IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re Boy Scouts of America and Delaware BSA, LLC, Debtors.	Civil Action No. 20-cv-00774 (RGA)
Century Indemnity Company, Appellant, v. Boy Scouts of America, Appellee, Delaware BSA, LLC Appellee.	On appeal from the U.S. Bankruptcy Court for the District of Delaware Bankruptcy Case No. 20-10343 (LSS) Bankruptcy BAP No. 20-13

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Dated: August 26, 2020
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CORPORATE DISCLOSURE STATEMENT

The Boy Scouts of America is a non-profit corporation founded in 1910 and chartered by an act of Congress on June 15, 1916. The Boy Scouts of America has no parent corporation and has issued no stock. No publicly-held corporation holds any interest in the Boy Scouts of America. Delaware BSA, LLC is a wholly-owned subsidiary of the Boy Scouts of America. Delaware BSA, LLC has issued no stock, and no publicly-held corporation holds any interest in Delaware BSA, LLC.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT 2
JURISDICTIONAL STATEMENT 1
STATEMENT OF THE ISSUE.....2
STANDARD OF REVIEW 2
STATEMENT OF THE CASE.....2
I. The Bankruptcy Filing and Bar Date Motion. 2
II. The Bar Date Hearing And Bar Date Order.....10
III. Proceedings Following The Bar Date Order.....13
IV. Century's Appeal.....14
SUMMARY OF ARGUMENT 15
ARGUMENT 19
I. Century Lacks Standing to Appeal the Bar Date Order.....19
II. The Relief Century Seeks is Legally Foreclosed. 21
A. The Bankruptcy Court Correctly Gave Proofs of Claim the Effect Conferred By Law. 21
B. The Bankruptcy Court Correctly Determined that the Abuse Claim Form Is Sufficient to Establish a *Prima Facie* Claim. 24
III. Century's Concerns Can Be Resolved Through A Trust Process Common To Mass Tort Bankruptcy Proceedings. 28
CONCLUSION.....31

TABLE OF AUTHORITIES

Page(s)

Cases

In re A.H. Robins Co, Inc.,
862 F.2d 1092 (4th Cir. 1988) 26

In re Allegheny Int'l, Inc.,
954 F.2d 167 (3d Cir. 1992) 17, 21, 22, 24

In re Andrews,
394 B.R. 384 (Bankr. E.D. N.C. 2008).....26

Chemetron Corp. v. Jones,
72 F.3d 341 (3d Cir. 1995) 4

In re Combustion Eng'g, Inc.,
391 F.3d 190 (3d Cir. 2004), *as amended* (Feb. 23, 2005) 16, 19, 20

In re Dykes,
10 F.3d 184 (3d Cir. 1993) 19

In re Energy Future Holdings Corp.,
949 F.3d 806 (3d Cir. 2020) 2

In re Holm,
931 F.2d 620 (9th Cir. 1991) 17, 21, 22, 24

In re Lampe,
665 F.3d 506 (3d Cir. 2011) 17, 21, 26

In re Old HB, Inc.,
525 B.R. 218 (S.D.N.Y. 2015) 20

Travelers Ins. Co. v. H.K. Porter Co., Inc.,
45 F.3d 737 (3d Cir. 1995) 19

Statutes

11 U.S.C. § 101(5)(A).....3

11 U.S.C. § 502(a) .....*passim*

11 U.S.C. § 502(b)(9).....1

11 U.S.C. §§ 101–1532.....2

Bankruptcy Code Chapter 11.....*passim*

Other Authorities

Fed. R. Bankr. P. 3001(a) 3, 25

Fed. R. Bankr. P. 3001(c)(1).....26

Fed. R. Bankr. P. 3001(f).....3, 8, 17, 21, 24

Fed. R. Bankr. P. 3003(c)(2).....3, 4

Fed. R. Bankr. P. 3003(c)(3).....1, 3

Fed. R. Bankr. P. 8004(a)(2).....14

Local Rule 9006-1(c) 7

JURISDICTIONAL STATEMENT

This Court should not exercise jurisdiction over this interlocutory appeal. As set forth in the Motion of Boy Scouts of America and Delaware BSA, LLC to Dismiss Interlocutory Appeal (APP001–APP003,[1] Dkt. 4) and the Memorandum in Support of Motion of Boy Scouts of America and Delaware BSA, LLC to Dismiss Interlocutory Appeal (APP004–APP027, Dkt. 5) (together, the "Motion to Dismiss"), Century Indemnity Company ("Century") lacks appellate standing to challenge the bankruptcy court's Order, Pursuant to 11 U.S.C. § 502(b)(9), Bankruptcy Rules 2002 and 3003(c)(3), and Local Rules 2002-1(e), 3001-1, and 3003-1, (I) Establishing Deadlines for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, (III) Approving Procedures for Providing Notice of Bar Date and Other Important Information to Abuse Survivors, and (IV) Approving Confidentiality Procedures for Abuse Survivors (the "Bar Date Order"). APP588–APP605, Bankr. Dkt. 695. In addition, Century has no right of appeal because the Bar Date Order is interlocutory. *See* APP001–APP003, Dkt. 4. Century has not filed a motion for leave to appeal, and no "exceptional circumstances" exist which would justify the need for immediate review. *Id.*

[1] Citations formatted as "APP###" refer to the Appellant's Appendix filed concurrently with its Opening Brief. Dkt. 20.

