person didn't have a claim for the full amount of their claim, whatever it is. I would hope that's not controversial.

What I think is controversial about this paragraph is how can -- is -- is -- how does that work in the insurance coverage context? What does a policy provide for? What does it say it covers? What product did the debtors buy? And so this paragraph is probably the one I find most concerning in terms of not knowing how it might be used later on down the line, but I think there's some -- ought to be some fundamental universal first principles about claims that I think parties could probably agree to.

And then some other court looks at it and applies it to particular contracts and a particular context. But I will say that that paragraph S to the extent it has to be in the form that is in this condition precedent is something that I might not feel comfortable with in the way it's written. And, as I said, the most troubling in that regard, and I don't think anyone should be surprised by this, are condition precedent R and S. But I think that there are some fundamental principles behind some of this, particularly S, that parties presumably could agree on.

And that's the guidance that I can give.

Other than that, I think, again, context matters.

I don't know what's going to be put in front of me. Somebody says parties are on, you know, shifting. I would say a lot of the parties have shifted their positions, depending on whether they're in agreement in a particular time with what's going forward or not. So -- and that's not surprising. It happens in cases, and that's where we are in this case.

So I don't know if that was helpful or unhelpful, but that's the best I can do at this point in time. I do think, though, that to the extent that these particular findings are gating issues for somebody who is supportive of this plan, you need to give some thought to my comments. Okay. Let's move on.

Ms. Lauria?

MS. LAURIA: Thank you, Your Honor.

Appreciate that feedback, and presumably we may have another break today and we'll circle up with the other co-proponents to determine what their reaction is or their initial reaction to Your Honor's remarks. But we appreciate that very much.

Your Honor, by my count we had another six or seven issues that were raised in Mr. Rosenthal's remarks. I didn't see any of them as rising to the level of patently unconfirmable. I'm happy to address any or all of them. I do think, importantly, we should address the timing and the uncertainty point that he raised because I feel that is an

issue that we've been confronting regularly. And as Mr. Kurtz said last week it's something that is critically important to the debtors and so I want to get that on the table.

And then, again, happy to respond to, and I can list them again, the handful of other issues that he mentioned.

You know, Mr. Rosenthal opened his remarks today by saying, you know, we don't think that this disclosure statement should be sent out now for solicitation, that we should hold off a couple of weeks because right now we don't have anything close to global consensus. And as Your Honor, and probably more particularly your chambers, is painfully aware, there have been multiple times during this case that due to where we're at in mediation we have contacted chambers and we've asked chambers to push something off so that we can continue to mediate.

We have done that when we have felt we are on the brink of something that could be, you know, a game changer with respect to the case itself.

We are not there, Your Honor. This is -- we are at the point where we have a plan that is substantially mature, and it is ready to go out for solicitation. No amount of mediation is going to change the core and fundamental principles of this plan of reorganization,

subject, of course, to the remarks that Your Honor just made, which we want to circle up with our colleagues about.

I didn't hear anything that necessarily should change folks' minds, but right now I think we have a core plan that is ready for solicitation. Importantly, from the continued mediation perspective, we think mediation should continue. We will continue to mediate with the chartered organizations. We will continue to mediate with Mr. Rosenthal and the other insurers. In fact, the nice thing about this plan, now that we have one very significant insurer on sides, that's Hartford, and one very significant chartered organizations on sides, that's -- that's LDS or TCJC, we've had someone wearing the hat of an insurer and the hat of a chartered organization review the plan and comment on those terms.

So as we look forward, additional settlements are really bolt-ons to the structure that we already have and that were already contemplated by the plan of reorganization itself. No amount of time is going to change that, and, in fact, as you heard from Mr. Kurtz last week and myself at the outset of the hearing last week, time is not the debtor's friend.

By the time we get to March, our trust distribution is going to go down to zero from a cash perspective, and the rest of the plan becomes significantly

infeasible if not infeasible and would have to be recut. So time is not our friend, and we are ready to launch.

In terms of there's too much uncertainty, I can tell you, Your Honor, there are numerous members of the coalition law firms or in state court counsel that I think are here to tell you today that it's not uncertain, that state court counsel representing 81 percent of abuse claimants are here in support of the plan.

The coalition lawyers and state court counsel affiliated with them have worked incredibly hard through the mediation process. They have literally shown up at every mediation session for the last year, probably before that. These were hard fought negotiations through mediation that the coalition and FCR and debtors worked very, very, very hard for. So to suggest there's some sort of uncertainty or a lack of global consensus, I think we have numerous individuals on the line today, Your Honor, that will tell you that's just not the case.

Have we reached agreement with all of our insurers? Clearly not, and we are looking forward to continuing to negotiate with them. We clearly have not reached agreement with all of the chartered organizations, and we're looking forward to continuing to negotiate with them. But that doesn't change the fact that we have a huge ground swell of support for this plan today and, again, Your

Honor, I haven't heard anything that renders this plan patently unconfirmable under American Capital Equipment that should prohibit it from going out the door and being solicited and getting that process started.

We also think it's critically important, and you'll hear from Mr. Kurtz on this later in today's presentation that we think it's critically important that the timeline for confirmation discovery get kicked off immediately.

So that, I think, was something that was very important for me to address with the Court, Your Honor. In terms of the other issues, I'm going to tick them off just to see if there's something that you want to hear more about.

We heard about the coalition legal fees. In short, we thought it was appropriate at the RSA phase given the amount of energy that the coalition put into this, we heard Your Honor at the RSA say it's premature for me to endorse this today. Let's see where this case comes out. That's why it's baked into the plan because that's at the tail end. That's when you know when these cases come out. They've worked hard.

They're continuing to work hard, and the debtors thought it was appropriate.

On third-party releases, and I believe Mr. Patterson also referenced this in one of his pleadings,

Mr. Rosenthal indicated that we've got it backwards, that the debtor's claims are indeed derivative of local councils and chartered organizations, not the reverse. That's just wrong, Your Honor.

As you know from the first day of this case, the Boy Scouts of America was congressionally chartered with the mission of scouting in 1916 pursuant to an act of Congress. It is only the national organization that has the ability to grant charters to provide scouting throughout the United States.

National controls the delivery of scouting at a local level, and so these are, in fact, we are the scouts, we are the scouting movement, we hold the congressional charter, and no one has asserted, and, in fact, we haven't seen any complaints where the national organization is getting accused of some sort of vicarious liability on the part of the local councils or on the part of chartered organizations.

In fact, you'll remember, Your Honor, I think it was three months into this case, I think it was our first contested hearing on the preliminary injunction, pre-bankruptcy case, these complaints defined scouting as scouting, national local counsel and at the local organization unit level. But that's a factual issue. That's not an unconfirmable on its face, Your Honor.

But I did -- it's an important legal issue that

you will hear a lot about and a factual issue to the extent there's issues with the third-party releases.

You've heard a lot about the $3,500 expedited distribution. That's going to come up, again, when we deal with the committee's motion. Mr. Rosenthal raised issues concerning whether there would be an adequate basis to pay out on those $3,500 claims. Again, I don't want to belabor that point now. I'm just going to make two observations. One, the expedited distribution has been tossed around a lot over the last four days of court.

Two important things: One, in order to receive the expedited distribution, the party had to have substantially completed their proof of claim form. And, two, the individual had to sign their proof of claim form. It could not have been signed by an attorney. The TDP has always said it had to have been actually signed by the claimant itself to be eligible.

I have to correct the record from Mr. Schiavoni who suggested that the majority of the proof of claim form was background information concerning the individual. That's just not true. It's 12 pages. 8 of those pages pertain to questions related to abuse, scouting, chartered organizations, the relationship with the abuser. There's one page on background, two pages on instructions, one signature page.

And then, finally, I think you heard a lot about good faith. That is clearly a factual issue. Whether it's in the 1129(a)(3) context or not, we will be prepared at the confirmation hearing to demonstrate that the debtor satisfies all of the 1129 standards for receiving confirmation of the plan, including 1129(a)(3), and that's just not a reason to prevent the plan and the disclosure statement from going out for solicitation.

So that was a very fast canvassing of the issues that you heard about. We're happy to go into more of them now, later, but we don't think there's anything here that should prevent this plan from being solicited.

As I said, Your Honor, I know there's coalition folks here that may want to be heard. In fact, I see Mr. Rothweiler has raised his hand, but unless you've got questions for me, that's where -- where I think we see the world.

THE COURT: Thank you. No, I don't have any questions from you. I am going to want to hear more about the $3,500 expedited distribution in the context of the committee motion or the change to the plan, and so we'll deal with that. But, no, I don't need anything further on the other issues you ticked off quickly for me.

MS. LAURIA: Thank you, Your Honor.

THE COURT: Okay. I do see Mr. Rothweiler.

MR. ROTHWEILER: Your Honor, can you hear me?

THE COURT: I can.

MR. ROTHWEILER: Very good. Thank you, Your Honor. I appreciate the opportunity to speak. Let me just introduce myself since I haven't been before the Court before. My name is Ken Rothweiler. I am a cofounder of the firm of Eisenberg, Rothweiler, Winkler, Eisenberg, and Jeck.

I think I need to tell you a little bit about my background, Your Honor, because it may be relevant to some of the comments that I will be making so that you know a little bit about my history. I am here in Philadelphia. I have been a trial lawyer for 40 years, and when I say I've been a trial lawyer, I've actually tried cases. I've tried cases from my first day out of law school, and I -- I've never been in the practice of trying automobile cases or slip and fall cases. I've tried cases that are catastrophic injury cases. My clients are brain-damaged individuals, paraplegics.

The most severely injured amongst all claimants are the claimants I've represented for 40 years.

I've also represented sex abuse clients that I'll tell you more about. In my career, Your Honor, I've tried over a hundred trials to verdict, so I have extensive experience in a courtroom. I don't have extensive experience in a courtroom like this, Your Honor, so I'm unfamiliar with bankruptcy court but I've learned a lot over the last 19

months. It's a whole different way of practicing law, and I must say just as an aside that you have amazing stamina and patience because some of these hearings go extremely law and it tests my own stamina and patience. So I just wanted to say that to you.

THE COURT: Well, welcome to the Wild West, which is what my former partners who were litigators thought about whenever I asked them to come into bankruptcy court.

MR. ROTHWEILER: That's what I've heard.

Your Honor, I'm -- I'm one of those lawyers that you would say I try one case at a time. I represent one client at a time. It's very unusual for me to represent any more than one client. The only exception was I was one of the counsel that represented the Amtrak victims that got hurt, severely hurt and killed here in Philadelphia a number of years ago. I represented a dozen or so of those Amtrak clients to a successful conclusion, and that's probably my only example of representing more than one client in -- in any litigation.

I should tell you that I'm a proud member of the Plaintiff's Bar here in Philadelphia. I have served as president of the Philadelphia Trial Lawyers Association and also of the Pennsylvania Trial Lawyers Association. I've represented, you know, over 15,000 plaintiffs trial lawyers before the Harrisburg legislature fighting tort reform and

other issues that came before the Plaintiffs Bar over the last 40 years.

So I'm steeped in the tradition of a plaintiffs trial lawyer, Your Honor. I'm proud to be one, and I've heard -- on these hearings I've heard some innuendo about and insinuation about plaintiffs' trial lawyers. I can tell you that that hurts. It comes -- it comes as an offense to me because those of us that try cases risk everything going into a courtroom representing clients with by the way no guarantee of ever being paid. I work on cases for years, years without any guarantee of ever being paid.

I spend hundreds of thousands of dollars on cases and through the workings of other lawyers in my office and through discovery and through the different things that we have to do. We hopefully are successful at the end of the day.

So just a little bit of editorial comment there, Your Honor, but I just think that I needed to say that. I have to tell you, Your Honor, that I did not intend to speak during any of these hearings. That was not my goal. I have very able counsel with Mr. Molton and Mr. Goodman to speak for us, which they have done.

But hearing some of the objectors, I felt I needed to speak and address some issues and to provide the Court with context.

And to start off with, Your Honor, I would just like to respond to one thing that Mr. Rosenthal said earlier today, and I -- and I wrote it down when he said it, and he said many survivors oppose the plan.

I don't know what Mr. Rosenthal's definition of "many" is, but I can cite some facts for you. In the RSA, 41 firms supported the RSA, 70,347 survivors supported the RSA. And, Your Honor, that was before the Hartford deal, and that was before the LDS deal.

What was in the RSA at that time was $850 million that was coming from the BSA and the local councils. Through the hard work of a lot of people, we've now increased that amount to $1.9 billion, and we're not done yet. We're nowhere near done, and as we put more money into that trust, the amount of people that agree with the plan and will vote for the plan goes up, because as you can tell a lot of the survivors if you talk to them, the ones that are opposed, they're opposed because they believe there's not enough money to fund the trust. Well, we're working on that every day.

Your Honor, for the last 19 months, I've done nothing other than work on this 24/7. I've not worked on one other case other than this case. Through the last 19 months, I've suffered through COVID. I got COVID. My mother died as a result of COVID. It's been, you know, a very traumatic experience for me and for my law firm. So people are hard at

work, and we're hard at work because we believe that these survivors need to be compensated and they need to put this behind them. And time is not their friend.

During the pendency of this bankruptcy, I've had clients that have died. I've had clients that have committed suicide. Time is not the friend of survivors, and I believe the Court, you know, needs to know that and needs to hear that.

With regard to the objectors, last week, Your Honor, I heard two -- and we call them state court lawyers in bankruptcy court, but, you know, in my world we call them plaintiffs lawyers. State court lawyers is a little bit of a different term for me.

But I heard two state court lawyers speak, and they're both prominent state court lawyers and I have a lot of respect for both of them, but they do not speak for the majority of the survivors.

My firm represents over 16,800 survivors. We represent the largest group of survivors in the bankruptcy. Your Honor, the amount of survivors that my firm represents is twice as many survivors then the entire TCC combined. So we believe that we have a loud voice in this bankruptcy.

We also believe that we have a fiduciary right, you know, obligation here. I know that the TCC is -- has been appointed by the U.S. trustee and serves as the

fiduciary, but with the amount of clients that we represent, Your Honor, we believe that we have that same fiduciary obligation.

I think I need to give Your Honor some context of how we got here. Why so many cases? You know, Mr. Schiavoni said how did there become such a case explosion? And when he has said that and when he has been before this Court, there was always at least from my perspective an implication by Mr. Schiavoni that somehow plaintiffs' lawyers were the cause of the explosion in cases.

Let me make this clear for everybody listening. Pedophiles are the cause of the explosion. Pedophiles is the reason why there are so many cases, not plaintiffs' lawyers, and that needs to be said because plaintiffs' lawyers are just representing those survivors. It's the pedophiles that are the enemy, not the Plaintiffs Bar, not plaintiffs' trial lawyers.

We're doing our best to do what we can for the survivors.

And I think I need to tell Your Honor how I became involved in this -- this -- this litigation, and how it progressed for me. And I need to tell you we need to go back to 2013 for that description and that story because a young man walked into my office and sat right there in my couch in my office, 24 years old. He told me a very compelling story

about being abused by his scout master when he was 12 years old.

And as he told me the story, tears down his face and down my face. He told me about for 12 years he kept it to himself, never told his mother, never told his best friend, never told his girlfriend, and he was married at the time, never told his wife.

Told me he was suicidal during that time period. But he told me he needed to get his story out, and he thought I was the lawyer to take on the case. Well, we worked on the case, we took depositions, and the case settled as it was coming up for trial. It was a very, very compelling case, and it was a significant settlement, probably the largest settlement of any single case that the Boy Scouts have ever paid on. And that's probably still true today.

And to be honest with, Your Honor, I thought it was a single case. I thought it was just another one of the cases that of a plaintiff that I represented in my forty years' practice, but it wasn't. It wasn't, and -- and two years later, Your Honor, CNN Did a ten- minute feature on that case, and if anyone is interested you can still see that case on YouTube on the internet, and as a result of that case getting some publicity, I started to get referrals for, again, single cases from around the country. I got them from the West Coast, from the East Coast and from all over.

And every one of those cases, Your Honor, we settled, and some of those cases had very significant statute of limitations issues, but you know what good lawyers can figure out arguments to overcome things like -- problems like statute of limitation problems. And the BSA paid on every single one of those cases.

