

**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

Hearing Date: May 19, 2021 at 10:00 a.m. (ET)

Objection Deadline: May 12, 2021 at 4:00 p.m. (ET)

**CENTURY'S SUBMISSION OF PROPOSED ORDER IN FURTHER SUPPORT OF ITS
MOTION TO AMEND THE COURT'S ORDER (I) APPROVING PROCEDURES FOR
(A) INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF
RETAINED PROFESSIONALS AND (B) EXPENSE REIMBURSEMENT FOR
OFFICIAL COMMITTEE MEMBERS AND (II) GRANTING RELATED
RELIEF [DKT. NO. 341]**

Century attaches as Exhibit A hereto a proposed order amending the Compensation Procedures Order [D.I. 341] in the form proposed by the Debtors to Century to resolve the instant motion and as Exhibit B hereto the email from Debtors' counsel conveying its agreement that the relief sought by this motion should be granted. The proposed order would amend the Compensation Procedures Order to change the quarterly hold back to an end of case hold back.

After initially reaching agreement with Century, the Debtors backtracked and agreed to the demands of the Pachulski firm that it be granted special treatment, apparently without telling them that it had already reach agreement with Century on a form of proposed order. The fact that the Debtors so quickly acquiesced to pressure illustrates why it is so vital that an end of case hold back be put in place now.

There is no reason to carve the Pachulski firm out of an end of case hold back order. The Pachulski firm is billing attorney time in 2021 at between \$625 and \$1195 in this case, with only

a single attorney billing below \$700/hour in January 2021.¹ This same firm has capped its attorneys' rates at between \$650 and \$700 per hour in at least five other sex abuse bankruptcies.² One of these cases, *Buffalo Diocese*, was filed on February 28, 2020, after the petition date here.³

The five cases in which the Pachulski firm has voluntarily capped its fees, are all mass tort bankruptcies driven by sex abuse claims with the only difference being that they involve churches.⁴ Like these churches, BSA is a non-profit entity, and the creditors' committees' work involved issues of restricted assets. Both church cases and this case involve a central charitable institution and a large number of affiliated non-debtor entities: here, the Local Councils, and in the church cases, local parishes. While the number of proofs of claim filed is higher in BSA than in any individual church case, many of the issues presented are the same. And church cases may be more complex, due to the overlay of First Amendment Establishment Clause issues.

¹ Dkt. No. 2433.

² See *Ex Parte* Application of the Official Committee of Unsecured Creditors to Retain and Employ Pachulski Stang Ziehl & Jones LLP as Counsel, *In re: The Diocese of Buffalo*, No. 20-10322 ¶ 9 (Bankr. W.D.N.Y. Apr. 6, 2020) [Dkt. No. 195]; Application of the Official Committee of Unsecured Creditors to Retain and Employ Pachulski Stang Ziehl & Jones LLP as Counsel, *In re: The Diocese of Rochester*, No. 19-20905 ¶ 9 (Bankr. W.D.N.Y. Oct. 18, 2019) [Dkt. No. 102]; Application of the Official Committee of Unsecured Creditors for Entry of an Order, Pursuant to 11 U.S.C. §§ 327 and 1103, and Fed. R. Bankr. P. 2014, Authorizing and Approving the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors, *In re: Roman Catholic Church of the Archdiocese of Santa Fe*, No. 18-13027 ¶ 7 (Bankr. D.N.M. Dec. 26, 2018) [Dkt. No. 54]; Application of the Official Committee of Unsecured Creditors for Entry of an Order, Pursuant to 11 U.S.C. §§ 327 and 1103, and Fed. R. Bankr. P. 2014, Authorizing and Approving the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel, *In re: Roman Catholic Bishop of Great Falls, Montana*, No. 17-60271 ¶ 5 (Bankr. D. Mont. May 5, 2017) [Dkt. No. 94]; Application for Authority to Employ Pachulski Stang Ziehl & Jones LLP as Counsel for the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to February 20, 2014, *In re: The Roman Catholic Bishop of Stockton*, No. 14-20371 ¶ 13 (Bankr. E.D. Cal. Mar. 21, 2014) [Dkt. No. 189].