STATEMENT OF THE ISSUE

Whether the bankruptcy court erred in declining Century's request that proofs of claim submitted in the BSA's bankruptcy case not be given the legal effect mandated by title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

STANDARD OF REVIEW

The bankruptcy court's ruling in the Bar Date Order, which addresses the legal effect of proofs of claim under the Bankruptcy Code and Bankruptcy Rules, presents a question of law and is reviewed *de novo*. *See In re Energy Future Holdings Corp.*, 949 F.3d 806, 815 n.2 (3d Cir. 2020) (appellate court reviews a bankruptcy court's legal conclusions de novo).

STATEMENT OF THE CASE

I. The Bankruptcy Filing and Bar Date Motion.

On February 18, 2020 (the "Petition Date"), the Boy Scouts of America (the "BSA") and Delaware BSA, LLC (together, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. *See* Case No. 20-10343 (LSS), Bankr. Dkt. 1. As of the Petition Date, the BSA had been named "in numerous lawsuits related to historical acts of sexual abuse in its programs." Bankr. Dkt. 4 at 3. The BSA had attempted to resolve sexual abuse claims outside of bankruptcy ("Abuse Claims"), but piecemeal tort litigation across the country

was financially unsustainable for the organization and risked "inconsistent judicial outcomes and inequitable treatment of victims." *Id.* at 5–6. The Debtors accordingly commenced the chapter 11 cases "to achieve dual objectives: (a) timely and equitably compensating victims of abuse in Scouting and (b) ensuring that the BSA emerges from bankruptcy with the ability to continue its vital charitable mission." *Id.* at 6–7.

By way of background, under the Bankruptcy Code, a "claim" is a "right to payment." 11 U.S.C. § 101(5)(A). A creditor with a claim against a Chapter 11 debtor that arose prior to the bankruptcy petition date must file a timely "proof of claim"—which is "a written statement setting forth a creditor's claim," Fed. R. Bankr. P. 3001(a)—in order to vote on the debtor's plan of reorganization and receive distribution under the plan on account of the claim. Fed. R. Bankr. P. 3003(c)(2). Pursuant to Bankruptcy Rule 3003(c)(3), the bankruptcy court must fix a time within which proofs of claim may be filed. Fed. R. Bankr. P. 3003(c)(3). This date, referred to as a "bar date," is the last date (subject to certain exceptions) that proofs of claim can be filed in the bankruptcy case, asserting liability against a debtor. If a creditor submits a proof of claim before the bar date that meets the requirements set forth in the proof of claim, the proof of claim constitutes "prima facie evidence of the validity and amount of the claim," Fed. R. Bankr. P. 3001(f), and the claim is "deemed allowed" unless a party in interest objects to the claim,

11 U.S.C. § 502(a). If a creditor fails to submit a proof of claim on or before the bar date, then the creditor may be prevented from voting on the plan of reorganization or obtaining payment under the plan. Fed. R. Bankr. P. 3003(c)(2) ("any creditor who fails to [file a timely proof of claim] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution"); *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995). The bar date is thus an important tool to help debtors establish the universe of creditors for voting on a plan and distribution pursuant to a plan of reorganization.

In traditional corporate debt restructuring cases, the debtor typically controls the claims process, including objecting to, resolving, and making distributions on account of claims, which often involve, among other things, vendor payables, isolated prepetition litigation, and employee disputes. But mass tort bankruptcies like this one, involving widespread personal injury claims, are different. Among other important features of a mass tort bankruptcy is the need to ascribe values to claims involving disparate injuries and to provide for recoveries for future as well as current claimants. In order to solve for the issues related to compensating personal injury claimants through a chapter 11 process, a mass tort debtor's plan of reorganization will often implement a post-confirmation trust to resolve and liquidate such claims and provide distributions. Instead of the reorganized debtor handling personal injury tort claims, one or more trustees are appointed to manage

the compensation trust with full control to administer, dispute, object to, compromise, and otherwise resolve tort claims pursuant to court-approved trust distribution procedures. *See e.g.*, *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) (Bankr. D. Del. Jan. 16, 2020) [Dkt. 1115-1] (Victims Restitution Trust Claims Administrator granted complete authority to "administer, dispute, object to, compromise, or otherwise resolve Personal Injury Claims subject to the terms of" the debtors' chapter 11 plan); *In re PG&E Corp.*, Case No. 19-30088 (DM) (Bankr. N.D. Cal. June 20, 2020) [Dkt. 8053-1] (Fire Victim Trustee granted authority and power to "administer, object to or settle Fire Victim Claims" subject to the Fire Victim Trust Agreement and debtors' chapter 11 plan).