And then the bankruptcy occurred. And why was there this explosion, Your Honor? Why all of the sudden did it go, as Mr. Schiavoni said, from 200 cases or maybe 1,000 cases to this 82,000 cases? You know and I wrestled with that question myself, and you know the answer I came up with. People that have suffered sexual abuse who have suffered in science now realized that there was a whole community of people out there that the same thing happened to them over the decades, and it gave them comfort. If you listen to the survivors, they will tell you that the most comforting thing in this whole saga has been that there are tens of thousands of other men that it happened to and they also suffered but now they were a community together.

Mr. Buchbinder, when we were interviewing for the TCC committee, he heard hundreds of those stories.

I sat in a room with him while he listened to those stories, you know, and -- and they're compelling and they're unbelievable that this kind of thing, you know, has gone on in America where there's been tens of thousands of

pedophiles that have caused this situation.

Then what happened, Your Honor, we -- we formed the TCC. When I say we formed it, I was on the TCC, and my firm was on the TCC, and we had a representative, a survivor, on the TCC. And I came to know the people on the TCC, who I very much respect.

And I came to know two other firms on the TCC, Andrews and Thornton, and Ann Andrews, who was one of the people I got to know. Slater, Slater and Schulman from New York City. I got to know Adam Slater very well, and we started to understand, Your Honor, that between our three firms, we represented over 40,000 survivors. And we understood what goes on in bankruptcy court where there has to be votes at the end, and we understood that we had a big -- big position in the bankruptcy because of all of the clients that we represented.

After five months of being on the TCC, Your Honor, we realized that we had unresolvable differences in philosophy with the TCC, and what we decided to do, our three firms, is we decided to form an ad hoc committee called the coalition.

And I have to tell you, Your Honor, this is - - this took a lot of thought and a lot of consideration from all of our firms. I mean I have a firm of ten lawyers. I don't have a big firm. We handle big cases, but it's not a

lot of lawyers that make up my firm. We knew that we were going to have to assume the financial burden of going forward as an ad hoc committee. That means paying the -- the bankruptcy lawyers, paying all of the professionals, the financial advisor and everybody that we would need in order to go through the bankruptcy. And it was a big decision, but between Ann Andrews, Adam Slater, and myself, we said to represent the survivors the way the survivors need to be represented, we need to band together in order to represent the survivors. And, hence, the coalition was formed.

Your Honor, we now represent over 65,000 survivors between all of the members of the coalition committee and it's not just our three firms. Other firms have joined us as well with thousands of clients that they also represent.

Your Honor, by contrast, the TCC represents about 6,800 survivors. So they represent 6,800, and we represent 65,000. And we actually represent more than that when you add all of the survivors and the survivors' lawyers that are not part of the coalition per se but are people that support the coalitions' positions.

And, Your Honor, I think it's important for you to realize that the three firms rallied around a common goal and mission. And here is our common goal and mission: No survivor would be left behind. All survivors would be compensated. Philosophically what we thought, Your Honor, is

if someone was sexually abused by a Boy Scout leader in New York, which is an open state, and if someone was sexually abused by a scout leader in Alabama, which is a closed state, it shouldn't make a difference. It shouldn't make a difference. Sexual abuse is sexual abuse. Their lives were still as scarred whether they lived in New York or they lived in Alabama. And we took a pact that we were going to represent them equally.

Our second common goal and mission was that the survivors need to be compensated in their lifetimes. Most of my clients, Your Honor, are between 60 and 70 years old. Time is not their friend, as I said before. As I said before, clients have died.

Time, time, time is important, and what I've realized in this bankruptcy is time keeps moving on, and for the survivors it's just not something we can tolerate. We get calls every day about when is it going to be over, when is it going to be over. It's been a year and a half. It's hard to give them an answer, Your Honor, because as I said, you know, I'm a plaintiffs' state court lawyer. We normally know the timeframe. If a case comes into my office today, I can look the client in the eye and say you're going to have a trial in two years. Put it in your -- put it in your calendar right now. We're going to be trying your case in two years, and they get resolution to their case in two

years.

And that's a wonderful thing. It's just not quite the same that I've learned in bankruptcy court.

Your Honor, there's been some criticism of what people have called the mass tort lawyers and let me just take two seconds and talk about that. I've never really dealt with mass tort lawyers because that's not my practice. These are some of the most outstanding lawyers I have ever dealt with. You talk about committed lawyers? Most of these people are working 24/7, and this is their only case, as it's my only case. That's how strongly we feel about the dedication that we need to have for the survivors.

They deserve nothing less than that. I've learned a lot from these lawyers who have been in bankruptcy court and understand what needs to be done.

And I have to tell you, and I'll say it publicly, I really appreciate it because there's a lot that I didn't know and they've opened my eyes.

But there's been some criticism about that, you know, mass tort lawyers about the contact they have with clients. Well, I can tell you, and this is true for all of the people in the coalition, that contact with clients is constant. With my firm, we have -- we get over 2,000 calls a month where we advise clients as to what's going on. We have monthly updates with them. We send out to them a written

monthly update every month. There's been 18 of them so far.

We have phone calls daily, like I said, and we have Zoom calls and we have video discussions with them, and we plan on having, we plan on expanding that, Your Honor, so that we have more planned Zoom calls so we get a bigger audience and we get them to see what we're doing and we get the opportunity to answer those questions.

There's a TCC survivors committee, and I know a lot of people on that committee, Your Honor, because like I said I was on that committee for five months.

And those survivors are really no different than every other survivor. They all have their own story, and they're all compelling, and they're all very sad. But we put together our own survivors' advisory committee. As a matter of fact, last night we had a meeting of that committee. They're from California and from New York and New Jersey and Texas, from all over the country.

And we listen to them. What are your concerns? What do you -- what do you need more from us so you can weather the storm, as we go through this bankruptcy? And it's -- it's a very tough thing to tell them that they have to wait, and I don't like using that word when I say to them you have to wait.

Now the question has been, Your Honor, what has -- you know, what has the -- what has the coalition's goal been

in this bankruptcy? Well, the goal is very simple. It's to formulate a confirmable plan to compensate all survivors.

Well, let's talk about that a little bit.

What has the coalition done to move that goal? Well, there's been the BSA deal. The coalition was instrumental in getting that deal done, Your Honor.

You can ask Ms. Lauria and Mr. Andolina the coalition's participation because it was daily and we worked and we worked and we worked on it.

And then there was the local counsel deal.

The coalition was instrumental in getting that deal done. You can ask Mr. Mason about that because he saw what the participation was from the coalition. Then there was the Hartford deal, tough deal, tough deal, and when I saw it was daily, it was -- it was daily and it was -- it really was 24/7. We needed to get that -- and you can ask Mr. Ruggeri and you can ask Mr. Anker about the coalition's participation in getting that deal done because it was significant. And I dare say that that Hartford deal would have never gotten done but for the coalition.

The LDS deal, you can ask Mr. Bjork and Mr. Austin, the LDS deal, the coalition was instrumental in getting that deal done. Because, again, Your Honor, going back to what I said before, time is not the friend of the survivors. And you know what, as a plaintiff's lawyer, I

know, you know what, if I stretch it out, maybe I can get more money, maybe I'll have more leverage. But that takes time.

Appeals, litigation is not the friend of survivors, at all.

We've put together, Your Honor, $1.9 billion that's going to go into a trust, and we're just getting started. We spent all day in New York yesterday with Century. We're trying to work on getting deals done. It's a difficult process, probably the most difficulty in my 40-year career. But I know it can get done because there's a lot of talent. On this screen, as I see all these lawyers, these are some of the most talented lawyers I have ever dealt with in my entire career. And I know it can get done.

So we're talking with Century. We're talking with AIG and Mr. Rosenthal. We're talking with the Catholic Church, and we're talking with the Methodists, and we're talking with the Episcopals, and we're talking with the charters. We're going up to New York again. I just got back from New York. We're going back up. I'm going back up tomorrow, again, for two days of mediation where we're going to be talking with some of the charters and some of the insurance companies. So we plan on that $1.9 billion that a lot of people will criticize yet, and they use the math and they say it's so much per -- per survivor. Well, that's

really kind of an inadequate description of the amount of money that we're getting into the trust because as we talked about different people will get different amounts depending upon, you know, the criteria, whether they satisfy the criteria or not.

And we intend to at least double that number, Your Honor. I'm going out on a limb by saying that, but that's the goal because our goal is to get as much money into that trust as possible. Now, there's been some objectors out in the public forum in the media that have criticized the coalitions as sellouts, and I take that as an extreme offense.

For the record, Your Honor, the coalition along with the FCR and the BSA has to date put together the largest compensation fund for survivors of sexual abuse in the history of the United States. Let me repeat that. The coalition along with the FCR and BSA has to date put together the largest compensation fund for survivors of sexual abuse in the history of the United States. That's a true statement, and we're only halfway there.

In contrast, Your Honor, the TCC has put together no deals with insurers or chartered organizations. They just have been in the position of objecting to everything the coalition has done. And I would suggest to the TCC that as fiduciaries of all the survivors, they spend the time helping

to enlarge the compensation fund rather than objecting and creating roadblocks for the survivors.

Your Honor, the -- there's many lawyers on the TCC that are my friends. I've developed friendships with them over the course of this 19 months. I've spent a lot of time working with them, and when I formed the coalition with Ann Andrews and Adam Slater, I still reached out to the TCC because I didn't consider us to competing forces. I considered us to be all working for survivors because we are all working for survivors. So I arranged Zoom calls with the TCC and with other members of the coalition to see where we could drive together and work together for the benefit of the survivors. I arranged a meeting in New York where we all -- everybody flew in. We had dinner together, the TCC and the coalition. We broke bread together to come to agreements so that we could move this forward and so there wouldn't be roadblocks. We met in Chicago, and I -- I -- I still today consider many of the TCC lawyers are my friends. But we're all working in the same direction, Your Honor. We're working for survivors. We're all in this together. I invite all objectors to come join us to build the largest fund for all survivors so they can be properly compensated. They deserve it, Your Honor. These survivors have suffered enough. They don't need to wait any longer, and I hope this process concludes quickly.

Thank you very much for giving me the time, Your Honor. I really appreciate it.

THE COURT: Thank you, Mr. Rothweiler. Okay. I see hands. Mr. Stang, I will let you speak. I'm sure you want to respond. I don't think -- but let's realize it's 4:00. There are things we need to get done today, and over the course of any number of hearings now, I've heard from all sides of all issues. And I recognize that you and members of your committee may disagree with much of what Mr. Rothweiler has said. So please appreciate that I understand that.

MR. STANG: Thank you, Your Honor.

THE COURT: Mr. Stang?

MR. ABBOTT: Your Honor, may I be heard briefly --

MR. STANG: Thank you, Your Honor.

MR. ABBOTT: -- before we get to Mr. Stang, Your Honor, just briefly on timing?

THE COURT: Mr. Abbott?

MR. ABBOTT: Your Honor, we have spent, obviously a number of days in front of the Court, and I appreciate Mr. Rothweiler's passion. I appreciate the passion that he has aroused in other folks who are on this Zoom call. But it is critical, Your Honor, that we get to the scheduling process.

THE COURT: We're going to get to it.

MR. ABBOTT: I just want to make that clear.

Mr. Kurtz has been waiting patiently, Your Honor.

THE COURT: And I have views on it.

MR. ABBOTT: Okay. Thank you.

THE COURT: Yes. Thank you.

MR. STANG: Thank you, Your Honor. I had to take a really deep breath during Mr. Rothweiler's prepared comments. For someone who was not anticipating speaking, he certainly read off his script explaining why his -- he and his other law firm coalition members are entitled to a substantial contribution so that the fees that Mr. Molton has incurred are reimbursed to them or perhaps never having to be paid by them.

And what he has said really reflects a misunderstanding of what the TCC is about and how survivors are to be treated in this case. He said I was on the TCC, referring to himself. He was not on the TCC. Mr. Kennedy, Mr. Humphrey, and seven other survivors are on the TCC. They are the fiduciaries.

He said the TCC represents 6,800 people. Again, he doesn't understand the role of the TCC or for that matter his role or for that matter I'll pick out one of my state -- one of the state court counsel who represents committee members, Mr. Modus' role. The -- Mr. Humphrey, Mr. Douglas, Mr. Kennedy represent the constituency. No attorney represents the constituency.

He said the TCC met with the coalition in Chicago. No, it didn't. Mr. Kennedy did not appear at that meeting. Mr. Humphrey was not at that meeting.

Mr. Greer (phonetic) was not at that meeting. Mr. Tabone (phonetic) was not. He met with other lawyers because this is about control. He told you how they represent upwards of what, 70,000 people. Well, he may, but this is about them thinking that they should run the case because they think -- think they have the votes.

They thought they should have had control of the committee, but Mr. Buchbinder and his staff appointed one committee member, if you -- if you look at it from this perspective, one committee per law firm, and that really torqued them. They couldn't stand that because as they started amassing clients, I believe Mr. Molton referred to them as inventory last week, they thought, wow, this really isn't fair. We've got survivors making decisions for survivors. We represent all of these people. We should be making decisions for the survivors.

And then he criticizes the TCC for not making any deals. Well, you know what, I could make a deal with Mr. Schiavoni in five minutes. I just have to meet his number. I could make a deal with Mr. Ruggeri in three minutes. I just have to match his number. So if I want to race to the bottom, I'm faster than anybody, but that's not

the TCC's goal. The TCC's goal is to get as much as possible for survivors.

You know how much someone who was anally penetrated is going to get in an open state using their current settlement number? $57,000, that's how much -- and our chart that's going to go into the disclosure statement is going to say that. You know how much you're going to get in the next lower-tiered state, Judge? $34,600. You know what? I'll double that.

I'll take Mr. Rothweiler at his word and say he's going to double that. $68,000 for multiple penetration claims in Oregon or Washington. Well, congratulations. You all did a great job. That is not the goal of the TCC. The TCC opposed the settlements that have been reached because they are race to the bottom settlements. And the Mass Tort Bar, the lawyers who have multiple clients have an agenda that is beyond simply in my opinion maximizing the return to clients because at some point a third or 40 percent of a big number is a big number, and it doesn't matter how much each person gets. But if I had experienced sodomy in California and you tell me I'm getting $58,000, I'm not accepting that settlement.

And we will see how many people accept that kind of settlement. So I may be right. I may be wrong, but to hear a 15-minute presentation that was an opening statement

for a substantial contribution claim, frankly, was inappropriate. It shouldn't have been done, and I hope we don't have to hear it again before we get to the -- before the hearing on their substantial contribution motion. Thank you, Your Honor.

THE COURT: Okay, thank you.

We're going to get to scheduling now, and I don't have my calendar. So we're going to take five minutes. I'm going to get my calendar, and we're going to talk scheduling.

We're in recess.

UNIDENTIFIED: Thank you, Your Honor.

(Recess taken at 4:02 p.m.)

(Proceedings resumed at 4:06 p.m.)

THE COURT: This is Judge Silverstein. I'm not sure if I'm a minute or so early. So let's give people time to get back on.

(Pause)

THE COURT: Mr. Kurtz, I have some thought about scheduling, but I will hear from you initially.

MR. KURTZ: Thank you. Thank you very much, Your Honor. Glenn Kurtz, White and Case, on behalf of the debtors.

Hopefully, this will be a little less energetic, but interestingly enough, we have some similar impact on abuse victims because as the Court well knows time is money

here not just in the traditional sense of having less cash on the balance sheet, but in the direct sense of having reduced cash contributions to the trust, which is in effect the proverbial melting ice cube. And so we really have something to -- to work hard at here in addition to feasibility issues and the like.

It struck me that the request for a lengthy period of time between solicitation and confirmation was unusual. We did a little research on that. We looked at Delaware confirmation cases, big -- what we thought were larger cases, and confirmed that the average time period between solicitation and the confirmation hearing is 46 days. And Hertz was 42 days, and so we think, of course, the request for six months and five months, which are 3.5 to 4 times more than the normal period of time is pretty excessive.

We also don't think as much time is needed here for a couple of reasons. One, we're not starting from scratch. I mentioned this before, but I went back and confirmed that we started producing information to -- to the objectors in March of 2020. We have produced information relating to historical claims, local councils' information related to the debtor's insurance, financial condition, it's organization, board minutes, and other documents and we've also produced for deposition the CEO, the chairman of the board, and the financial restructuring expert here. So we're

pretty far down the line the way we see it.