³ See *Ex Parte* Application of the Official Committee of Unsecured Creditors to Retain and Employ Pachulski Stang Ziehl & Jones LLP as Counsel, *In re: The Diocese of Buffalo*, No. 20-10322 (Bankr. W.D.N.Y. Apr. 6, 2020) [Dkt. No. 195].

⁴ See *supra* note 2.

Looking to just one of the TCC's professionals in a single month: Mr. Stang's December 2020 fee application reflects 96.9 hours of work, billed to the BSA estate at \$1195/hour, for a total of \$115,795.50.⁵ Had Mr. Stang billed at his Buffalo Diocese rates in this case, billing only \$700/hour, the total for December 2020 would have been \$67,830, a difference of \$47,965 and a nearly 40 percent reduction in Mr. Stang's fees for the month. The difference in fees is not offset by Pachulski's agreement to "contribute" 10% of its fees toward claimant compensation at the end of the case.⁶

No explanation is offered for why the BSA estate should be charged rates that are significantly higher than the rates the Pachulski firm seeks under similar circumstances in other mass tort sexual abuse bankruptcies. Particularly, at this point in the case, the TCC's lead counsel should be in line with what that firm elects to charge the estates of Dioceses throughout the country for similar work. The Pachulski firm has already sought allowance of over \$7.5 million in fees (less 10% that it will contribute back to the estate).

In determining whether compensation is "reasonable" under 11 U.S.C. 330(a), the Court must analyze the rates charged for services rendered. The Court will be in a better position to address at the end of the case whether the Pachulski firm should charge the BSA estate a higher rate than it does for comparable work in similar case. The proposal put forth by Debtors in their response (Dkt. No. 4094) proposes to treat the Pachulski firm differently from other professionals with regard to the holdback while proposing no meaningful reforms to address the billing rate and number of professionals billing the estate. Nor is there cause to require the 20%

⁵ Dkt. No. 2285-2.

⁶ Dkt. No. 292 ¶ 9.

holdback of the Pachulski firm to be placed into a separate escrow account. The professionals should all share an interest in the efficient and successful outcome of the case.

WHEREFORE, for the reasons set forth herein, Century respectfully requests that the Court grant the relief requested herein and enter the Proposed Order attached hereto as Exhibit A amending the Compensation Order.

Dated: May 16, 2021

Respectfully Submitted,

By: /s/ Stamatios Stamoulis
Stamatios Stamoulis (#4606)
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Third Floor
Wilmington, Delaware 19801
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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*

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,¹

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

Ref. D.I. 341, 3161

**ORDER AMENDING THE ORDER (I) APPROVING
PROCEDURES FOR (A) INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF RETAINED PROFESSIONALS
AND (B) EXPENSE REIMBURSEMENT FOR OFFICIAL COMMITTEE
MEMBERS AND (II) GRANTING RELATED RELIEF**

Upon the motion [D.I. 3161] (the “**Motion**”) of Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America, for entry of an order amending the *Order (I) Approving Procedures for (A) Interim Compensation and Reimbursement of Expenses of Retained Professionals and (B) Expense Reimbursement for Official Committee Members and (II) Granting Related Relief* [D.I. 341] (the “**Compensation Procedures Order**”);² and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Boy Scouts of America (6300); and Delaware BSA, LLC (4311). The Debtors’ mailing address is 1325 W. Walnut Hill Ln., Irving, TX 75038.

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Compensation Procedures Order.

been provided, and it appearing that no other or further notice need be provided; and the Professionals' having conferred and consented to the relief requested in the Motion as modified by this Order; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEARBY ORDERED THAT

1. The Motion is **GRANTED** as set forth herein.
2. The last sentence of paragraph 2(f) of the Compensation Procedures Order (“Upon allowance by the Court of an Interim Fee Application, the Debtors shall be authorized to promptly pay such Professional all requested fees (including the 20% holdback) and expenses not previously paid”) is hereby deleted in its entirety and replaced with the following new sentence: “Upon allowance by the Court of a Final Fee Application, the Debtors shall be authorized to promptly pay such Professional all requested fees (including the 20% holdback) and expenses not previously paid.”
3. For the avoidance of doubt, subject to entry of an order of the Court granting a Final Fee Application, the Professionals shall be permitted to retain the 20% holdbacks paid under orders of the Court entered prior to the date of this Order.
4. Any Interim Fee Applications that are pending before the Court as of the date of this Order are hereby deemed withdrawn.