The BSA intends to implement such a process here. On the Petition Date, the BSA filed a plan of reorganization that contemplates a trust similar to those approved in other mass tort cases. This plan is intended to provide the framework for the negotiation of a global resolution of Abuse Claims asserted against the BSA and other entities that provide Scouting programming. Under the BSA's proposed plan, after confirmation, the trustee would administer, process, settle, resolve, liquidate, satisfy, and make trust distributions on account of Abuse Claims, subject to the BSA's plan of reorganization and trust procedures. *Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* ("BSA Plan"),

SAPP010—SAPP011, SAPP031—SAPP032, SAPP032—SAPP033[2], Bankr. Dkt. 20 at Art. I.24, Art. III.B.8, Art. IV.A; *compare* SAPP031—SAPP032, BSA Plan Art. III.B.8 *with In re Imerys Talc Am., Inc.*, Case No. 2086 (LSS) (Bankr. D. Del. Aug. 12, 2020) [Dkt. 2083] (debtors' amended plan provides that all Talc Personal Injury Claims that were filed in the Chapter 11 Cases shall be expunged from the Claims Register and will be channeled to and assumed by the Talc Personal Injury Trust).

But before Abuse Claims can be channeled to a trust in accordance with a confirmed plan of reorganization, the BSA and other parties in interest must know what Abuse Claims against the BSA exist. To that end, on the Petition Date, the BSA filed a motion requesting that the bankruptcy court (a) set a deadline for the filing of claims against the BSA (the "Bar Date"), (b) establish the form and manner of notice to be given to potential claimants, and (c) approve procedures for providing notice to sexual abuse survivors. APP155–APP184, Bankr. Dkt. 18 (the "Bar Date Motion"). The BSA emphasized the "critical importance" of receiving and analyzing Abuse Claims promptly so that the claims could be handled in an efficient and equitable manner. APP161, Bankr. Dkt. 18 at ¶¶ 10–11. Sexual abuse survivors shared this goal: the Tort Claimants' Committee and the BSA

[2] Citations formatted as "SAPP###" refer to the Appellees' Supplemental Appendix to Appellees' Answering Brief.

agreed that the Bar Date was necessary to allow the parties "to understand the body of claims that are out there" in order to "proceed with respect to the mediation" and ultimate resolution of claims and distributions to claimants under a confirmed plan of reorganization. APP485, Bankr. Dkt. 675 at 64:13–24.

The BSA thus requested that the Bar Date be set, and proposed procedures for confidential submission of Abuse Claims. APP163, Bankr. Dkt. 18 at ¶ 17, Exs. A, B-1, C-1, D. It held off, however, on submitting a proposed notice plan or a proposed proof of claim form for Abuse Claims so that it could consult with stakeholders and experts as to what the notice and claim form should encompass. APP164, Bankr. Dkt. 18 at ¶ 19. After months of extensive negotiations and consultation with experts, the BSA supplemented the Bar Date Motion with a proposed notice plan and claim form on May 4, 2020. APP735–APP737, Bankr. Dkt. 557. Consistent with Bankruptcy Local Rule 9006-1(c), the supplemental filing was submitted 14 days prior to the May 18 hearing on the Bar Date Motion. In addition, the BSA had circulated its draft sexual abuse claim form to the insurers, including Century, even earlier—on April 19. APP484, Bankr. Dkt. 675 at 63:22–24.

On May 11, the Tort Claimants' Committee filed an objection to the BSA's Bar Date Motion. APP222–APP232, Bankr. Dkt. 601. Among other things, the Tort Claimants' Committee challenged various aspects of the BSA's proposed

Abuse Survivor Proof of Claim Form, and submitted an alternate proposed form. APP227–APP229, Bankr. Dkt. 601 at 6–8 & Ex. A. Three days later, after discussions with the Tort Claimants' Committee and other constituencies, the BSA filed a revised Sexual Abuse Survivor Proof of Claim Form (the "Claim Form"). Bankr. Dkt. 630-1 at ¶ 11 (noting that the BSA had "substantially revised the Sexual Abuse Survivor Proof of Claim Form in an effort to resolve many of the Tort Claimants' Committee's objections, while also taking into account the informal comments of certain other constituencies, including the Debtors' insurers and the Local Council Committee"); *see also* Bankr. Dkt. 632-2 Ex. 7 (revised form). The next day, on May 15, 2020, three of the BSA's insurers—including Century, the appellant here—filed objections to the Claim Form. APP319–APP340, Bankr. Dkt. 651-1 (Hartford); APP341–APP350, Bankr. Dkt. 656 (Century); APP351–353, Bankr. Dkt. 659 (Allianz).

As is relevant here, Century argued that any Bar Date Order entered by the bankruptcy court should provide, in words or substance, that:

> *The proof of claim may be used to preserve the filer's claim, voting, and for purposes of mediation but does not constitute prima facie evidence of the validity and amount of the claim under Rule 3001(f) or otherwise.*

APP344, Bankr. Dkt. 656 at 4. No other insurer joined Century's request that this language—providing that a proof of claim "does not constitute prima facie evidence of the validity and amount of the claim under Rule 3001(f)"—be included

in the Bar Date Order.[3] Nor, contrary to Century's suggestion, Appellant's Opening Br. ("Br.") at 14–15, did the BSA propose language purporting to modify the legal effect of the filing of a proof of claim. Instead, the BSA had proposed language indicating that the allowance of claims would be "subject in all respects to the terms of any confirmed plan of reorganization for the Debtors and any trust distribution procedures that may be approved in connection therewith." APP370, Bankr. Dkt. 667-1 at ¶ 11. Only Century asked to be relieved of the effect of the Bankruptcy Code and the Bankruptcy Rules.