We also believe that in addition to the normal interests and simply having more time, which is fairly common place in most cases and particularly for somebody that is seeking to avoid relief, there does seem to be I think pretty clearly an independent interest in having some delay. And I think even this exercise has reflected that because the time you have for discovery is from a start date to an end date.

And so, therefore, everybody should be looking for a very early start date because the earlier you start the more you can get done, and here we've had a lot of resistance. We've been raising this for a while now, and the objectors won't agree to a start date. They didn't even want Your Honor to hear confirmation scheduling until this week.

So -- so there's a lot -- there's sort of a lot of indications including all of the requests for adjournments or not to set schedules that we think are kind of transparent here.

Also, if the objectives were really concern about the amount of time that they needed in order to complete discovery, then, of course, they would be starting just as soon as they could, as opposed to resisting the start. I think there's a certain amount of vigilance that should be expected of a party that's complaining about timing here.

They have known that we had intended to proceed,

and I know we're not getting that anymore, but we had intended to proceed on December 9th and yet we didn't have any document requests or any discovery requests. They haven't been propounded even though it was at least conceivable we would have been successful on that.

Your Honor stated at least as of the August 30 hearing that, quote, "Think about how discovery is going to be conducted to promptly get us to a confirmation hearing." So the parties have been on -- on notice for a few weeks now that we really needed to get moving on it. You stated more than once last week that there's nothing that would keep people from pursuing discovery now, and -- and the only thing I really heard is we don't have an approved disclosure statement. That -- that's language. The deal terms are what they are. The objections are what they are.

They are free to and needed to serve and pursue discovery kind of vigilantly, I think, before they watch the ice cube melt a little more. There was certainly no reason they couldn't serve discovery. If it turned out that something got mooted, then we simply wouldn't have produced it, or we could have made a motion for a protective order, which is something that Your Honor raised last week as well.

I think you're going to hear that there is some need for a substantial amount of discovery. I don' think there is any more need for discovery here in -- in any

greater volumes than in most cases. As I said, we've already given a lot of the discovery. I think a lot of the issues Your Honor is going to need to grapple with to the extent they don't get resolved between now and confirmation are largely legal. And insurance neutrality, probably largely --

THE COURT: Excuse me, please. Excuse me, Mr. Kurtz. Please check your audio.

MR. KURTZ: I think insurance neutrality is largely a legal issue. I think third-party releases is largely a legal issue. Certainly, there will be some questions about good faith. There will be some questions about the TDPs, but nothing that is not manageable within the normal time period, much less what I think is already going to be somewhat extended.

I guess the last issue is how do you populate the schedule once we have a hearing date, and I think the best way to deal with that is wait for Your Honor to give us something on the schedule, and then we can work something out. I don't know how difficult that should be. I think there's more than enough time, if we were fortunate enough to get January, which would leave close to four months, there's plenty of time for us to take discovery. Get all of the objections on file. Get all of the replies and proceed.

So I -- I -- I do want to express appreciation for the accommodations Your Honor has given us through the course

of the case. I appreciate your schedule is very busy. I appreciate January is particular busy. As fiduciaries of the estate, dealing with maybe a melting ice cube trust, we sort of feel compelled to just ask for the earliest possible date, especially since we still have a period of time before emergence even after a confirmation approval assuming that one is forth coming, during which time, of course, we are continuing to kind of burn off cash.

So we're hoping that there's some flexibility there, Your Honor. We'll do everything we can on our end to expedite matters, and -- and -- and we appreciate any accommodation you could afford us.

THE COURT: Thank you. I do have some things in mind.

Mr. Plevin? Mr. Plevin, you are muted.

MR. PLEVIN: Thank you, Your Honor.

Let me first start by responding to some of the points that Mr. Kurtz made, and then I want to talk about the impact of the findings and what we heard earlier today about the insistence on going forward with those and the factual nature of several of the findings and how that impacts discovery.

Mr. Kurtz ended by saying that what he was suggesting the Court do is pick a date, and then we'll fit the schedule to it, and then to me that's just completely

upside down as to how we ought to proceed, and it's contrary to what Your Honor has said not only in this case but in other cases about the need for due process.

To just fit litigation deadlines into a date, a confirmation hearing date that's chosen for no reason other than for convenience, makes little sense. You need to look at what are the issues, what are the discovery needs, how quickly can the parties move, and build the schedule out based on that.

This is not -- Mr. Kurtz gave a couple of examples. This is not a case that's a pre-pack where there's not going to be a contested evidentiary proceeding. This is not a case in which the debtor simply sells its assets and disappears in which there's not a contested evidentiary confirmation hearing. This is a different kind of case, and it needs to be treated as such.

Mr. Kurtz talked about some information that had been made available. He talked about the fact that some information had been produced. AS Your Honor heard last week, almost all that information is locked up in mediation confidentiality and can't be used.

He said they made people available for depositions, and that's true but that was with respect to the RSA, not with respect to confirmation issues, which are completely different. So maybe there's a little bit of

streamlining that can be done because we don't have to ask people about their background when they've already been asked about that, but it's not a substitute for discovery.

So in setting the schedule here, Your Honor, the real question is what do we need to litigate, and we've pointed out in our objections and you heard robust argument today about the required findings under the plan, which we think are purposefully designed to prejudice the insurers, and I'm not going to repeat that except I want to make one point that I -- I didn't have a chance to make earlier today, and that's with respect to 10M of the plan or X.M, which is the insurance neutrality clause.

And what makes that so important, Your Honor, is that that clause said that the -- that the policies are subject to the findings of the Court and the terms of the plan. So when you heard argument earlier today about how there was no effort to modify the policies or seek insurance coverage rulings, the plan itself in Section X.M tells you that that's wrong, that what the debtors and their supporters are trying to do is use the confirmation order and the plan to modify the terms of the insurance policy.

And that means that we have to have the right to contest those findings, because if we were simply to go away and not participate in the confirmation hearing and evidence were presented and Your Honor issued the plan with their

findings, our policies will have been modified in a prejudicial way. And so I -- I needed to point out Section X.M to the Court.

I also heard Ms. Lauria say that they would circle up and I guess the 5-minute break we just had probably wasn't long enough for them to do that about reactions to Your Honor's discussion of the proposed findings.

Before Ms. Lauria, earlier today we heard from Mr. Harron, from Ms. Quinn, that they were -- they believe the findings are appropriate, they are entitled to them. Mr. Goodman explained in some detail how some of these findings were evidentiary based, there had to be a record made under the terms of the findings, and he -- he acknowledged that some of these findings required evidence.

So we have a situation where the debtors and the plan supporters want findings that are based on evidence that we believe are highly prejudicial, and you can't deny us consistent with due process the right to go get that evidence.

So the debtors really - there are two basic pathways here, Your Honor, and they have a choice of which path to go down. One is the path of an expressly insurance-neutral plan, one that does not include these findings, does not prejudice the insurers. If we go down that path, then maybe Mr. Kurtz can have the confirmation hearing he wants in

January because there would not be a need by the insurers to contest the findings in the plan, but if the plan -- if the debtors and the plan supporters want to go down the other path, which is the one that we believe prejudices the insurers, then we need discovery. And what do we need discovery on and what do we need to litigate?

We need to litigate insurance neutrality. We need to litigate the reasonableness of the values in the TDPs, the base claim values, the maximum claim values. We need to litigate the process by which the TDPs came into being. We need to litigate the impact of the TDPs on the insurers. We need to litigate the role and the discretion of the settlement trustee. We need to determine whether the settlement trustee has conflicts. We need to litigate whether the settlement trustee ought to be selected by the debtors or by other parties or by the court. We need to determine whether his -- if we could, to what extent the settlement trustee's future decisions on claims that have not been fully presented are reasonable or could be reasonable. We need to talk about and litigate the plan's goal to preclude insurers from raising effective coverage defenses.

And, Your Honor, if you want to know how this is being set up to prejudice the insurers, you need only look at the proposed letter from the coalition and the FCR that is -- that was filed, I believe last night, to go out with the --

with the plan and the disclosure statement where they explain in so many words that the purpose of the plan is to put the screws to the insurers and make them pay more.

So that's what we need to do. The items we would be seeking in discovery include the following: Documents related to the formulation of the plan and the settlement of claims thereunder. We were told earlier today that the TDPs are an evidence-based plan. We -- we seem to think that -- we tend to think that's completely wrong because when claims were settled before bankruptcy, they were settled, as I mentioned earlier today, in an adversary process in a court with people on opposite sides with the Boy Scouts seeking to either establish they're not liable or if they are liable, that they're liable in a lesser amount than the plaintiff wanted.

That is not the structure that is being proposed here. So if it is going to be an evidence- based TDP structure and that's the contention, then we need to find out what happened all along in the history of the Boy Scouts settling claims. And it may be -- Mr. Goodman said the insurers have that information.

My clients are an excess insurer. We were only involved in a very, very small number of claims before bankruptcy. We don't have access to all that information. So we need to find out what the course of dealing was and how

the settlements took place.

We need to get the documents relating to abuse cases that were dismissed or resolved without payment. What defenses were asserted? How were they successful? Why were they successful? We need to get documents related to Eric Green's relationship with parties in this case, and communications related to his selection as trustee. We need to get information regarding the negotiation and history of the current version of the TDPs, the debtor's input into those issues, the evidence of the roles of the various parties in the drafting of the TDPs, and the basis for the values in the TDPs.

And we need to get the information about the course of dealing. We need to get information not only regarding the debtor's own liabilities as a historical matter, but we're being told that these values to some extent may wrap in sex abuse settlements from other cases. If that's the case, we'd want to know if that's the contention. We'd need discovery on that.

I mentioned course of dealing. One thing you might look at is the combustion engineering case where the Third Circuit looked at the course of dealing in terms of how claims were handled pre-bankruptcy. We would need to establish the insurer's non-involvement in the creation of the TDPs. We would need financial information regarding the

claims against and assets of the parties who would become protected parties under the plan, which could include issues regarding which assets are restricted and not available for contribution to the trust, something that several weeks ago we heard Mr. Brown talk about at great length.

Some of these requests, Your Honor, will predictably become enmeshed in issues of mediation privilege, particularly when we talk about good faith. The debtors acknowledge this. They have filed a motion, which I think of at least as sort of an abstract motion that is not tethered to any specific discovery in the confirmation context, and that motion is calendared for hearing on October 19th.

We know that no matter what discovery requests we make now, the debtors are going to object to producing anything they feel is subject to that privilege.

Depending on the outcome of the Court's ruling on that, we could get a significant additional production on October 19. I'm sure that it makes no sense in anybody's mind to start depositions before October 19 and then re-start them and take them over, again, after October 19. So that's a problem. This whole issue of mediation privilege, which was highlighted in the RSA context has to be addressed.

The schedule that the debtors proposed in connection with their fourth amended plan was not only too compressed but it was also illogical. And I -- I sort of

hear them now saying they're not going with that schedule, maybe they are. They certainly didn't propose one since last week.

We submitted a revised proposal. We heard the Court say 217 days is not going to do it. We went through our proposal and shut out about 35 days, which I think is cutting it to the bone.

The TCC did the same thing with their -- well, actually they submitted a new proposal. Their proposal ends up roughly the same time as ours, roughly a little bit earlier, but I'm going to talk about some of the respects in which their proposal is not logical. But the debtors haven't given us anything to chew on, only a request that you set it for the earliest possible date, and somehow we're going to figure it out later.

But they don't put any effort into deciding what it is that we need to -- that we need to litigate or why.

So our -- our proposal, and I realize, Your Honor, we may have done a disservice to the Court a little bit because we started in a different place than the TCC. We based all of our days on days after approval of the disclosure statement, but we didn't assume a date for that. They did assume a date, and so they went with October 1st.

So I put together our schedule and tried to compare it with theirs to see where we came out.

There's a lot of similarities between the two proposals but let me just talk about some of the differences that we think that doesn't make sense.

The TCC has a deadline to depose fact witness -- let me start one other place. We put in a deadline to serve initial written discovery, and I think that's clear -- that's important, Your Honor, because we're prepared and will be prepared to submit comprehensive document requests, as comprehensive as we can make them based on what we know now. But that can't be the last time we're entitled to serve discovery requests.

Things come up in depositions. Things come up in discovery. One of the things we know, one of the lessons from Imerys is that voting issues came up once the vote tabulation was done. So the debtors had a deadline in their proposal for written discovery. Ours is for initial written discovery, and I think that's appropriate.

When we get to the deadline to depose fact witnesses, we said 75 days after approval of the disclosure statement. If you take the TCC's assumption that October 1 is the date, then our 75 days ends December 15, which is 33 days after our proposed date for completion of document production. So that would mean the comprehensive document requests go out.

They're responded to much more quickly than the

federal rules require.

We get the documents, we have a chance to look at them, schedule depositions, we have 33 days to take depositions. The TCC, as I read their proposal has set up a 9-day deposition window. We have experience with deposition windows in Imerys and they just don't work. Everyone tries to go to the end of the window, and then we end up taking depositions after the window is over.

I had emails today about what's happening with expert depositions in Imerys where there's going to be at least one if not two or three depositions taken after the window by agreement.

So but even so their -- the TCC's deposition period is December 14 to 23. Our deposition deadline would actually be in the first part of that range, December 15th.

The TCC shaves some time off their schedule by having initial expert reports due on December 17, which is right in the middle of the fact deposition window. So to me that makes no sense. I think you need to finish the fact depositions before you can have initial expert reports, and we provided 15 days after the end of depositions for fact depositions, rather for expert reports.

Rebuttal expert reports, I mentioned last week the eight days allowed by the debtors in their schedule just is undoable, unworkable. It's not enough time to figure out

even what rebuttal expert you need, let along go out and recruit one and have that person prepare a report. The TCC gives 28 days for rebuttal reports. Our proposal gave 25 days. I think that is probably the irreducible minimum for that.

Deadline to depose expert witnesses, the TCC shaves that down to seven days after rebuttal reports are due. We gave 20 days for that. Again, I don't think that's an unusual or too long a figure for expert reports. The TCC has us filing motions in limine before deposition designations, so we wouldn't even know what the deposition designations are when the motions in limine would be due.

And the TCC's proposal ends on February 28th, Your Honor. Ours ends on March the 30th. So -- and I should say a couple of things, Your Honor. There's no explicit. There's no explicit time in our proposal for voting-related discovery, which -- which could happen. It may be necessary as -- as I heard the colloquy's last week a lot of the issues about the voting are going to be decided at the back end. So it's reasonable to think you may need some time for discovery of voting issues. We certainly did in Imerys. There is no time in this proposal for any delays caused by motions to compel or motions for protective order. And as Your Honor pointed out last week, there's not only the perhaps more exotic discovery issues but the regular discovery issues that

pop up that may have to be addressed by the -- by the Court.

I think there needs to be some time, obviously we've got this mediation motion that's set up for October 19. But that's as I said, an abstract thing that may not work.

So that's our proposal, Your Honor. We think that ending up where we propose is as I said the irreducible minimum, this would be the end of March.

You know, I've -- I've -- I'm not going to go through my biography the way some others do, but I litigated pre-packs in the asbestos world 20 years ago, and I used to tell people then that we were litigating at the speed of sound, just to give them an idea of how crazy it was. This schedule that we've proposed is litigating at the speed of light. It's much faster.

It's hard for me to envision as a litigator how we are actually going to get through this schedule. I think the experience we've seen in Imerys is instructive in that, you know, we set an aggressive schedule and even though the debtors wanted to keep the schedule, they have come to the court and asked for relief sometimes just because it wasn't working.

I think what we've proposed is something that has a chance of working, and if the parties work hard we could stick to it. But the main point I want to leave Your Honor with is the schedule ought to be driven by the issues that

need to be litigated. And if we're going to have to litigate the findings, the factual basis for the findings, as Mr. Goodman acknowledged earlier today, and the impact on the insurers of those findings, I think we can't do this in -- in -- in January or even February. I just don't think those dates are workable. Thank you, Your Honor.

THE COURT: Okay. Thank you. Let me note one difference between Imerys and this case, and there are many, but one significant difference is that Imerys is not operating anymore and Boy Scouts is.

Mr. Brown?