5. Any obligation of the Professionals (including, but not limited to, under paragraphs 2(e) and (f) of the Compensation Procedures Order) to file Interim Fee Applications are hereby suspended pending further order of the Court.

6. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Order.

EXHIBIT B

Stamatios Stamoulis

From: Schiavoni, Tancred <tschiavoni@omm.com>
Sent: Sunday, May 16, 2021 8:47 PM
To: Stamatios Stamoulis
Subject: FW: BSA - Proposed Order Amending Interim Compensation Procedures
Attachments: BSA - Proposed Order Amending ICP Order (002).DOCX

From: Shamah, Daniel S. <dshamah@omm.com>
Sent: Wednesday, May 12, 2021 10:59 AM
To: Linder, Matthew <mlinder@whitecase.com>; Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Lauria (Boelter), Jessica <jessica.lauria@whitecase.com>; Andolina, Michael <mandolina@whitecase.com>; Warner, Blair <blair.warner@whitecase.com>; Martin, Ernest <Ernest.Martin@haynesboone.com>; Azer, Adrian <Adrian.Azer@haynesboone.com>; Kirschenbaum, Andrew <akirschenbaum@omm.com>
Subject: RE: BSA - Proposed Order Amending Interim Compensation Procedures

Matt – please see attached for our markup of the revised order. Please let us know if you have any questions.

Daniel

From: Linder, Matthew <mlinder@whitecase.com>
Sent: Tuesday, May 11, 2021 8:09 PM
To: Shamah, Daniel S. <dshamah@omm.com>; Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Lauria (Boelter), Jessica <jessica.lauria@whitecase.com>; Andolina, Michael <mandolina@whitecase.com>; Warner, Blair <blair.warner@whitecase.com>; Martin, Ernest <Ernest.Martin@haynesboone.com>; Azer, Adrian <Adrian.Azer@haynesboone.com>
Subject: RE: BSA - Proposed Order Amending Interim Compensation Procedures

[EXTERNAL MESSAGE]

Daniel,

Thanks for the call and for extending our response deadline to Friday while we work to resolve this. If you could confirm the extension by reply email please. Also, attached is the order referenced below. Let us know your thoughts.

Matthew E. Linder | Counsel
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White & Case LLP | 111 South Wacker Drive, Suite 5100 | Chicago, IL 60606-4302

From: Linder, Matthew
Sent: Tuesday, May 11, 2021 4:50 PM
To: 'Schiavoni, Tancred' <tschiavoni@omm.com>
Cc: Lauria (Boelter), Jessica <jessica.lauria@whitecase.com>; Andolina, Michael <mandolina@whitecase.com>; Warner, Blair <blair.warner@whitecase.com>; 'Martin, Ernest' <Ernest.Martin@haynesboone.com>; 'Azer, Adrian' <Adrian.Azer@haynesboone.com>
Subject: RE: BSA - Proposed Order Amending Interim Compensation Procedures

Tanc,

Following up on my note, the Debtors would appreciate an extension of the response deadline to Friday, May 14. We would like to avoid the expense of responding and resolve the motion consensually. Please confirm this is acceptable.

Matt

Matthew E. Linder | Counsel
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From: Linder, Matthew
Sent: Tuesday, May 11, 2021 3:21 PM
To: Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Lauria (Boelter), Jessica <jessica.lauria@whitecase.com>; Andolina, Michael <mandolina@whitecase.com>; Warner, Blair <blair.warner@whitecase.com>; Martin, Ernest <Ernest.Martin@haynesboone.com>; 'Azer, Adrian' <Adrian.Azer@haynesboone.com>
Subject: BSA - Proposed Order Amending Interim Compensation Procedures

Tanc,

We have reviewed your motion to amend the interim compensation procedures order. Although we disagree with many of the assertions in your motion, the Debtors are prepared to consent to the relief on the terms set forth in the attached revised version of the order. Our revised draft of the order makes several necessary changes, including suspending the requirement that professionals submit quarterly fee applications to the Court, which would serve no purpose (and needlessly expend further estate resources) in light of the relief being granted. We circulated this order yesterday to all of the estate professionals (Debtors, TCC, UCC and FCR) and have not heard any feedback.

Please let us know if you have comments. We would like to submit the order under certification of counsel.

Matt

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