In the alternative, Century challenged the content of the Claim Form, arguing that if the Claim Form were to be used as proof of a sexual abuse survivor's claim against the BSA, then the form would need "[f]ar more detailed questions and documentary support." APP346, Bankr. Dkt. 656 at 6. In particular, Century joined the other insurers in arguing that the Claim Form should include a dozen additional questions demanding details as to claimants' full educational and employment histories. APP347, Bankr. Dkt. 656 at 7 (adopting Bankr. Dkt. 651-1 App. A). Further, Century argued—without joinder by any other insurer—that the Claim Form should include some 28 questions and sub-questions relating to which

[3] Compare APP322, Bankr. Dkt. 651-1 (Hartford Objection) at ¶ 4 (requesting that the Bar Date Order provide "*The proof of claim form does not replace the claims process that the Trust or the tort system will impose.*").

individuals at which entities were made aware of the abuse, as well as how and when they were told. APP349–APP350, Bankr. Dkt. 656 App. A.

II. The Bar Date Hearing And Bar Date Order.

The parties continued to negotiate at length the Bar Date Order and the Claim Form throughout the days leading up to the Bar Date Hearing on May 18, 2020. *See* APP452–APP453, Bankr. Dkt. 675 at 31:12–32:1. The BSA submitted a revised version of the Claim Form, which resolved most of the objections, early on the morning of the Bar Date hearing. APP354–APP356, Bankr. Dkt. 667. In its May 14 and 18 proposed orders, the BSA also proposed the language described above, stating that the allowance, and the process for allowance, of Abuse Claims would be subject to the terms of the Debtors' confirmed plan of reorganization and trust distribution procedures approved in connection with the confirmed plan. APP370, Bank. Dkt. 667-1 at ¶ 11. As evidenced by the proposed plan of reorganization it filed on the Petition Date, the BSA always has contemplated that Abuse Claims will be reviewed, processed, and ultimately liquidated by a trustee in accordance with trust distribution procedures and the BSA's plan of reorganization. *See* SAPP032—SAPP040, BSA Plan, Bankr. Dkt. 20 at Art. IV.

At the hearing, Century reiterated its argument that the Claim Form should not be used as a proof of claim within the meaning of 11 U.S.C. § 502(a). Instead of constituting a *prima facie* proof of a claim as section 502(a) provides, Century

argued that submitted Claim Forms should be used solely "to preserve claims for voting purposes and to collect information for mediation." APP479, Bankr. Dkt. 675 at 58:12–16. The Court rejected this position as contrary to the terms of section 502(a): "[T]he return of that proof of claim form has the effect that the [bankruptcy] code gives it. I am not going to alter the effects that the code gives it. . . . I don't think we have to say anything about what the effect of a proof of claim, filing a proof of claim is in a proof of claim order because it is what it is under the code." APP491, Bankr. Dkt. 675 at 70:2–6, 70:22–25. The Court explained the basis for its ruling:

> [I]f I can look at [a proof of claim form] and understand what it is that the claimant has alleged, for example, breach of contract, breach of my employment agreement, services performed, and if its [sic] signed under oath and, otherwise, meets the requirements I think it's a valid proof of claim.

APP491, Bankr. Dkt. 675 at 70:9–14.

The bankruptcy court also declined to include the BSA's proposed language regarding the allowance of claims in the Bar Date Order, finding it "extraneous." The court concluded this language would not be "very informative to these claimants nor do I think they have a clue what it means when we talk about the difference between allowance, a treatment, et cetera," so this language "doesn't need to be in the order." APP492, Bankr. Dkt. 675 at 71:1–9. And the court

reiterated its commitment that "[t]here should be nothing in this order which deviates from the code." APP492, Bankr. Dkt. 675 at 71:10–11.

Century and the other insurers argued in the alternative that more questions should be included in the Claim Form. The insurers jointly asked that claimants be required to "identify by name and address, all the schools they attended to the best of their recollection, beginning with elementary school and continuing to secondary school and post-secondary schools," APP528, Bankr. Dkt. 675 at 107:19–22; "all of their employment history dates … for each job and location," APP529, Bankr. Dkt. 675 at 108:16–18; and "if they suffered other unrelated forms of abuse, unrelated to Boy Scouts." APP530, Bankr. Dkt. 675 at 109:14–17. Century argued separately in support of the series of further questions that it wanted to add, including whether the claimant "ever contact[ed] the Boy Scouts about abuse," and if so, which individual was contacted on what date; and whether the BSA otherwise knew about the abuser, "who was it at the Boy Scouts who knew about this abuser," and "how did that person learn of that information." APP532, Bankr. Dkt. 675 at 111:2–15. The bankruptcy court declined to order the additional questions sought by Century and the other insurers. APP542–APP543, Bankr. Dkt. 675 at 121:12–122:9. The court explained, "I don't know that more information is better and I do have a concern that the more intrusive the information is . . . it will discourage parties, abuse victims, from coming forward

and we don't want to do that. So, I'm not going to require that additional information." APP543, Bankr. Dkt. 675 at 122:3–9. In addition, demonstrating its full awareness that the BSA intended for claims to be resolved through a compensation trust, the bankruptcy court explained that the form without the additional questions was "more than sufficient to provide the debtors with information in which to be able to use it to, for what I thought was the purpose, which is to try to come to a consensual resolution." APP542–APP543, Bankr. Dkt. 675 at 121:25–122:3.