MR. BROWN: Thank you, Your Honor. For the tort committee. Much of what the committee and its professionals are so concerned about has been articulated by Mr. Plevin. There are a couple of additional issues that I wanted to highlight for the Court. I mean I think the -- the overall concern is that certainly the proposed schedule that we saw last week was far more than a scheduling order. And whether it was intentional or -- or not, and I'm going to try not to pass judgment on that. But it was going to have the impact of imposing unworkable limitations on the committee's professionals and its experts to discover and put before the court what needs to be discovered and put before the court in order for the survivors who do not support this plan and do not want to be bound by a non-consensual third-party release

and a channeling injunction, it will deny them the opportunity to make that case to you, as to why the national mortgage factors are not met here.

And, in particular, Mr. Plevin highlighted I think a lot of what the insurers need to do from their perspective in terms of investigating the underlying claims. And there is a massive amount of data and discovery that needs to be obtained and analyzed and synthesized.

As Mr. Stang mentioned earlier today, we have a pending application for our experts on that. We've had extensive discussions with them about how much time they will need after they get the data in order to file their expert report.

And the sequencing proposed by the debtor was just -- was shocking. I mean it was a matter of days.

I mean and that's never been done in a case. I mean you look at Imerys, you look at Purdue, the timeframes that are allotted from the time that documents are produced to when expert reports are due, in this case I believe they are -- well, initially it was a matter of expert reports were due November 8, four days after fact discovery is completed.

That's what the debtor's initial proposal was. That -- I mean I just think that's exemplary of what the debtor is trying to do to the committee and their ability to -- to put on an effective showing at confirmation.

This idea of -- well, the issue you -- I think you asked, am I going to be required to make an aggregate determination of claims. And there was discussion about, well, the estimation motion is off so maybe you don't. But you clearly will. I -- one of the master mortgage factors is whether or not the plan pays all or substantially all of the claims of the class that's going to be impacted by the channeling injunction and release.

So if there's going to be non-consensual releases in this case, we're going to have to know what the claims are. Our experts --

THE COURT: Doesn't the committee know what the claims are? The committee has been telling me what the claims are.

MR. BROWN: I think we have -- we are retaining experts to tell me what the claims are.

THE COURT: When are those on? I don't recall seeing any of -- of a motion, but when did you schedule those for a hearing?

MR. BROWN: I'm going to defer, if I may, because -- to Mr. Stang or Mr. Lucas on that.

THE COURT: Fair enough, but -- okay, go ahead.

MR. BROWN: So the same -- the same issue with respect to claims is going to come up with respect to the best interest test, and it's going to come up at least a

subset of the claims in connection with the Hartford settlement.

It's a great deal of the same data. It all funnels into what the -- what our expert is going to say on this and how much time it's going to take to gather the data, how much time it's going to take for them to synthesize it, put it in an expert report, have their depositions taken. There's going to be another - - you know, this is going to be a battle because the debtors are going to have their own experts and we're going to have to rebut those. Maybe it will be the same expert. Maybe there will be a different expert, I don't know yet, but that's a huge concern of ours here is time to do discovery, time to get the expert reports done, time to get the rebuttal reports done.

Some of the things, also, that are going to come up here, I mentioned last time and I got a lot of pushback from Mr. Kurtz, about -- but whether I accurately characterized it or not, but the fundamental truth is we have been trying for -- since early last week to address the issue of the local counsel designations confidentiality. Virtually everything they produced has been designated confidential.

Clearly, it's not all confidential.

BSA has -- the protective order requires BSA to facilitate this -- this declassification. We're not getting where we need to get. We don't have the issue resolved.

It's likely going to require a motion, and that's going to take time, and it may require additional discovery to get documents that were not -- that have only been produced in the context of mediation and for which a mediation privilege is being claimed.

There's the mediation privilege issue, and I -- I think that this is -- this was raised by Mr. Plevin, but that the issue really boils down to BSA and Hartford and any other parties that are going to settle, they are seeking a good faith determination with respect to the plan. They're seeking a 9019 determination with respect to fair and equitable.

Are they going to offer the mediation at the -- the fact of mediation as evidence of good faith and reasonableness? If they do, then is that not a waiver of the mediation privilege? You can't use that privilege as both a sword and a shield, and if they're going to advance the mediation as evidence of reasonableness or good faith, then they can't hide discovery. They can't preclude discovery on how the sausage was made.

I think that's similar to what Mr. Plevin was saying, but we have the very same concerns because -- and so that motion is going to be heard, that -- not until October 19th. Then there will be fights over the mediation, over the mediation privilege, and what the nature of the

discovery is.

There is no discussion in the debtor's version of a schedule for any discovery on voting integrity, and we think that issue has been raised.

It's come up. We've built it into our schedule, and we think it is critical that there is time allotted for that, and that's not something that can be done right away.

And I also just want to point out that, you know, in Mr. Kurtz's initial statements he was critical of all the objectors for not having already launched their discovery.

Yet, I have a recollection that Century was just stopped in its tracks on doing discovery that hadn't yet been teed up because the disclosure statement hadn't been approved and the plan wasn't at issue.

So, you know, you can't have it both ways. I think everybody has been holding their powder on discovery because of what happened with Century. This isn't at issue yet. I mean technically I thought what the Court said was the plan isn't yet a contested matter.

THE COURT: I don't think I said that.

MR. BROWN: No, you didn't say -- so I think that is how it was interpreted.

So in any event, it hasn't been a foot- dragging exercise. There was concern that plan discovery was not yet ripe.

So if you have any questions, I am happy to answer them, Your Honor, but those are, I think, you know, those reflect some profound concerns that we have. And I just think as somebody -- well, for all of us who are going to be impacted by this schedule, there is just, you know, there - there's an element of what's doable and what's -- you know, what is humanly possible and what the debtor is proposing, had initially proposed, it's just not humanly possible to do what needs to be done in this very complex case with multiple issues in anything that resembles a competent way in the timeframe that the debtor is proposing.

THE COURT: I agree that competing time concerns are an issue, but what nobody has really disputed is that BSA is going to run out of money if we don't get this thing going, that the contribution from the BSA clearly goes down every month that we continue to have -- that we don't have a resolution of this matter, and, you know, this debtor doesn't make a product. It's not -- it's a different kind of entity, and we can't lose sight of that.

I'll hear from Mr. Ryan and then maybe we should take some break. I forgot about the need to caucus about my thoughts with respect to the findings. But I'll hear from Mr. Ryan first.

MR. BROWN: Well, Your Honor, just before -- before that, just I wanted to answer your question about

our -- our expert. It was -- the expert is Claro (phonetic) and the application was filed on September 17th. So I'm sorry, I just wanted to address your prior question.

THE COURT: Thank you. When's it going to be heard? Not until the 19th? We may be able to speed that up.

MR. LUCAS: Well, Your Honor, this is John Lucas. It was filed, and the objection period runs on the -- I don't have my glasses on, the objection period runs on the first, I believe, of October. And so assuming there are no objections and we don't receive anything, we'll be able to submit an order under COC.

THE COURT: Okay. Thank you. Mr. Ryan?

MR. RYAN: Thank you, Your Honor. Jeremy Ryan on behalf of the Catholic and Methodist Ad Hoc Committees. I'll be brief, Your Honor, I just -- as we're discussing these 30,000-foot issues, I didn't want people and Your Honor to lose sight of this isn't Hertz. This isn't a plan that leaves creditors unimpaired, and in fact, to the contrary here, Your Honor, you have a plan where you have 24,000 chartered organizations who didn't file proofs of claims who aren't creditors of the estate and you have a plan that proposes to strip them of their property rights and insurance policies, proposes them to deem them to grant releases. It proposes to do a lot of things to people who aren't creditors of this Court, who are not participants in this proceeding,

and whether that can ultimately be done or not is going to be left for another day. But there is a substantial question of how much due process do people, who aren't creditors whose property rights are being taken away under a plan need to get in all of this and the notices of what's going to happen to them.

How much due process do we need for the 16,000 chartered organizations who filed proofs of claims, who aren't sophisticated parties? They don't have access to the unlimited budget many of the parties here have, and how long do they need to have to get to understand and receive these things and have a long enough period to vote.

So as we're taking about due process and the timeline of this, and we're certainly not advocating for a March -- a March confirmation date, but I don't want to lose sight of the fact that this is not a 42- day case or a 50-day case or a 60-day case.

Now, as Your Honor noted last week, there's at least 60 days that you have to give notice to people. And we need to be cognizant of the tremendous amount of people who aren't sophisticated parties and who aren't even creditors whose rights are being taken away under this plan. So I just think we need to have that -- have that perspective, as we look at trial dates, and as we look at a calendar and when things go out for solicitation and for notice and when people

have to object and respond by. Thank you.

THE COURT: Okay. Thank you.

Ms. Lauria, how much time do you want to caucus with the FCR and the coalition about my remarks with respect to the findings and what you're hearing in terms of discovery that is generated from certain of those findings?

MS. LAURIA: Your Honor, I'm just looking at my clock right now. I see it's 4:50. I know we've had a long day, but I think we want to achieve as much as we can today. So I would say we come back in 15 or 20 minutes if that works for the Court.

THE COURT: That's fine. Let's take 20 minutes and let's see -- let's see where we -- where we are, and, again, I think the two findings that in my mind create the most issues are the condition precedent R and S, as they are currently drafted. We're in recess.

MS. LAURIA: Thank you.

(Recess taken at 4:50 p.m.)

(Proceedings resumed at 5:12 p.m.)

THE COURT: This is Judge Silverstein. Ready to get back on the record?

MS. LAURIA: Your Honor, this is Jessica Lauria. We were just gathering. I see folks from the coalition and FCR back on the line, so I think we are ready from our perspective.

THE COURT: Okay.

MS. LAURIA: So we spent the last 15 or 20 minutes, Your Honor, specifically focusing on R and S although we take your remarks on the other provisions as helpful. And I guess what I would say is this: We do think there may be a mechanism to tighten the language with respect to R. We certainly take your point that any findings you make do need to be limited by the type of hearing that you are hearing those findings, and certainly we think that's in the 1129 context, 1129(a)(1), which I think could incorporate in 1123(a)(3).

There may necessitate a 9019 standard. I don't know that we need to make a determination right now. It sounds like this could even be an issue that needs to be briefed but suffice it to say I think the parties certainly understand that you're only making a ruling under the legal regime that is presented to you, that this Court has the power to decide and not some other legal regime.

With respect to S, Your Honor, certainly appreciate what I will call your Fuller-Austin observations, that the fact that the debtor is, for example, contributing $220 million, bankruptcy dollars, to the trust doesn't necessarily mean that that is establishing the aggregate claim liability.

I think, as you noted, this one is controversial,

and it's also complicated for us to -- and it was a little too complicated for us to determine in the 10 or 15 minutes how we were going to address the Court's rulings. But I think I don't necessarily want to speak for the others, but I'll speak for the debtor. We heard you loud and clear, and we understand that this language needs to be tightened for the purposes of the proceeding and for what is in front of the Court and not for other purposes. I don't know if the FCR Coalition would like to weigh in on that.

THE COURT: Okay. I'll -- I'll make one other comment, which maybe I shouldn't, but I will. I wrote this down when Mr. Rothweiler was speaking. He said they had a -- this is my word, sort of a fundamental principle, no survivor left behind. A very laudable goal and a -- and a call that I think the survivors can make. But I don't know that that's -- that that's a -- a deal that the insurance companies made when they issued policies.

So, again, and it's not the first time by the way that I've heard that -- that sentiment or in the papers somewhere. Okay?

Listen, here are my thoughts on -- on scheduling. We need to get this on the calendar. Parties need to get going on discovery. There's going to need to be abbreviated time frames to determine issues and that I recognize also puts quite frankly pressure on me as well to decide things in

a timely fashion of disputes that get put in front of me.

But this is not, as I've already said, this isn't Imerys. It's not Purdue. Okay? Those are very different cases.

This is case of a not-for-profit entity that as I recall is right now going through its fundraising season while it's in bankruptcy. It's going through its membership-raising season while it's in bankruptcy, and I think Boy Scouts, but as importantly, and I'll stress that, as importantly, survivors need to know is there a resolution here or not. So this needs to be scheduled, and I'm looking at starting a trial on January 24th.

I recognize that is an incredibly tight schedule. That does not go -- I'm not -- it's not lost on me. That will mean that, again, timeframes need to be shortened for production of documents. Time frames will need to be shortened to resolve discovery disputes. If there's going to be an assertion of media privilege that is getting in the way of documents and I have not seen what the debtors have filed yet, that's got to be resolved.

I will tell you, as I think I've said in this case, I'm sure I did because I had it here. I probably had it in some other cases recently. There's got to be a balance in the mediation privilege when you want certain findings at confirmation. Not everything is going to be able to be

protected, and we're going to have to find the balance.

It is hard to decide these privilege issues in the abstract. I did that recently in Imerys. Then I get documents in front of me, and it makes me have to rethink what I did. It's very hard to do it in the abstract, but I will take a look at that motion. We're going to start on the 24th of January.

I will give the parties an opportunity to see if they can arrange a schedule. If not, I will hear that promptly, and I'll impose a schedule. But in the first instance, I'm going to let the parties see if they can work it out.

I think it's an appropriate schedule. I think it's a doable schedule with cooperation. I recognize it's a tight schedule, and -- but I think all parties agreed at various points in this case that from their different perspectives there needs to be an -- an endpoint where we know whether there's a confirmable plan or not. And we'll see.

MR. KURTZ: Thank you very much, Your Honor, for -- for setting the schedule. Glenn Kurtz. We will be seeing you somewhat shortly on the motion for a protective order. I tried not to make it abstract. Tried to tie it to specific documents, which will be pulled and available for *in camera* review if Your Honor chooses to do so or at least by

very specific categories.

So we look forward to resolving that. I hear you on the balance. Ultimately, we have to figure out what that is. We don't have anything to hide. IF it's protected and it doesn't have to go out, we're happy with that. If it's not protected and it does have to go out, we're happy with that as well, Your Honor.

MR. SCHIAVONI: Your Honor, we have before you a motion to shorten notice on the motion to compel the documents withheld by Mr. Green on the assertion of the in preparation for mediation privilege, as yet to be recognized, and another motion to compel on shortened notice against the debtor with respect to the documents that concern the modified plan. We didn't sit on our rights in those regards at all. All of the third-party aggregators have failed to comply with the subpoenas.

I -- you know, the coalition partners of those folks are not cooperating. We'll bring motions on shortened notice if necessary to try to move those along. You know, cooperation is sort of like the hallmark of, you know, moving on an expedited schedule. So we need that from the coalition.

THE COURT: It is. I will take a look at those, and we'll get a hearing scheduled on those. Hopefully I can announce it tomorrow when we're going to have a hearing on

those matters, but that's going to be the hallmark is parties cooperating and getting documents and other discovery out.

Okay. Ms. Lauria?

MS. LAURIA: Thank you, Your Honor, and we will, obviously, work on putting together a proposed scheduling, as Mr. Kurtz suggested. I think what that leaves for purposes of rounding out the disclosure and solicitation process are three issues. And maybe I would propose to go in this order, just because of the impact that the issues may have on the documents.

The first is how to treat that $3,500 expedited distribution election because that flows through the ballots and the plan and the disclosure statements, and I do believe it is one of the truly remaining substantive issues left it may make sense to take that first.

Next, we have, and I think Mr. Ollinder (phonetic) will go through with you anything that may remain on the disclosure statement. Knock on wood, we've been communicating with folks during the course of today, and I'm hoping that those are relatively limited issues. And then, finally, I believe Mr. O'Neal will pick back up with the solicitation procedures, everything other than that $3,500 expedited distribution. Also, I understand that he's had some constructive conversations with the TCC Today, so hopefully we've rounded those out as well.

I'm not sure if you want to turn to any of that tonight, Your Honor. I'm ready to go on the $3,500 expedited distribution issue and why the change was made to the ballot over the weekend if that makes sense.

THE COURT: Yes, let's do that.

MS. LAURIA: Thank you, Your Honor, and what I'd like to do is just give you --

MR. STANG: Excuse me, Your Honor, that is our motion. I think that's our motion. I don't know why Ms. Lauria is addressing something that we filed. It's not an order shortening time. We haven't had a ruling on it, and it's -- if you think that the $3,500 issue and our classification motion are the same thing, we're the ones that filed it.