The bankruptcy court issued the Bar Date Order on May 26, 2020, which approved the proposed Claim Form and the related noticing procedures. APP588–APP605, Bankr. Dkt. 695. The Bar Date Order did not include Century's proposed additional language limiting the potential *prima facie* effect of a filed proof of claim, or Century's proposed additional questions. *Id.*

III. Proceedings Following The Bar Date Order.

Since the Bar Date Order was entered, the BSA has engaged in an extensive notification process as required by the court, expending approximately $6.8 million to notify potential sexual abuse claimants of the upcoming Bar Date. APP185–APP218, APP588–APP605, Bankr. Dkts. 556, 695. As required by the Bar Date Order, the BSA sent the court-approved notice and Claim Form to thousands of potential known sexual abuse claimants by first class mail. Declaration of Katie

Nownes (Dkt. 6) at ¶ 3 ("Nownes Decl."). As further required by the Bar Date Order, the BSA emailed the court-approved notice and Claim Form to another six million parties, including current and former Scouts, volunteers, and parents, and email notices to an additional three million parties. *Id.*

Beyond these direct notices, the Bar Date Order also requires publication notice to potential sexual abuse claimants. APP603, Bankr. Dkt. 695 at ¶ 17. Pursuant to the order, the BSA has retained a media vendor to produce print, television, and radio advertisements, all of which are well underway. Nownes Decl. at ¶ 4. Consistent with the Bar Date Order, the ads will run from August 31 through mid-October. *Id*.

IV. Century's Appeal.

On June 8, 2020, Century filed a notice of appeal from the bankruptcy court's Bar Date Order. Bankr. Dkt. 803. No other insurer joined Century's appeal. Although it appealed an interlocutory order, Century failed to file a motion for leave to appeal as required by Bankruptcy Rule 8004(a)(2). The BSA has moved to dismiss the appeal, both because Century lacks standing and because an interlocutory appeal is not justified. *See* APP001–APP027, Dkts. 4, 5.

Century's opening brief on appeal clarifies the relief it seeks here. Perhaps recognizing that the very expensive notification process is already well underway, Century does not seek to have the Claim Form revised to include the additional

questions it proposed. *See* Br. at 2. Instead, Century seeks to have the Bar Date Order modified to provide that "a Proof of Claim does not establish a presumptively valid claim, but instead operates only to preserve claims and provide information about potential claims." *Id.*

SUMMARY OF ARGUMENT

The BSA, on the day it filed its bankruptcy petition, filed a plan of reorganization that proposes to channel all Abuse Claims to a compensation trust, where they will be reviewed, objections resolved, allowed or disallowed, and ultimately liquidated by a trustee in accordance with trust distribution procedures and the BSA's plan of reorganization. SAPP010—SAPP011, SAPP031—SAPP032, BSA Plan, Bankr. Dkt. 20 at Art. I.24, Art. III.B.8. Century agrees that this "proposed approach—*viz.*, claims would be collected for mediation purposes but not liquidated until a later screening process occurred—is only logical in a case of this magnitude." Br. at 25. The bankruptcy court recognizes this goal and determined that, by setting a Bar Date and approving a Claim Form that would obtain sufficient information to support mediation and resolution of Abuse Claims by a post-confirmation trust, the Bar Date Order would move the parties toward that goal.

But Century wants more. Unsatisfied with the protections provided for in the Bankruptcy Rules and in a plan of reorganization to be confirmed by the

bankruptcy court, Century demands absolute assurance that no Abuse Claim will be allowed based on submission of a proof of claim. It thus asks this Court to amend the bankruptcy court's Bar Date Order "to provide that submission of a Proof of Claim does not establish a presumptively valid claim, but instead operates only to preserve claims and provide information about potential claims." Br. at 2. What Century seeks is expressly foreclosed by the Bankruptcy Code, the Bankruptcy Rules, and binding case law—and unnecessary to boot. Its appeal should be rejected.

Initially, the appeal should be rejected because Century lacks standing to pursue it. As detailed in the BSA's Motion to Dismiss (APP004–APP027, Dkt. 5), a party has standing to appeal a bankruptcy court order only if the would-be appellant is "directly and adversely affected pecuniarily" by the bankruptcy court order. *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 214 (3d Cir. 2004), *as amended* (Feb. 23, 2005). Courts including the Third Circuit have held that no standing exists to appeal a procedural order like the Bar Date Order, which sets forth a process for adjudicating claims but does not actually impose any obligations on Century. For this reason alone, the appeal should be rejected.

The appeal equally fails on the merits. First, the Bankruptcy Code is explicit that—directly contrary to Century's requested relief—a filed proof of claim establishes a presumptively valid claim: "A claim or interest, proof of which is

filed under section 501 of this title, is deemed allowed, unless a party in interest … objects." 11 U.S.C. § 502(a). The Bankruptcy Rules are equally clear: "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). And case law, unsurprisingly, says the same: A bankruptcy court errs if it holds that a "proof of claim [is] not entitled to prima facie validity." *In re Lampe*, 665 F.3d 506, 514 (3d Cir. 2011); *see also In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) ("[T]he allegations of the proof of claim are taken as true [and] [i]f those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim."). The bankruptcy court here followed these binding authorities when it reasoned that a proof of claim in this case, like every other bankruptcy proceeding, will have "the effect that the code gives it." APP491, Bankr. Dkt. 675 at 70:3–5.