MS. LAURIA: Your Honor, we --

THE COURT: Okay, well, the debtors have made a change -- the debtors have made a change to their plan, so I'm going to hear both of you.

MR. STANG: Okay.

THE COURT: Don't worry about it. No one gets an advantage over the other, but there's a change in the plan. I noticed it in the plan, and let's talk about it.

MR. STANG: Okay.

MS. LAURIA: Your Honor, and I certainly didn't mean to cut the TCC off in that regard. We did make the

change to the plan. I thought it would make sense to explain why. Also, we didn't file a written objection simply because we haven't had the time to do it. So I thought it might make sense to put some perspective on this. What I'd like to do is just give a brief, a very brief history of the $3,500 expedited distribution and then go into why it is that we made the change over the weekend to the plan and the ballots.

And I guess I would chalk this up to the category of no good deed goes unpunished in this case. You know, throughout 2021, this literally the entirety of this year we've had various conversations with parties on all sides of this proceeding concerning some sort of expedited distribution mechanic. That includes both folks on the survivor side and folks on the -- on the insurer side.

And when we came to resolution around the RSA with the TCC and the coalition, we all agreed to a $3,500 expedited distribution. And that was embodied in both the fourth amended plan, the RSA, as well as the plan that we went forward on, the fifth amended plan.

When we came to that understanding, speaking for the debtors and really for myself in particular, because I probably was at the middle of this decision, we were contemplating two different mechanisms for soliciting -- I'm using that in the little "s" sense of the word -- soliciting the elections on the expedited distribution. The first was

just getting those indications through the trust process itself, and, in fact, as I mentioned earlier in the hearing, there is a mechanism in the TDP and this existed, you know, well before this weekend where the trustee would, in fact, review the proof of claim, insure that the proof of claim was substantially complete, and insure that the individual itself signed the proof of claim form, not just the attorney, but the individual itself signed the proof of claim form. So we thought about doing an election mechanism in connection with the TDP.

The second option was in connection with the balloting process, and that is what we elected to do, again going back to the fourth amended plan. The logic behind that, Your Honor, was really one of efficiency and ease of administration for both the claimants themselves as well as the trust. Our view was we were going to be sending out a massive solicitation to 82,000 individuals, and with that touchpoint with those individuals we should gather as much information as we possibly could, including whether or not those individuals wanted to take the $3,500 election.

As you undoubtedly saw in the confirm- -- in the disclosure statement objections, we received a ton of objections from the insurers to the $3,500 election. And those were along the lines of some of what you heard from Mr. Rosenthal and Mr. Schiavoni today that the debtors were

attempting to do vote buying by putting the $3,500 election on the ballot, that we were trying to carry the class by buying votes with respect to that election. And I can assure you, Your Honor, that is absolutely not what our intention was ever with respect to that $3,500 election.

But we proceeded to keep it on the ballot as we went into last week's hearing. And as we sat there, and I think it was on the 23rd, when we got to the solicitation procedures, we heard Mr. Stang and Mr. Smola describe very convincingly the complications with the balloting process here, and in particular the fact that we included on the ballot this election to settle a claim, you know, not just whether or not you're going to vote up or down on the plan but actually settle a claim.

And, you know, when we went back and looked at the transcript, Mr. Stang made a very impassioned speech about the fact that due to rules of professional conduct an attorney has an obligation to consult with its client about the settlement of any claim.

And as we heard Mr. Smola further describe the difficulties that many of the plaintiff lawyers have in communicating with their clients due to confidentiality concerns and the sensitive nature of the claim, it struck us as, you know, we had added that to the ballot to try to ease the administrative burden on both the plaintiffs and the

trust, but it became apparent after last week that we were, in fact, increasing the burden, maybe unnecessarily so, on the plaintiff lawyers.

In fact, we have 70 to 75,000 individuals that are represented by counsel. Whether those individuals are completing master ballots or not, that's a lot of people. That ranges from lawyers representing one person or a few hundred persons to, I think, Mr. Smola indicated he represents 4,000 persons, to Mr. Rothweiler who said his firm of 10 lawyers represent 16 to 17,000 people.

As you know, and we just heard, we're on a very tight timeframe. We are contemplating a 60-day solicitation period, and from our perspective for those lawyers to advise, based on what I heard last week on whether you could or should elect the option, it depends on a couple of things.

One, first you have to determine whether your client is eligible, so whether they did complete a proof of claim and whether they signed it. We've now heard that, I think, 20,000 amendments have been made to the proofs of claim. A big number of those are to substitute individual signatures for attorney signatures, but that sort of part one is assessing that.

And, next, you need to assess whether or not the client should, in fact, take the $3,500 election.

So it struck us that we were maybe asking for too

much on the ballot given the timeframe and given the number of claimants that are indeed represented by counsel and given their ability to determine eligibility versus, you know, whether or not they should even take the settlement.

So we thought in the face of that, and I think Your Honor said last week, the expedited distribution is turning into the tail that's wagging dog. That is never what we intended with the expedited distribution, so if that's going to be a hardship on plaintiffs, I think our view was take that off the ballot.

The TCC we now understand didn't like that. They want that on the ballot. I think that from our perspective, you know, there may be a balance where it can remain on the ballot but rather than jam people with the voting deadline and particularly those individuals who are represented by counsel who needs to advise all of their clients whether they're eligible and whether to accept you can have it on the ballot and then also have an opportunity to take the election via the trust process or via the trustee, we don't like that. That sounds kind of confusing to me.

But at the end of the day I think we were just simply trying to strike the balance between making the ballot less complicated, not forcing individual lawyers to feel like they needed to provide individual advice to clients on eligibility and whether or not to settle and sort of delink

it from that process and, again, also delink it from the accusations that we're trying to do some sort of vote buying because that was certainly never the intention.

I have looked at the TCC's classification motion. I'm happy to respond to that now, too. We don't think it's appropriate, and we think it's legally wrong. But just to be clear, when we made that change to the ballot believing that change was really in the wake of I think what we all heard last week in terms of extreme complications around the voting process itself. That was the genesis for the change.

You know, under bankruptcy rule 3013, one, we don't have an accepted plan yet. 3013 speaks to an accepted plan and whether we need to look at classification in the context of an accepted plan. God willing we get to an accepted plan, but those aren't the facts before us today, and, secondly, we think classifying the direct abuse claims in the same class is appropriate.

1122(a) says substantially similar claims go [interposing] the same class. As I read the committee's pleading, I think maybe what they're talking about is disparate treatment within the class. And the cases that have evaluated disparate treatment under 1123(a)(4) have all concluded that so long as you give everyone an equal -- first of all, it specifically speaks to giving a creditor the opportunity to take less.

And it, second, speaks to the case law that is speaks to sort of an equal opportunity that the opportunity to take an election is given equally to all class members. So we don't think it's appropriate now. We don't think it's correct to separately classify them. We're happy to brief that more fully in connection with the confirmation hearing, but we really don't think that's an issue that pertains to the ballot or not or trying to deconfuse the ballot. I think they're simply suggesting that there is some difference between, I don't -- big claims and small claims. And we just don't think that's appropriate under the law to distinguish folks on that basis.

So, again, happy to do a hybrid if people think that's more appropriate. I think that's confusing. We thought the ballot was over burdening people, but that's the background, and that's how we found ourselves here today on that issue.

THE COURT: Thank you.

Mr. Stang?

MR. STANG: Thank you, Your Honor. Today's my birthday, and so I maybe as a present I can get an extra five minutes.

MR. GOODMAN: Your Honor, I don't mean to interrupt Mr. Stang, but there are others who may want to speak in support of this and I think Mr. Stang is going to

speak in opposition. I wasn't sure if you wanted me to go now or wait until later.

THE COURT: Mr. Stang, what would you prefer? It's your birthday.

MR. STANG: Let's hear it all at once, Your Honor.

THE COURT: Mr. Goodman?

MR. GOODMAN: Okay. I was right, to be fair.

Again, Eric Goodman, (inaudible) counsel for the coalition. The plan, as filed by the debtors back in April, provided for a $1,500 expedited distribution. That was under the global resolution plan but not the toggle plan. That's, you know, April, so many months ago.

That did change under the plan filed in July. The amount of the expedited distribution went up from 1,500 to 3,500. We also insisted on upping the standard. The requirement changed so that the proof of claim must be complete and signed by the survivor under penalty of perjury. That was added by the coalition and the TCC.

The TCC back in July supported the expedited distributed. Since the RSA terminated, the TCC has made it clear that this was going to become a significant voting and plan confirmation issue for them.

In addition, the insurers I think have always consistently suggested that they would argue that the expedited distribution was the equivalent of buying votes.

I will fight very, very hard on issues that I think are major issues, issues that I care about, issues that are important to survivors and the survivors receiving a fair recovery in this case.

I don't agree with the insurers. I don't agree with the TCC, but I also know a distraction when I see one. I think that the trustee should be able to pay nuisance values, especially when the payment is less than the cost of reviewing the claim.

I also think that it might be a bit unfair at this point for people to make the election of 3,500.

You heard from Mr. Rothweiler that the amount of funding in the trust could go up significantly in the coming months. So it may be, you know, unfair to even ask people to make that election right now.

Given those factors, we support the debtor's change in this regard. I do think it gets rid of an issue of potential distraction. Given the current state of affairs, I do think it makes sense for this to be something that is done later and not at the voting stage. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Patterson?

MR. PATTERSON: I was going to defer to Mr. Stang, Your Honor. I'm on Mr. Stang's side.

THE COURT: All right. Okay.

Mr. Stang?

MR. STANG: Thank you, Your Honor. Your Honor, this is not an example of no deed -- no good deed goes unpunished. This is an example of no self- serving deed goes un noticed because that's really what's happening here.

This is not a gesture by the debtor to relieve over-burdened state court counsel from actually getting the informed consent of their clients. Not a single person at the hearings last week said that they couldn't effectively communicate with their client regarding this election.

In fact, the debtor's schedule, the abbreviated schedule you just heard about was on file. No one said they couldn't accomplish this. For all of my differences with Mr. Rothweiler, he said just within the last two hours that they are in constant contact with their clients, fielding thousands of phone calls a month, regularly communicating with them in some fashion.

So this idea that the debtor is doing the plaintiffs' bar a favor, it's a favor no one asked for. And so I really think that we need to look at this from two perspectives.

One is should it be a separate class. That's the subject of our motion, and should it be on the ballot because those could be two different things.

Now, you said last week that it was important to

understand the voting, to see where this -- on this issue where the support was coming from. That's how I interpreted your comments, and we cited to the transcript in our motion.

The elimination of the $3,500 election from the ballot makes it impossible to track who's voting for this plan as -- if you think of them as people who elect for the 3,500 and people that will go into the TDP either to litigate their claims if that's permitted under the TDP or through the TDP process.

If you don't make people indicate their election on the ballot, we will never know the level of support that's being given to the class by those folks because one thing -- everyone talks about we've got to put this stuff in context. Here's the context. No court since these abuse cases started being filed in 2002, I think, has ever crammed down on a survivor class. No one. But what is going on here is that the plan proponents want that class to be as big as possible and to get them all to vote yes.

If this is a separate class, those yes votes, the people electing for the 3,500 don't count towards the vote tallies on the impaired class. They don' want that. This is in effect kind of stuffing the ballot box. I thought it was gerrymandering, but it's really stuffing the ballot box. They want as many yes votes in there as possible, and that's a creditor who is going to get 2,500. They want that person

to vote yes. And you'll come out with the 80+ percent approval rating of this by that class.

But if those people who are getting at least below $3,500 under the TDP and when you look at the chart that we have proposed and the debtor has accepted for inclusion in the disclosure statement, there are a lot of people $3,500 and under and there are a lot of people in that -- in a higher number, maybe 5,000, 7,000 who will take the 3,500 and not take the risks and the delay associated with being in the TDP.

So that's what's really going on here. They want to maximize the people in the class, get them to vote yes, and then those people may elect the 3,500 but they have in effect they've impacted the voting, and, frankly, I think they have distorted the voting.

When I spoke to this issue last week, and I think I -- Mr. Smola will speak for himself. We didn't say that it was too complicated or that the professionals couldn't do it. We talked about integrity, the integrity of the voting system, making sure that counsel who was signing the master ballot were acting in the first capacity as Mr. Goodman described it as kind of collectors of the ballots. And that there were no shenanigans going on with people not accurately recording their client's vote. Or in the second capacity, actually making the decision themselves, which would be

backed up by power of attorney, which issue I think we've resolved as we'll get through the solicitation motion. But no one opposed the idea that they couldn't communicate with their clients effectively to get an informed consent on what to do.

I don't think the hybrid that Ms. Lauria was suggesting really makes sense because it doesn't give you that measure of who is supporting the plan in that class. Whose money is really at risk? Who's rolling the dice and who is not? Because the $3,500 if you take that election, you're not rolling the dice. And while it is true that the trustee does have to check to make sure that the signature is on the claim form and that it is substantially completed, that's not really a -- in my opinion a substantive review process. That's checking a signature block and seeing how many answers were given. It's not even looking at the answers.

I don't think is an issue of vote buying because if you put those people in a separate class, and every plan that I've had any experience with has always had the convenience class, the nuisance class, as someone described it as a separate class. Well, if they're in a separate class, they're not -- the vote buying is not an issue because they're not tilting the impaired class to acceptance.

So I think that if you have separate

classification this concern about vote buying goes away.

3013 does not deal with a, quote, "accepted plan." It's not what the language says. It says for the purposes of the plan and its acceptance, the court may on motion direct determine classes or creditors.

It doesn't say after the plan has been accepted or after voting is completed. This is the time to do it. This is the time to make the plan accurately reflect what is going on in the case.

And everyone will have the opportunity to take the election. There will be no discrimination amongst abuse survivors, but if you take the election, you're in an unimpaired class and you're deemed to have voted yes. Well, you're unimpaired. I guess you're -- you're not voting at all, I'm sorry. You're not voting at all. I get an -- I get -- I get an erasure on that one because it's my birthday.

I made a mistake, and so to me this is about integrity of the voting system, being able to keep track of who is voting how and how that is really going to affect your view of where the support is coming from in the plan, and if you do it any other way, we will never know if, in fact, the survivors whose claims are really at risk are supporting this.

People have called this the tail wagging the dog. I don't -- you may have -- I think you may have used that

expression, Judge. We don't know that.

There could be 10,000, 15,000, we estimate using our chart the TDP values that we're talking about that possibly as many as 25,000 people might be making that election because under the distribution scheme and given the current plan settlements, that's about how many people it might make sense to take that election. It cries to the inadequacy of the settlements, please. We won't get started on that, but this is not the tail wagging the dog. This may be the dog.

So, Your Honor, we think it makes sense. It reflects the concerns you expressed last week. We think keeping it on the ballot absolutely is necessary so we can track where the support of the survivors really is and whose money is at risk here, if you will, and we think it should be in a separate class to avoid the issue of vote buying, and we think it makes it cleaner. So that's all, Your Honor.

THE COURT: Thank you.

Mr. Patterson?

MR. PATTERSON: Thank you, Your Honor. I lack the history that so many people here have, and so I look at it very, very simply. This is a plan that provides for alternative treatments. The two alternative treatments give the claimant a fundamentally different interest or stake in the outcome of the plan.

One, reduces the claim if pertinent or actually potentially increase their distribution to $3,500. Accepts that, executes the required releases and moves on with life.

The second is going to be tied up with the TDP process, payment percentages, hold backs, whatever set aside there is for the futures and all the rest of that architecture for many, many years and except getting more money overtime, hopefully, maybe not, but agreeing to take that risk in exchange for potentially a greater distribution.

Ex ante, leaving everything else aside, leaving this case aside, ex ante, those are two different classes, and that is why the first time I think I drafted a plan and I had a little nifty -- I thought I could collapse it and I put in my little trade class, this is what you get, but if you agree to reduce your claim, then you get this little amount of money, and I thought I had made an efficient move. And we went to a disclosure statement hearing, it was a small case, and the partners let me kind of run with it so I could get my nose bloodied and learn how to practice law. And I did. The judge said those are two classes, Mr. Patterson. Those people have different rights. Those are different classes. Read 1122 before you come back. And so that's -- that is the correct analysis.

Now, this Court need not resolve the 3013 motion in the sense of deciding they're separate classes today, but

this goes back to what the history that I am familiar with, which was last week. And I raised this issue because I wanted to make sure, we were talking about a number of issues related to how we're going to count the votes, how we're going to measure the votes for master mortgage, and I said and by the way, Your Honor, I just want you to know we may bring a 3013 motion because we think these people are fundamentally in a different class.

And, Your Honor, said -- you know, I think I'm not surprised given the papers that that is something someone is going to do, and we'll have all the information. And I was completely satisfied with that because having the information is the important part here. At the end of the day, the Court can decide the 3013 motion later, but the balloting issue is really the key issue.

And I don't think you need a starker case than to look at combustion engineering, and when that case went up to the Third Circuit and the fact that the vast majority of the votes have been delivered by people whose rights were fundamentally different.

They, in that case they were receiving some money from one trust and had a spillover claiming to the other trust in a small amount.

And the Third Circuit -- in that case it was an artificial impairment case, but the principle is really the

same. And the debtor is given a certain amount of discretion with regard to classification and treatment, but when the purpose or when the underlying effect of that is to conceal what the real support is for the plan by people who have a real and meaningful economic state in it, or to separate out people who have a different economic stake in it, then that is improper classification or improper treatment.

Your Honor, I think this issue of eligibility and the other little things, that's a complete red herring. The election can be I elect to take this treatment, but I understand that I have to comply with the requirements of the trust in order to receive it.

That -- this is not something that ought to get in the way. We heard loud and clear from the coalition lawyers that they were able to do all the solicitation necessary, and the idea that there has been a revisiting of this principle with regard to the 3,500, frankly, it doesn't really -- it doesn't really hold water.

Finally, Your Honor, with respect to the point that the integrity of the balloting could be put at issue, first, no one has said that. That's speculation. I think it's a red herring, but even leaving that aside, this is an election that's going to have to be made at some point. And a 60-day balloting period that we have for this purpose given the focus that people are going to have on this process,

given the materials that they are going to be receiving, given the communications that all of the lawyers are going to be making with their clients, there is no better time to ascertain what the claimant's preference is in this regard than now.

This is the time when they are focused on the issue. To suggest that they would get a standalone piece of paper at some point in the future that advises them about it, that wouldn't be meaningful. This is the time that they are focused on it. This is the time that people are in communication with them.

Your Honor, I was a little disappointed to see the switch about. I understand that the debtor wants to have a valid vote and a meaningful vote to record the votes on the plan and really gauge the support, and I think if they really want to do that, they would want to know are people who are accepting this plan truly the people who are impacted by the insurance settlements, who are impacted by the third- party releases, who are impacted by the loss of their rights in the tort system? And that's what this gauges, Your Honor.

I'm happy to answer any questions the Court has.

THE COURT: Thank you. I don't have any questions.

Mr. Smola?

MR. SMOLA: Thank you, Your Honor. Can you hear

me okay?

THE COURT: I can.

MR. SMOLA: I'll just be very brief. With respect to Ms. Lauria's point about the $3,500, frankly, that is the least of a plaintiff's lawyer's concern for the informed consent they need to obtain for their clients. A yes vote in this case, as I have sort of said three or four times now, potentially compromises a case against a third party, a local counsel, and potentially compromises a case against another third-party non-debtor, a chartering organization, and every lawyer that votes yes in this case is going to have to get affirmative consent from their clients in order to execute that vote and is going to have to inform their clients that they are potentially compromising those other cases.

Certainly, the $3,500 was an additional consideration, but it's really those first two considerations that drive the communication we as plaintiff's lawyers have to get from our clients in order to compromise their claims by way of a yes vote.

Thank you, Judge.

THE COURT: Thank you.

Ms. Lauria?

MS. LAURIA: Thank you, Your Honor, and I will also be brief. I want to just put some meat to the bones of something that Mr. Goodman said, which is from the

plaintiff's perspective, as the settlement amounts increase in this case, so do their recovery percentages under the TDP matrix.

And I'm going to point the Court to the blackline disclosure statement that we filed in the overnight hours. It's docket 6385-2, and I'm going to ask the Court to turn to -- it's page 40 of 507 of the PDF or page 33 of the disclosure statement itself.

And while you're getting there, Your Honor, I just want to set the stage for what this is. Mr. Stang has referenced multiple times that they prepared a recovery chart. It provides for pittance of recoveries, and that the debtors endorsed it, apparently, by putting it in the disclosure statement, and, therefore, that proves that a huge number of folks may take the $3,500 under our plan.

That's simply not the case. What Mr. Stang failed to mention was that the debtors provided their own recovery chart where we took the TDP values. We applied the scaling factors as they pertain to the -- and, again, Your Honor, it's page 33 of the black line, page 40 of 507 of docket number 6385-2. We applied the scaling factors for the statute of limitations, and then we applied various recovery percentages at both the base claim amount under the TDP, as well as the max claim amount. The base claim amount of 10 percent we calculated based on the Bates White estimation of

a 7.1 billion trust applying the Hartford distribution, the distribution from the local councils, as well as the $100 million Delaware Statutory Trust note, as well as the debtors own contribution. The 63 percent recovery is assuming the valuation is at Bates White's low end, which is $2.4 billion, but, again, utilizing the same assumptions and then it is our contention, of course, that claimants may receive up to a 100 percent recovery as additional insurance settlements come in the door based on the Bates White estimation.

And if you just glance through this chart, you will see whether you're talking about in-statute claims for non-touching that appears on page 35, or out-of-statute claims versus various states in the scaling factors, the difference between a 10 percent recovery or a 63 percent recovery could formulate the difference between electing a $3,500 expedited distribution or not. You see that repeatedly including even in the more severe abuse claim category types.

So we do think that more information, and, again, this is just to add to Mr. Goodman's point, there is a dramatic difference between recovery percentages depending upon the dollars that are in the trust and also depending upon the ultimate value of the -- the liabilities that the trust is confronting.

Beyond that, Your Honor, I will say that as we

said, I guess it was last week, we think many of the voting issues can be dealt with on the back end. Maybe we misinterpreted the statements of counsel last week at the hearing, but at the end of the day we felt like this truly was turning into the tail that was wagging the dog and that it was appropriate to remove it from the ballot.

Thank you, Your Honor. Unless you have any questions for me, that concludes our views of this topic.

MR. STANG: Your Honor, may I make one comment about this issue of the moving target of the settlements?

THE COURT: Yes.

MR. STANG: I think this works, I think this might work. The notion that I heard was essentially let people opt into it later at some undefined period of time after the effective date. And that, of course, is the problem that I tried to identify. I thought Mr. Patterson made it as well, that we just don't know if the people voting yes really have skin in the game.

But you could have an approach that says you have to make the election, and you can opt out later.

If it turns out that on the effective date of the plan they've doubled, just to use Mr. Rothweiler's hopeful example or even, you know more than doubled the settlements, people might go, you know what, maybe I shouldn't have taken that election. But we don't know. There could be no more

settlements. I have no idea who Mr. Schiavoni is talking about talking to in settlements. I thought he was talking to us, but apparently not because he met with the coalition yesterday, but we don't know. The settlement numbers might not change at all, so the idea that someone makes the election, we know they are electing, and they can, in effect, opt out of that election so that they are not damaged by an increasing pot of money. Maybe that is a resolution to this, but we really feel the need to keep track of who's making this election so we can see if it's skewing the voting, and the idea that we could take up the classification issue at the confirmation hearing is interesting. Maybe that's a way of doing it, but we really need to identify these folks so we can see whether people with significant interest in the issues that Mr. Patterson identified are voting yes or not.

THE COURT: Mr. Goodman?

MR. GOODMAN: Thank you, Your Honor. Eric Goodman, counsel for the coalition. I'd just like to speak on one issue. 1122(a) provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest. I think we satisfy that here plainly because all of the claims in Class 8 are survivor claims. On the treatment issue, that's actually an 1123(a)(4), not 1122, and 1123(a)(4) provides that the plan shall provide the same

treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.

The plan does provide for the same treatment. It provides the same options, you know, what people decide to do later on if -- if they decide to accept less favorable treatment for reasons that are personal to them, I don't think that impacts the analysis under 1122 or 1123 at all. That's my only point, Your Honor.

THE COURT: So I haven't read the motion yet. That's my -- I have to confess when I heard it was under 3013, I said what rule is that, but the but I see it's there, and my gut reaction is it's not a classification issue because all of the holders in the class have the same legal rights *vis-à-vis* the debtors, and because they all have the same options. They all have the same opportunities with respect to their recoveries, depending, of course, on what abuse they suffered.

But -- so I don't know if it's a classification issue, but my gut reaction is it's not. But the reason I thought this information would be helpful had more to do with the channeling injunction request and the third-party release request that I'm going to be -- that I'm being asked to make. And not necessarily a cram down issue, although I guess I

hear that, too. But or the channeling injunction and the third-party releases appropriate under the relevant standards?

And in that regard, I thought it would be helpful to know who was voting and what their choice is. Of course, I could have been in a situation where there was no choice. You just -- there's no convenience class. You just are funneled into the trust, and if you end up with, you know, $19 for a non- touching claim on a 10 percent recovery, then you get $19. You don't have the option to get $3,500. But I'll confess I hadn't -- I did note these charts. I hadn't thought about this issue in connection with the charts.

I do think counsel is going to have to have communication with their clients with respect to voting on this plan, and it's a complicated plan and it does - - even whether one accepts it or rejects it is a complicated decision, much less whether one accepts the particular offer of $3,500.

I don't know if it's a classification issue, but I think it's important to understand the vote. I don't know about an opt out. I don't know if that's something the debtors or anyone else would accept. So I think it needs to stay on the ballot.

MR. PATTERSON: Thank you, Your Honor.

THE COURT: Thank you.

MS. LAURIA: Your Honor, we will conform the ballots and the other documents back to the format that they were in on this topic previously.

THE COURT: What else can we accomplish this evening? There were two -- two other topics, Ms. Lauria. Let me see my notes.

MS. LAURIA: Yes, Your Honor, it was sort of clean-up on the actual disclosures on the disclosure statements and then resolution of any open issues with respect to the solicitation procedures.

Both of those topics are being handled by the team in the White and Case conference room, which I cannot see. I might as Mr. Linder if he is somewhere near the camera to let us know if one or both of those topics are a size that can be dealt with still this evening.

MR. LINDER: Good afternoon, Your Honor, White and Case. As for the disclosure statement itself, we're certainly a long way off from where we were with 170 objections last week. I think we're -- we're down to maybe four issues that I have on my list. So I think that's something discreet enough that we might be able to accomplish in the time remaining today.

THE COURT: Okay. Let's see if we can knock those out.

MR. LINDER: Great. Thank you, Your Honor.

As Ms. Lauria mentioned, we've been working extremely hard since we broke last week -- I think it was last Thursday -- to revise the disclosure statement, the plan, the solicitation materials and the various exhibits and schedules to account for the revisions that the debtors agreed to make during the hearing last week as well as the items that the Court directed us to include in a revised version of the documents.

We've also worked to reconcile our comments with the numerous objectors' comments, and we believe that the draft we filed in the early morning hours today at Docket Number 6385-2 that's the redline is very close to resolving all of the disclosure statement objections.

Again, as I mentioned, I believe there are four categories of issues that I'm aware of so I would propose to just walk through each of those in turn, starting, Your Honor, with the future claims disclosures.

Your Honor will recall that certain of the objectors asked for disclosures with respect to an estimate of the future abuse claims so that they could better understand what effect if any those claims may have in terms of dilution, potential dilution of their recoveries, vis-à-vis future abuse claims.

We have conferred with the FCR's counsel over the weekend, Your Honor, and the FCR has preliminarily estimated

that future abuse claims in number are projected to equal approximately 14 percent of the number of abuse survivors that are not future abuse claims. And in value, Your Honor, are projected by the FCR to equal approximately 21 percent of the value attributable to abuse claims that are not future abuse claims.

Your Honor, from the debtors' perspective, those numbers I just want to be clear do not comport with our view or our analysis. We're continuing to engage in discussions with the FCR's representatives with respect to their preliminary projections, but regardless, Your Honor, we will continue to confer with the FCR and include -- we would propose to include in a further revised version of the disclosure statement what I suppose would be the solicitation version those estimates.

And, specifically, in the version that we filed last night, Your Honor, the main provision that we included is on page 96 of the redline, and what that essentially has is a placeholder for the projected amount and value that I just recited. And, again, that's on page 96 of the redline. It indicates both the FCR's forecast and our dispute of those forecasts based on our own valuation expert's analysis of future abuse claims.

We've also added, Your Honor, risk factors to emphasize that there is a risk, that the projected value of

claims is higher than the debtors range or that the types of -- or that the claims that could be allowed in amounts higher than the total projected ranges for each type of claim, which could also reduce recoveries for holders of compensable claims. That risk factor is on page 275 to 276.

So with those changes, Your Honor, we believe that that is sufficient disclosure on the topic of future abuse claims. And we propose to memorialize that in a further revised version of the DS.

MR. SCHIAVONI: Your Honor, our just -- our one concern about that is that there's no explanation of the methodology that was -- that's applied to come up with the 14 to 21 percent.

MR. MONES: Your Honor, this is Paul Mones. May I speak?

THE COURT: Yes.

MR. MONES: Thank you, Your Honor. I am and have been since the beginning of this future claims, since a future claims representative has participated been very, very concerned about the methodology of arriving at this number considering the on-the-ground reality of states which allow repressed memory and the number of juveniles who -- people under the age of 18, who are -- would not have filed given the nature of the criminal justice system as it's been applied in the last 3 to 5 years with regard to

organizational -- abuse in organizations like the Boy Scouts whereas back in the 60s, 70s, 80s, 90s, the numbers of reports of sexual abuse that were -- that were reported to law enforcement were less, the numbers now according to law enforcement research, et cetera, at least in institutions, not in family matters has significantly been altered. So I hope we would have a -- echoing perhaps Mr. Schiavoni's comments we would have an opportunity in some way to have an evidentiary hearing on the way in which this number was formulated because, again, purely in my opinion I think those numbers are way, way off.

MR. LINDER: Your Honor, if I could briefly respond. Our understanding is that this analysis, again, is preliminary. Ankura is the FCR's valuation expert. With respect to substantiating the value, that's obviously something that we would expect to happen at confirmation.

THE COURT: I think there will be discovery on it.

MR. MONES: Thank you, Your Honor.

MR. STANG: Your Honor, may I make a comment on this?

THE COURT: Yes, Mr. Stang.

MR. STANG: Your Honor, first of all, whatever is going to be expressed in terms of the FCR's opinion should not be in percentages, it should be dollar amounts or number of people. One shouldn't have to go back and compute

percentages. There's just no reason. But we received a draft redline of the plan a little past midnight on Monday.

It was not marked confidential. It was not marked subject to the mediation privilege, and that e-mail or in that draft redline, it said that the FCR estimates there are 11,300 future claims and 5.055 billion dollars in value.

Now, I'm not a math whiz but 5 billion dollars is more than 21 percent of the high-end range of the debtor's estimates at 7 billion. So when they say percentage of value, I have no idea what the value means.

And I have a communication. I presume it came from the debtor that the FCR was estimating these claims at 11,300 people and 5.055 billion dollars.

Would someone please explain to me how we got from Monday at 12:40 a.m. with those numbers to what we just heard?

MR. LINDER: Your Honor, before the FCR responds, what I would note is that my understanding is the FCR does not adopt the debtor's estimation. It does not adopt our range of values, just to respond to Mr. Stang's comment. But with respect to the propriety of how the estimation is expressed, I would defer to the FCR.

MR. SMOLA: Your Honor, can I just be heard for just very briefly? I think this should be a very simple disclosure. How many future claims are projected in terms of

numbers? How many of those are repressed memory claims, meaning claims that can come from policies in the 70s and 80s? How many of them are minor claims? We heard the FCR earlier saying they felt many of these were minor claims that would be fully insured. Is it 8,000 minor claims? Is it 200 minor claims? What is the projection, and what is the total estimate for future liability?

It's relevant for two reasons in disclosure. One is where do these claims fall in the insurance picture? Are they for minors who were abused in the last decade, or are they going back to the Hartford era, Century era, and other non-aggregate limits? And, two, it may dictate how the FCR discovery goes. If there is 11,000 claims, that discovery may need to be robust. If it's much less than that, it may not need to be so robust. So I think a simple disclosure will -- will put us on the right path in my view.