Century cannot identify any case in which any court has ever held that a proof of claim should not be given the legal effect mandated by the code and the rules. To the contrary, no authority supports departing from those authorities. Because the law expressly forecloses the only relief Century seeks, its appeal fails.

In any event, the concerns that apparently motivated Century's appeal are misplaced. Century asserts that the Bar Date Order "allow[s] tort claimants to state

a presumptively valid claim without alleging facts necessary to state such a claim using a form that was not designed for this purpose." Br. at 11. Not so. The Claim Form asks more than 25 questions going to the elements of potential claims, and—contrary to Century's contention—the Claim Form *does* provide for claimants to submit evidence "that BSA knew about the abuser," Br. at 16, including evidence that the claimant reported the abuse to the BSA and/or law enforcement and that the BSA was aware of the abuse. APP615, Bankr. Dkt. 695-7, Claim Form Questions N, O, P, R.

To be sure, claimants using the Claim Form may submit insufficient information to support a claim. But that is no basis for entering an order that disregards the requirements of the Bankruptcy Code as Century requests. Ultimately, all claims will be reviewed, processed, and allowed or disallowed and paid in accordance with a confirmed plan of reorganization. The BSA anticipates that a trust will be set up through that plan, and the trustee will be entitled to request more information in connection with processing the claims.

In short, Century's dissatisfaction with the Claim Form cannot support rewriting the Bar Date Order to incorporate a term that flies in the face of the statute, the rules, and binding precedent. Instead, Century's concerns can be addressed through standard bankruptcy processes. The Bar Date Order should be affirmed.

ARGUMENT

I. Century Lacks Standing to Appeal the Bar Date Order.

As set forth in the Motion to Dismiss, Century lacks standing to appeal the Bar Date Order.[4] The requirement for standing to appeal a bankruptcy court order is "more stringent" than appellate standing in other contexts due to "the 'particularly acute' need to limit appeals in bankruptcy proceedings, which often involve a 'myriad of parties . . . indirectly affected by every bankruptcy court order[.]'" *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 215 (3d Cir. 2004), *as amended* (Feb. 23, 2005) (quoting *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 642 (2d Cir. 1988)). The would-be appellant must demonstrate that it is a "person aggrieved." Specifically, the appellant must be "directly and adversely affected pecuniarily" by the bankruptcy court order. *Id.* at 214. The appellant must "show that the order diminishes one's property, increases one's burdens or impairs one's rights." *In re Dykes*, 10 F.3d 184, 188 (3d Cir. 1993). By contrast, "standing is precluded if the only interest in the bankruptcy court's order … is an interest as a *potential defendant* in an adversary proceeding." *Travelers Ins. Co. v. H.K. Porter Co., Inc.*, 45 F.3d 737, 743 (3d Cir. 1995) (emphasis added). Those who "may be

[4] To avoid repetition, the BSA incorporates by reference the arguments as to appellate standing in the briefs supporting its Motion to Dismiss, *see* APP019–APP021, Dkt. 5 at 10–12; Dkt. 16 at 2–5, and briefly summarizes those arguments here.

exposed to some *potential* harm incident to the bankruptcy court's order, are not 'directly affected' by that order" as necessary to have appellate standing. *Id.* at 741 (citation omitted) (emphasis added).

These requirements doom appellate standing for Century here. The Bar Date Order does not diminish Century's property, increase Century's burdens, or impair Century's rights, but instead sets forth a process for *potential* Abuse Claims against BSA to be filed, which may be covered by Century's policies. Whatever Abuse Claims are submitted using the Claim Form approved in the Bar Date Order remain subject to objection. *See Combustion Eng'g*, 391 F.3d at 217 (no appellate standing for insurers because insurers "may still dispute coverage under specific policies, and may raise any of the same challenges or defenses to the payment of claims available pre-petition"). Century's pre-petition rights with respect to its policies have not been altered by the Bar Date Order. Century is not obligated to pay amounts exceeding its pre-petition policy limit and it maintains the right to dispute coverage. Century has not been "directly and adversely affected pecuniarily" by the bankruptcy court order, and thus lacks standing. *See In re Old HB, Inc.*, 525 B.R. 218, 224–25 (S.D.N.Y. 2015) (holding that insurer similarly situated to Century lacked appellate standing to challenge bar date order).

II. The Relief Century Seeks is Legally Foreclosed.

Even if Century is permitted to pursue this appeal, the relief it seeks should be denied. The Bankruptcy Code, the Bankruptcy Rules, and binding case law unequivocally foreclose an order holding, as Century asks this Court to hold, that "submission of a Proof of Claim does not establish a presumptively valid claim." Br. at 2.