MR. BRADY: Your Honor, Robert Brady for the FCR. Both of those statements are correct, what Mr. Stang saw in a black line and what the debtors propose to put in now. So we can express this in either way.

I think the debtor preferred percentages.

But we do expect this to be the subject of discovery, and we are prepared to sit down with the TCC, the coalition, and anyone else who wants to understand the methodology and we'll present that to them. But we always

expect that this would be a confirmation issue, and we're making the disclosure now because the Court asked us to. And we understood that the Court asked us to list the number of claims and the amount.

The fact is Mr. Stang has said these claims are worth over $100 billion. The debtor believes they are somewhere between 2 and 7, and the FCR has his own view as to what the value of the claims are.

THE COURT: Okay. So let's --

MR. LINDER: Your Honor, just to be clear on the percentage versus the dollar amount, the reason the debtors prefer the only apples-to-apples comparison that can be made is with respect to numbers of claims given the disparity between the FCR's valuation number and the debtor's valuation number. Doing a percentage allows an apples-to-apples comparison to be made.

MR. STANG: Your Honor, I'm just not sure what the apples are. It's 14 percent of the value if it's $5 billion. If my math is right, it's $25 billion in claims because that's 20 percent, 5 percent is 20 -- that's the math, I guess. I guess I just don't understand what the value means.

I understand the people because we know there's 82,200 some odd. That's easy. I just don't understand the value side of it. Just give us the number like Mr. Smola suggested.

THE COURT: I don't understand it either. I wrote it down, but I wasn't quite sure what it -- what it meant or what it was correlated to. And so, Mr. Brady, it's 21 percent of value, whatever that value happens to be? Is that -- is that what Ankura's opinion is, or do they have an opinion on a number?

MR. BRADY: They have run the claims through the TDPs, and they have an opinion on the value of the claims run through the TDPs.

THE COURT: So it's as run through the TDPs?

MR. BRADY: Correct.

THE COURT: Okay with some, I suppose analysis as to what they think are the appropriate scaling factors?

MR. BRADY: Correct.

THE COURT: Just explain that in a sentence and give out the numbers.

MR. LINDER: We will work with the FCR, Your Honor, to do that.

THE COURT: Thank you.

MR. ROSENTHAL: So, Your Honor?

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: Yes, it's Michael Rosenthal of Gibson Dunn. So what the FCR is going to give is -- is -- is an aggregate number, a percentage, and the actual -- the actual number of claims, an aggregate value and the

percentage of that value to a total value, all three of those things. Is that what we're looking for? I heard 11,300 claims. I heard $5 billion, and I heard $5 billion represents 21 percent of something.

THE COURT: That sounds -- you could put the percentages in. That's fine, and that one sentence or so on just what Mr. Brady explained. Then it's discovery.

MR. LINDER: With that, Your Honor, I propose to move on to the next, the second of the four categories.

THE COURT: Yes.

MR. LINDER: That is the plain English summary document. This is -- this is a document that was actually appended to the revised solicitation procedures order that we filed, docket 6386-1. I'm raising it in the context of the disclosure statement, Your Honor, because Mr. Ryan had suggested that it would be an efficient means, an effective means of communicating with charter organizations with respect to information contained in the disclosure statement.

And, Your Honor, this was exhibit 12, and that starts at page 243 of 256 if you're looking at the stamp at the top.

THE COURT: Page 243, okay.

MR. LINDER: Your Honor, we spent a good portion of our day on Friday and Saturday, the debtors did, working with the ad hoc committee of local councils preparing the

draft that is appended to the revised solicitation procedures order. We sent this draft in substantially this form to all of the objecting parties including Mr. Ryan and the other representatives of charter organizations. We sent that on Saturday afternoon. We then sent a further revised version to all parties including Mr. Ryan on Monday.

Last night at about 7 p.m. Central Time we received preliminary comments from Mr. Ryan, and we made good faith efforts after we received those to incorporate as many comments as we could, given the time constraints and the number of documents we were working to file.

The document that's before Your Honor is -- it's about a ten-page document, and it's comprised of four items. The first is -- is about nine pages of frequently asked questions regarding the treatment, I don't know if treatment is the right word, but the effect of the plan on charter organizations with respect to what we view as their three options under the plan.

The first is to become a participating charter organization, and that is the "default" option. The second is to negotiate a settlement by which they can become a contributing chartered organization, and then the last is to opt out of that treatment assuming that the charter organization is not a debtor in bankruptcy.

So we've set forth several FAQ on each of those

options, a table at the back of the document that attempts to summarize the three options on a single page, as best we can in terms of what the contribution that's required to be made by those charter organizations and the protections that the charter organizations would receive under the plan for each option.

There's also an opt out election form. Mr. Ryan had requested that rather than the more informal method of contacting the debtors to opt out of becoming a participating (inaudible) that there actually be something that looked more like a ballot that could be opted out, that could be submitted as an opt out.

We've prepared that. That would be -- that is proposed to be remitted to our claims and noticing agent.

And, finally, we would propose to append to the summary and FAQ a confirmation hearing notice so that parties know what the relevant objection deadlines are and the proposed date for the hearing on confirmation of the plan. I understand from communications with Mr. Ryan during the hearing, Your Honor, that there are a number of items that he would propose be added to this document. We've been trying to balance the desire, Your Honor, to have this be a concise and effective summary against what we view as a risk of this taking on a life of its own and becoming in essence a mini version of the disclosure statement. The disclosure

statement has already been heavily negotiated.

So what I'd propose to do, Your Honor, is to in an attempt to make sure all the information that Mr. Ryan believes should be included in this document is included is to add a section perhaps before the chart that and some of the examples of what Mr. Ryan would like articulated in this document are voting, means by which holders of indirect abuse claims, most of which are charter organizations can vote their claims be effective, the releases and injunctions on charter organizations, et cetera.

What I would propose to do would be to add a section that bullet points out some of those items and cross-references the disclosure statement and where those -- where all of those items, all of which have been articulated in the disclosure statements can be found.

All of the indirect claim holders, indirect abuse claim holders who are charter organizations will be receiving the disclosure statement as part of their solicitation package, so from our perspective, we think that is an appropriate way to balance the charter organization's desire for a one stop shop for all of this information against this document again taking on a life of its own.

THE COURT: Mr. Ryan?

MR. RYAN: Thank you, Your Honor. We do -- we do -- first, we commend a lot of effort went into getting

something into -- an effort to put into plain English. You know, what our hope is and what we thought the Court agreed with was that charter organizations need something that gives them the entirety of what they're being asked to decide on in plain English. And there's -- there's two components to that. One is the three options for the releases and the treatment with respect to all chartered organizations, and also the creditors, and there are 16,000 creditors needed to understand that part of the disclosure statement in plain English as well.

So, addressing half of -- half the loaf, and then giving them a key that points them back to the disclosure statement in our view is -- just falls a little short. I understand the concern of not wanting a 50-page document, but, you know, we gave them a turn that we think has a lot of those concepts in 10 pages. We think it can be done. We think we're losing the goal of plain English if we say, hey, there's going to be some maybe consensual, maybe not consensual third- party releases. Here, go look in the disclosure statement for where they're discussed, and then you're going to find a whole lot of defined terms that you're going to have to go into a plan to understand. It's just leading them down the rabbit hole that we're trying to avoid, which is these are not sophisticated people who don't understand legal documents and not to have them wade through

a disclosure statement which requires page flipping back to a plan to read one definition, to read another definition.

We think we can get this all in there in plain English simply. There are a lot of very important concepts that aren't in right now. Most notably, it doesn't speak anything about the 16,000 charter organizations that have to vote, that are entitled to vote.

It doesn't say anything about the third-party releases, consensual or non-consensual and those things need to be in a plain English document. Those are some of the most important things that are going to be going on with respect to a chartered organization. There's a whole list of other things, Your Honor, that I could run through at a high level that it doesn't have. I think probably, Your Honor, and I'm expecting that based on where this was in the revised proposed solicitation procedures order, you haven't looked at what the debtors have done either.

Perhaps the simplest thing to do to save everyone a lot of time on this is you have what the debtor submitted. We'll be happy to -- to send something over to the Court under a notice of filing of what we think can be done, and Your Honor can take a look at those two. And if you have some discreet questions between the two, you know, this thing is not getting printed tomorrow. We have time tomorrow. We can have a much more discreet hearing with less than 260

people. This is not an issue that affects the vast majority of people who are on this line, and that gives the Court the time to not have us negotiate line by line but just see two different presentations. Ultimately, both of them asked and say that it's a court-approved document, so let the Court -- you know, we'll live with what the Court chooses.

THE COURT: Okay. Why don't you submit what you want and I'll take a look at it, but are the chartered organizations with their creditor hat on going to receive another plain English document that --

MR. RYAN: No.

THE COURT: -- deals with --

MR. RYAN: No, Your Honor, this is the only - - that -- and that is part of the problem. This is the only plain English document the debtor is proposing to send out. And the genesis of this was chartered organizations need to know everything that affects them in plain English. So, again, that is my half a loaf comment is telling them about the options under the plan with respect to releases, and claims, and channeling, and contributions, it completely doesn't tell them about their -- their rights as creditors, the effect of signing the ballot, what happens if they don't opt out of the consensual releases.

None of that's in there in plain English, and that's exactly the kinds of things that we think creditors

need to know. Chartered organizations need to know as creditors casting a ballot.

THE COURT: Okay. I'll take a look at what you submit.

MR. RYAN: Thank you, Your Honor.

THE COURT: Mr. Schiavoni?

MR. SCHIAVONI: Your Honor, I'm happy that maybe I'll have an opportunity to give my final round of comments to Mr. Ryan this evening, and then either he'll include them or you can look at them. Two critical elements of this that's not really there is really an explanation of in the Hartford settlement there's a clause that says that Hartford's coverage is going to be released. There's just no disclosure really of what that means in this settlement.

There's the same thing with regard to in the Hartford settlement the deemed release that's to be part of the TDP that's a condition of the Hartford settlement, there's no disclosure of what that means here either. And it's like the most fundamental thing that strikes me as wrong with that is that you've really got to go to Page 4 of what is a dense single- spaced document to realize that you're not getting, you're left un protected and that there's 35,000 claims going to be coming at you and no one is representing you in the bankruptcy.

I mean Mr. Ryan is like carrying a big load, but

there's no committee, there's no one representing them, and you know to the extent some of these folks maybe think, you know, I don't want anybody to be pointing at like the carriers are representing them.

So I think it should be clear that they're un -- you know, they're unrepresented, and the net result of this death trap provision is that they're -- it's like even under the election or the -- the -- the negative assignment, they're left uncovered, you know, for all these claims.

So it's just, you know, it seems like the very first question is, is the effect of the plan, will it release me, and the answer is no. Local counsels get full release, and you don't. You don't have counsel in the case, but I will give those comments to Mr. Ryan and we'll see what happens.

MR. RYAN: And, Your Honor, we'll welcome those from Mr. Schiavoni. I will say, I didn't want to go into this, but the lack of disclosures regarding the Hartford settlement are one of our biggest concerns.

You know, the document right now doesn't tell people, it says, hey, you'll have your insurance rights. It doesn't tell them the Hartford rights are gone. It doesn't, you know, and there's been a substantial movement in some of the things, Your Honor, but we know from Boy Scouts own -- they've taken positions on pre- 1976 local counsel insurance

coverage and whether it -- it covered chartered organizations. If you look at the first version of the latest disclosure statement, it said there's no coverage for you guys.

You know, we know from the Boy Scouts own documents that 300 local councils participated over an eight-year period in a blanket policy that covered charter organizations. So there's concerns about that. Now, that has been fixed, but one of our concerns has been that there's been a lack of adequate diligence into some of the things that under the rubric of the Boy Scouts believe -- well, the Boy Scouts believed until we pointed them to their own data room that there was very little coverage for local -- for chartered organizations under the local counsel policies.

You know, Mr. Linder had said to you last week that, you know, the Boy Scouts never agreed to defend and indemnify chartered organizations. There is a resolution of Boy Scouts in response to the handling of sexual abuse claims that says Boy Scouts shall defend and indemnify against claims, and that was specifically enacted with respect to abuse claims. And it was not a go forward defend and indemnify. It was any claim regardless of when time was occurred.

So there is that kind of lack of Folsom disclosure that concerns us that is -- we only know what we know as far

as what beliefs are there. I mean there's a whole representation as to what the Boy Scouts believe chartered organizations thought 60 years ago about a charitable doctrine of immunity.

Things like that don't need to be in there, but, you know, I think if you look at the evolution, there's been some improvement but that shouldn't have to be the parties say, hey, your own documents.

There's a corporate resolution that says, you will defend and indemnify. It should just say we agree to defend and indemnify you, and as Mr. Schiavoni mentions, we want to make clear that people -- just saying you're still exposed to lawsuits in the court system, people need to know you can't defend on boy scouts to honor their prior promises. Those things need to be clear.

That's not a -- that's not a belief. Those are facts, and those need to be prominently disclosed to people because they've always been subject to sexual abuse claims. But what they need to know is that the Boy Scouts are no longer going to defend and indemnify them.

Those kinds of things need to be made clear that they won't have insurance from the Hartford.

That's what we need to get out to these people in plain English. Thank you.

MR. LINDER: Your Honor, I would just ask that

if -- if there's going to be a submission by Mr. Ryan that we impose some parameters on when that -- when that might be filed, just in the interest of finalizing our documents.

THE COURT: Well, I don't know. Everything is last minute. People are working as quickly as they can. Debtors are. Other people are. He said he'd do it at some point tonight. We'll look at it tomorrow. That's all I can ask.

MR. ROSENTHAL: And, Your Honor, I only have my hand up because I would hope that Mr. Ryan would include us in those discussions, please.

MR. RYAN: Absolutely, Mr. Rosenthal.

THE COURT: This is clearly an important issue, and it's -- and it's an issue that really only surfaced in court in a significant way recently so --

MR. RYAN: And, Your Honor, I know I said tonight, but I'm already looking at 6:40, so it may be tomorrow morning. I will tell you that.

THE COURT: I'm not staying up waiting for it, so --

MR. RYAN: I appreciate that. You know, our clients have the resources they have. We don't have, you know, go to trial in 20 day resources like some of the other people on this call.

THE COURT: I know, but, no, my only point is this

is a very important issue, these chartered organizations and their ability to understand what's happening, especially given the way this is structured. And as with many things in this case, it's complex and I don't know that there's a lot of precedent for this.

So communications with the chartered organizations really need to be helpful. That doesn't mean add another 50 pages to it. I don't know that that makes it helpful, but they need -- it needs to be helpful so that they understand what's going on.

MR. MONES: Your Honor, could I have 30 seconds, please?

THE COURT: Mr. Mones?

MR. MONES: I would just refer the Court to Dale versus Boy Scouts of America, which is a 2000 United States Supreme Court decision that gave the Boy Scouts of America the right to exclude gay scout leaders.

Part of that decision was that the Boy Scouts of America control the hiring, firing, and even to that point, sexual preference of the scout leaders gave no discretion to the charter organizations or to the counsels in this regard with regard to the Boy Scout's control over the core issue of scouting, which is the identity of the scout leaders.

So I would just offer to the Court in evaluating this in the future because it's been a centerpiece of the Boy

Scout's liability over the last 16 to 18 years in state court litigation that the United States Supreme Court at least has decided at least partially about this issue about the duty owed by and the control of the Boy Scouts of America over their charter organizations since the charter organizations do select the scout leader. Thank you, Your Honor.

THE COURT: Okay. Next?

MR. LINDER: Next, Your Honor, we have the third issue, which is that we've been advised by Mr. Patterson that the revised description of the source (inaudible) waiting is in his view not clear and appears to be contrary to the representation that only affected claimants would receive shares of non-BSA- sourced assets. Your Honor, the language that he's referencing is on page 240 of the red-line document.

MR. PATTERSON: It's on page 6385-2, yeah, page 240. Thank you, yeah.

THE COURT: I have to switch documents.

Okay, thank you.

MR. LINDER: And you'll recall, Your Honor, that last week it was noted that the language only used the term in part with respect to the non-BSA-sourced assets. It only referenced part of those assets being allocated among holders of claims that relate to the -- the source of the assets being attributed.

And -- and -- and we were specifically we were discussing the TCJC settlement. We've revised that, Your Honor, to provide that it's either all or in part those assets are being contributed to the trust and then being used to pay holders of claims, again, that relate to the contributor in question. I think that is now clear. The only instance in which the TCJC contribution under this revised provision, which just parenthetically, Your Honor, is really a recitation of what is now in the revised trust distribution procedures on the same topic.

The only instance in which the funds would be used to pay claimants other than TCJC claimants is if as a predicate all TCJC claimants were -- their claims were all satisfied in full from those proceeds, and then the overage -- I think it's the last sentence of this -- this provision in blue, if there's a remainder after the satisfactions of all relevant holders, then that remainder shall be distributed to all holders of abuse, allowed abuse claims in accordance with their payment percentage.

THE COURT: Okay. So I get that sentence, that last sentence, but what does all or in part mean?

MR. RYAN: Your Honor, what I understand it to mean is that we really don't know what the terms of a future settlement with another organization might provide for. So this is intended to permit flexibility with respect to

further settlements. The TCJC settlement is predicated on those proceeds going only to TCJC claims with the remainder being distributed to other claimants if there is any. But this is intended to preserve that flexibility in the event that further settlements provide for different terms.

THE COURT: Mr. Patterson, what's your concern?

MR. PATTERSON: Well, is there a statement somewhere in the disclosure statement that the TCJC proceeds will be used only to pay TCJC claimants up to the full value of their claims?

MR. RYAN: Your Honor, I believe where we put that and for the front we have summary bullets. This is on page 14 of the redline, and it is at the top of page 14 there is a -- a new sentence that states that the TCJC contribution will pay claimants with a claim against TCJC in addition to a *pro rata* share of trust expenses.

MR. PATTERSON: I didn't read that to be exclusive, and then when I read the source affected waiting language that said in whole or in part, I read them as consistent with each other. But if the intent is on page 14 that -- that it's only, then I would ask that it's TCJC's contribution will go to pay only abuse claimants with a claim against TCJC.

MR. RYAN: That's fine with us, Your Honor. We're happy to make that change to clarify.

MR. PATTERSON: But with that, I understand there is no flexibility with regard to TCJC other than with regard to an overage, and there is flexibility with regard to any future settlement.

THE COURT: That's how I understand it now. Okay. I think that fixes that problem.

MR. RYAN: Correct.

And, Your Honor, that brings us just to the last category, which is really a catch-all. We would just note for the record that we've been conforming changes to the disclosure statement to reflect changes to the solicitation procedures, and we'll continue to do that. And so there may be further changes on that front. It's not really a disputed category, but I wanted to note it for the record that our further revised version of the disclosure statement will -- will account for anything else that's discussed on the record today or tomorrow.

THE COURT: Okay. So what do we have for tomorrow?

MR. PATTERSON: Your Honor, I just -- before we finish, I had one other comment regarding the plan and disclosure statement.

THE COURT: Okay.

MR. PATTERSON: And it goes to -- the easiest place to see it is I'm in document 6385-1, PDF page 12 of

416. And it's the definition of abuse claim.

THE COURT: So that's in the plan?

MR. PATTERSON: Yeah, it's in the plan, Your Honor.

THE COURT: Okay. I don't have the docket items on here. Plan page 12?

MR. PATTERSON: Your Honor, it's definition 18. It's on page 4 of my version.

THE COURT: Definition 18, abuse. Okay.

MR. PATTERSON: So I'm -- my concern with regard to this definition is two-fold, and this deals with whether or not the release, which uses the term "abuse claim" is broader than the Court indicated as being confined to scouting-related activities.

So my first concern is that and the architecture of this definition is that the first 12 or so lines down to the provided, however, those first 12 lines that's just -- that is what applies to the debtor, and then the proviso introduces the concept of what this application of this definition of abuse to protected parties, chartered organizations and so forth or just chartered organization -- contributing chartered organizations to begin with.

And the way that proviso works is it says that provided, however, with respect to a contributing chartered organization, abuse claim is limited to and then there was a

whole series of provisions. It's limited to a claim that's attributable to, arises from or based upon in whole or in part abuse that took place occurred prior to the petition date. And I'm concerned with that in whole or in part because of some of the claims, and this is, ultimately, Your Honor, a confirmation issue. But we're going to get to confirmation and we're going to be making this argument, and I just want to be clear if this is the release that the debtor wants to go out with, then that's the definition they want to go out with.

So that's the first concern. And the second is when it says that is limited to a claim that's attributable to --

UNIDENTIFIED: Do you need the papers to deal with this or --

THE COURT: Excuse me, Mr. Patterson. I'm hearing somebody's cross conversation, we're all hearing it.

Mr. Patterson, yeah?

MR. PATTERSON: Thank you, Your Honor. It has a series of includings, so the first one is about five lines down, including a claim that seeks monetary damages, including fraud and the inducement, including negligent hiring, including any theory, and this is the key one, including any theory based on public policy or failure to act by a protected party and so on and so forth, or for whom a

protected party or limited protected party is alleged to be responsible in connection in whole or in part with the contributing charter organizations involvement in or sponsorship of one or more scouting units. The -- as I read the grammar of this section, the limitation of involvement in the scouting units is applicable only to the prior including any theory based upon, but not applicable to the entire *proviso*.

THE COURT: Okay. Well, I had to write on something like this once. I think it was on a dip document, what did the proviso mean, and what did it relate back to, and, you know, pulling out Scalia's book on -- shoot, what's the one he and Garner have on different --

UNIDENTIFIED: Yeah.

THE COURT: Yeah, that one, and, you know, we don't want to end up in that situation. So I would ask the parties to look at the definition of abuse claim to make sure that it or its use in the releases is clear that there is no non-BSA-related activity or conduct that is being released here because I think that is just basic to what we're doing.

And if there is a protected party that has exposure or liability and I'm not prejudging any of that, but they have exposure in more than one capacity in a BSA-related and a non-BSA- related, that the non-BSA-related conduct is not being released. It's not being included here.

MR. PATTERSON: And just given the way that these documents inter-relate with each other, I mean it's frequently the case that you put a sentence like that in.

THE COURT: Yeah. It may be the -- I hate these sentences, too, for the avoidance of doubt or notwithstanding the above, or, you know, all the sentences we hate that are qualified, but it might be very necessary in this context to be clear on that.

MR. LINDER: I think what I'd propose to do, Your Honor, and I'm happy to work with Mr. Patterson on this is to move that qualification relating to involvement in or sponsorship of scouting units that key nexus between the abuse and scouting, to move that up to maybe right after the *proviso* to make it apply to everything that comes after or otherwise to make it -- make it work better because we certainly don't want any implication that we're hiding the ball or otherwise constructing this provision to accomplish something that I think you represented last week we're not trying to accomplish. We're only (inaudible) in scouting-related claims.

MR. PATTERSON: That certainly helps, and it takes away my opportunity to argue the -- the rule of the prior antecedent or the last antecedent.

THE COURT: Yeah, whatever that is.

MR. PATTERSON: Whatever that is, exactly.

But -- but even with that, Your Honor, when we have these terms that say arises from, is based upon, results from in whole or in part, directly or indirectly, or relates in any way, that -- we -- we -- I think we would benefit from having the stop sign as well because this definition can take you a long way before you stop if you don't understand the Court's intention that this is not intended to apply to non-scouting-related abuse.

THE COURT: Right. I -- I do think that it would be helpful. You know, you -- this is one sentence that's a page, and I think it would be helpful if -- well, fix this however best grammatically it works to accurately reflect what we're talking about. But I also think it would be helpful to have a separate sentence from this definition that makes it crystal clear that no non-BSA-related conduct is being released. I think that is really helpful, and it will be helpful down the line, and I think it's non-controversial. So let's just make sure it says that.

MR. BJORK: Your Honor, may I be heard very briefly? Jeff Bjork from Latham and Watkins.

THE COURT: Mr. Bjork?

MR. BJORK: Hi. Here on behalf of TCJC. I'm happy to look at the language because I think in part it's our language that we've been working with the debtor on. I would just say that in terms of the unrelated to scouting

absolutely is not covered, not intended to be covered by the scope of the TCJC injunction. But the settlement does encompass any allocated liability that relates to scouting-related conduct.

All I'm raising, Your Honor, is it's complicated because it's -- it's claim by claim, fact by fact, and I don't want to get into it right now because it's late for you especially. But it is something that I was going to call Mr. Patterson about and we're speaking to Mr. Smola about because it's not -- it has to encompass our allocated share as part of the settlement. And so there's mixed facts depending upon the claimant and the claim. Every claim that was filed in this case asserts it's BSA related.

And they may also, certain claims, assert that there is some church connection as well.

THE COURT: Yes.

MR. BJORK: That's fact-specific.

THE COURT: Yes.

MR. BJORK: So I'm not trying to prejudge it now. I'm just saying it's something that we would want to brief to you and -- and -- and argue at the appropriate time.

MR. PATTERSON: If that's the case, that could be fairly straightforward, because then you would take out in whole or in part, and you would just define the -- allocable liability. And keep in mind, Your Honor, I'm not consenting

to any of this. I'm just trying to make it accurate or understandable for -- for someone like me.

MR. BJORK: I think our concern, Mr. Patterson is --

THE COURT: He says modestly. So I'll let the two of you all speak and --

MR. BJORK: Okay.

THE COURT: -- loop in the debtors obviously on this, but, yes, we had sort of a similar discussion I guess it was last week that about allocable shares. And I -- that concept I fully appreciate, and, yes, if some jury were to say 10 percent is allocable to BSA and 70 percent is allocable to the church, and, you know, whatever is left, 20 percent is allocable to some family member, that's -- I understand those distinctions, and I think that is what this needs to reflect.

But, yes, the allocable share of the church's liability that's BSA-related, I understand to be being released, and I don't think Mr. Patterson disagrees with that. So it just has to be accurately reflected.

Hopefully I didn't confuse things more on that.

MR. PATTERSON: Crystal clear.

MR. BJORK: Tom, I'll call you shortly.

THE COURT: Okay. What else?

MR. LINDER: I think that's it, Your Honor, on

disclosure statement.

THE COURT: Okay. So --

MR. SCHIAVONI: I'm sorry, Mr. -- Your Honor, there was a schedule of insurance policies that was going to be added to the disclosure statement. I'm just not sure whether you ended up adding the -- a column for the SIRs and the deductibles to it.

MR. LINDER: Your Honor, we did file revised schedules to -- those are schedules to the plan, schedule 2 and schedule 3. We made extensive modifications to those schedules.

THE COURT: I would ask that you take a look at it, Mr. Schiavoni. I do remember quickly thumbing through schedules that had changes to them. Why don't you take a look, and if there's any issue contact Mr. Linder.

MR. LINDER: I think the issue on that, Your Honor, and I'm recalling that correspondence that we had with Mr. Schiavoni, is that the SIRs and deductibles as opposed to the other projected information that's set forth on that chart are disputed.

So I believe what we did is we dropped footnotes in an appropriate place indicating that those are disputed issues among debtors and certain carriers. So from our perspective I don't believe it would be appropriate to try to shoehorn that into the chart that was just intended to

contain objective information with regards to the policy.

MR. SCHIAVONI: But, Your Honor, it's my understanding and it's like I -- it's like I'm reading as fast as I can, but it's my understanding that a change was made to the plan or maybe it was the disclosure statement, in connection with Zurich and others that modified the description of the SIRs and then sort of adopted the -- that there are, in fact, SIRs.

So if that's the case, and, again, we can try to look at it overnight and deal with Mr. Linder tomorrow about it, but they should be described and if just to, quote, dispute whether other things are SIRs or deductibles. It seems like if you're going to present, you know, occurrence limits, you might as well, it's like it's totally misleading not to present the retain limits and the deductibles. It -- it -- it gives a completely misleading presentation of the chart.

MR. LINDER: I would note, Your Honor, that my colleague, Adrian Azer, who is with Hanes and Boone, BSA's insurance coverage counsel is available to address this issue as well to the extent --

MR. AZER: Your Honor, may I be heard briefly on this?

THE COURT: Mr. Azer?

MR. AZER: Going to Mr. Schiavoni's point, we and

the FCR and the coalition did negotiate language with Zurich and certain insurers on this issue. I don't think there was any concession as to the existence of the SIR. Again, going to Mr. Schiavoni's point and Your Honor's comment, to the extent, Mr. Schiavoni you would like to talk about it we are certainly happy to go off line and address that language and address any comments you have to the schedule and try to work through it and come to some resolution that's acceptable.

But, yeah, I'm not sure the language we negotiated with Zurich made that concession.

Ms. Quinn -- I don't know if Ms. Quinn has any further addition on that.

THE COURT: Okay. Well, Mr. Schiavoni, I'll let you talk to Mr. Azer about this. I want to make sure you have a chance to look at the language and look at the chart, which I'm looking at, and let's see if that can be worked out.

MR. SCHIAVONI: Terrific.

THE COURT: If not, I'll address it tomorrow.

MR. SCHIAVONI: Great.

MR. LINDER: Now I think we're done, Your Honor.

THE COURT: Okay. So tomorrow we may have some cats and dogs disclosure statement, but I also have confidence that you all are going to resolve all of this overnight, and then what else?

MR. LINDER: I Believe the last remaining category is -- is the solicitation procedures order, Your Honor.

THE COURT: Okay. So that, the solicitation procedures order, and the plain English, which might be included in that, the plain English charter -- chartering organization issues we've talked through?

MR. LINDER: Correct, Your Honor.

THE COURT: Okay. Okay.

MR. STANG: Your Honor?

THE COURT: Mr. Stang?

MR. STANG: The TCC, on its own behalf, and the FCR and the coalition jointly have filed proposed letters. I am extremely sensitive to editing someone's letter because I don't want them to edit mine, but there is one statement in the FCR coalition letter that I think is really inaccurate.

And I don't know if you want to -- it's literally one sentence. And if you wanted to do that now, we could, or if that's part of the solicitation, tomorrow.

THE COURT: Have you all discussed it? Have you discussed it with them?

MR. STANG: We -- we -- I have not, Your Honor.

THE COURT: Then I'd like you to discuss it with them first.

MR. STANG: Okay.

THE COURT: Okay. I'm just making a list.

So the proposed letters, the plain English, chartering organizations, the solicitation procedures, meaning disclosure statement. That should be it. Okay.

MR. ABBOTT: Your Honor, Derek Abbott, as long as we're talking about tomorrow, Ms. Johnson had asked us to remind all of the parties that the Zoom information that they used for today's hearing is what they should use for tomorrow.

We understood the Court had reserved noon on in the afternoon, but there might be some greater specificity that the Court could share with us at this point.

THE COURT: Yeah. I've got a morning evidentiary hearing so we're going to start at 1:30.

And I think I will be on time. If I find out that I am going to be significantly late, I will let you know, but I think that should do it from what counsel in the matter is telling me and my own guestimation.

MR. ABBOTT: Very well. Thank you, Your Honor. Much appreciated.

THE COURT: So you'll have some additional time, not to come up with more issues but to resolve the issues we have on the table that are remaining. No more new issues.

MR. RYAN: Your Honor, the only -- the only thing I would say is some of us are going to have to leave relatively mid-afternoon to late afternoon to catch flights

for the mediation in New York.

THE COURT: Okay. Shoot. Okay. Let's -- let's say 12:30, instead of 1:30. That gives us an additional hour, but I'm hoping that should be enough.

MR. RYAN: Thank you.

THE COURT: Because I certainly want people to get on their planes.

MR. SCHIAVONI: I was holding out hope that Your Honor was going to say get a good night's sleep and stuff.

THE COURT: No. I don't get one, you don't get one. Okay.

MR. SCHIAVONI: That was an attempt at humor, Your Honor. I'm sorry.

THE COURT: It's been what?

MR. SCHIAVONI: It was an attempt at humor. I --

THE COURT: I'm smiling.

Okay. Okay, counsel. Well, thank you. That concludes tonight.

I will see you tomorrow at 12:30.

(Proceedings concluded at 7:08 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling September 29, 2021

William J. Garling, CET**D-543

Certified Court Transcriptionist

For Reliable