A. The Bankruptcy Court Correctly Gave Proofs of Claim the Effect Conferred By Law.

Section 502(a) of the Bankruptcy Code and Bankruptcy Rule 3001(f) work in tandem to lay out a process pursuant to which, if a claimant alleges facts in a filed proof of claim that are sufficient to support liability, the claim is *prima facie* valid. *See In re Lampe*, 665 F.3d at 514 (citing *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991))). Specifically, section 502(a) of the Bankruptcy Code provides that a filed proof of claim "is deemed allowed" unless objected to, 11 U.S.C. § 502(a), and Bankruptcy Rule 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." What is required of the claimant is to allege sufficient and non-contradictory facts to state a claim:

> Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," . . . the allegations of the proof of claim are taken as true [and] [i]f those

> allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim.

In re Holm, 931 F.2d at 623; *see also In re Allegheny Int'l, Inc.*, 954 F.2d at 173 ("[A] claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward.").

The bankruptcy court straightforwardly applied these authorities in the case at hand. With the Bar Date Order, the bankruptcy court set the Bar Date pursuant to Rule 3003, and proofs of claim timely submitted prior to the Bar Date have the legal effect conferred upon them by Section 502 and Rule 3001. Namely, if the allegations of the proof of claim set forth all the necessary facts to establish a claim, they prima facie establish the claim. *In re Holm*, 931 F.2d at 623. As the bankruptcy court explained, "the return of [the Claim Form] has the effect that the code gives it." APP491, Bankr. Dkt. 675 at 70:3–6.

It was entirely correct for the bankruptcy court to reject Century's request—now posed to this Court—to depart from the Bankruptcy Code and the Bankruptcy Rules. Century asks for an order providing that "submission of a Proof of Claim does not establish a presumptively valid claim," Br. at 2, but section 502(a), Rule 3001, and the Third Circuit say otherwise. In neither this Court nor in the bankruptcy court has Century identified any authority allowing a rewriting of the Bankruptcy Code to change the legal effect of a proof of claim—and the BSA is not aware of any that exists. That is why the bankruptcy court rejected Century's

request: because it would "alter the effects that the code gives [the proof of claim]." APP491, Bankr. Dkt. 675 at 70:4–6.

In this way, the language that Century sought to introduce into the Bar Date Order is materially different from what the BSA proposed. The BSA proposed adding a paragraph stating that the process for allowance of Abuse Claims would be subject to "the terms of any confirmed plan of reorganization … and any trust distribution procedures" set forth in the Plan. APP370, Bankr. Dkt. 667-1 at ¶ 11. This language merely sets forth the expectation—which Century agrees with, Br. at 25—that Abuse Claims will be channeled to and resolved through a trust.[5] Resolution of personal injury claims through a trust is commonplace in mass tort bankruptcies. *See* III, pp. 28–31. Unlike Century, therefore, the BSA did not request an order declaring that claims would have an effect different from what the Bankruptcy Code prescribes. The bankruptcy court declined to include the BSA's language because, though the court recognized it may well be accurate, it concluded it was unnecessary. APP492, Bankr. Dkt. 675 at 71:1–9. It was Century alone that requested an order altering the effect of proofs of claim from what the code provides, and it is Century alone that pursues this appeal now.

[5] The language proposed by Hartford and other insurers was similar. *See* APP322, Bankr. Dkt. 651-1 (Hartford Objection) at ¶ 4 (requesting that the Bar Date Order provide "*The proof of claim form does not replace the claims process that the Trust or the tort system will impose.*").

B. The Bankruptcy Court Correctly Determined that the Abuse Claim Form Is Sufficient to Establish a *Prima Facie* Claim.

Century suggests that its requested departure from the Bankruptcy Code should be granted because the Claim Form approved by the bankruptcy court is supposedly "legally insufficient." Br. at 16. Contrary to Century's assertions, however, the bankruptcy court found that the Claim Form contained sufficient information to allow a claimant to allege all the necessary facts to establish a *prima facie* valid claim. Specifically, with respect to the Claim Form, in its application of section 502(a) of the Bankruptcy Code and Bankruptcy Rule 3001(f), the bankruptcy court stated that "if I can look at [the returned Claim Form] and understand what it is that the claimant has alleged, for example, breach of contract, breach of my employment agreement, services performed, and if its [sic] signed under oath and, otherwise, meets the requirements I think it's a valid proof of claim." APP491, Bankr. Dkt. 675 at 70:9–14; *see* Fed. R. Bankr. P. 3001(f); *In re Allegheny Int'l, Inc.*, 954 F.2d at 173 ("Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is '*prima facie*' valid."); *see also In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) ("[T]he allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim.").

Century argues that no matter how detailed a claimant is in completing a Claim Form, such form could not set forth all the necessary facts to establish an Abuse Claim against BSA as a matter of law. *See* Br. at 13–16. This is incorrect. Pursuant to Bankruptcy Rule 3001(a), a proof of claim only needs to be a "written statement" that "conform[s] substantially to" Official Form 410.[6] The 12-page Claim Form clearly satisfies this standard. Contrary to Century's assertion that "claimants need provide only the sparsest of information," Br. at 12, the Claim Form asks claimants to answer ***over 25 questions*** regarding, among other things, the date, location, and nature of the abuse; the harm suffered; the identity of the perpetrator; the context in which the abuse occurred; the connection between the claimant and Scouting; who at BSA was aware of the abuse; who else knew about the abuse; and the claimant's alleged damages. APP606–APP618, Bankr. Dkt. 695-7. As the bankruptcy court correctly determined, the Claim Form is "more than sufficient" for a claimant to allege the necessary facts to establish a sexual

[6] Bankruptcy Rule 3001 provides "A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form." Fed. Bankr. P. 3001(a). Official Form 410, published by the U.S. court system, applies in all cases and is a three-page form that includes only six questions as to the nature and amount of the claim. Official Form 410, Questions 7–12.

abuse claim. APP491, APP542–APP 543, Bankr. Dkt. 675 at 70:9–16, 121:25–122:9.[7]

Additionally, Century erroneously argues that Bankruptcy Rule 3001 requires "facts and documents necessary to support the claim." Br. at 13. However, proofs of claim need attach "supporting information" only when a claim "is based on a writing," Fed. R. Bankr. P. 3001(c)(1). Tort claims are not "based on a writing" and so there is no requirement to attach supporting documents to a proof of claim that is based on "state law tort principles." *See In re Lampe*, 665 F.3d at 514 ("We agree with Payne that Rule 3001(c) was inapplicable to his claim inasmuch as he did not base the claim on a writing, but rather advanced his claim on what are essentially state law tort principles."); *In re Andrews*, 394 B.R. 384, 389 (Bankr. E.D. N.C. 2008) (noting rule requiring attachment of supporting documents to proof of claim is limited to instances where claim is based on a

[7] Century's citation to *In re A.H. Robins Co, Inc.*, 862 F.2d 1092 (4th Cir. 1988), proves the point. *See* Br. at 23. The "detailed questionnaire" approved in that case—which Century agrees was sufficient, *id.*—sought much of the same kind of information that the Claim Form here requests. *Compare A.H. Robins*, 862 F.2d at 1093 (detailed questionnaire requested "information of the claimant's use of the Dalkon Shield, such as dates of insertion and removal, the type of injury alleged and the names of physicians or clinics visited by the claimant"), *with* APP606–APP618, Dkt. 695-7 (requesting detailed information about the alleged sexual abuse, including date, location, nature of the abuse, the identity of the perpetrator, the context in which the abuse occurred, the connection between the claimant and Scouting, and who at BSA was aware of the abuse).

writing). The Claim Form clearly satisfies the legal standard under Bankruptcy Rule 3001.

The bankruptcy court also correctly declined to add Century's requested additional questions because those questions merely repeated questions already on the Claim Form, Bankr. APP542, Dkt. 675 at 121:6–8 ("I see that information. It actually looks like you asked for the same information multiple times."), or sought additional details that were not "relevant" to a claim's *prima facie* validity. *Id.* at 121:18–24. Additionally, the questions that Century wanted to include went well beyond that which is necessary to obtain the necessary facts regarding Abuse Claims. Indeed, many of Century's questions were more like interrogatories served by a defendant in a tort case rather than the proof of claim form required by Bankruptcy Rule 3001. *See* APP349–APP350, Bankr. Dkt. 656 at 9–10. Moreover, asking sexual abuse survivors multiple different ways whether and how the BSA knew about the abuser or whether the claimant has evidence of such knowledge is plainly misguided. In most instances, this information is in the control of the BSA. Questions such as these would only create unneeded hurdles for sexual abuse survivors, making it less likely that a sexual abuse survivor will assert a claim. If after review of the submitted Claim Form, the BSA believes it has a defense to the claim, there are procedures to dispute the claim. Ultimately,

however, the BSA's objective is for the post-confirmation trust to handle all aspects of administering Abuse Claims, including raising any such defenses.

The bankruptcy court did not err in declining to add language to the Bar Date Order altering the legal effect that the Bankruptcy Code and Bankruptcy Rules prescribe to a filed Claim Form.

III. Century's Concerns Can Be Resolved Through A Trust Process Common To Mass Tort Bankruptcy Proceedings.

Century's appeal should further be rejected because Century's concern about the potential for far reaching effects related to the *prima facie* validity of Abuse Claims is misplaced. While the number and amount of Abuse Claims is still largely unknown (hence, the reason for the Bar Date Motion), the BSA has consistently taken the position that any successful chapter 11 case will need to include a compensation trust through which Abuse Claims can be reviewed, objected to, allowed or disallowed, and eventually distributed upon. Century's desire for an "additional information-gathering process," Br. at 25, may be realized through a trust process as well. The BSA's proposed plan expressly provides that holders of Abuse Claims may be required to submit additional documentation regarding their claims according to trust procedures. SAPP031—SAPP032, BSA Plan, Bankr. Dkt. 20 at Art. III.B.8.b. By operation of the trust, therefore, there would be adequate opportunity "to properly vet these claims and weed out those

without merit." Br. at 23. As the BSA and Century agree, the approach proposed by the BSA is the "only logical" means of resolving this case. *Id.* at 25.[8]

Notwithstanding its agreement with the concept of a trust process as set forth in the BSA's proposed plan, Century suggests that the bankruptcy court's Bar Date Order somehow departed from what "[o]ther bankruptcy courts" have done "when mass tort claims are at issue." Br. at 23. That is incorrect. The proposed BSA Plan and compensation trust implement procedures that are analogous to those used in other mass tort bankruptcies, including bankruptcies adjudicated in this district. *See e.g.*, *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) (Bankr. D. Del. Jan. 16, 2020) [Dkt. 1115-1] (Victims Restitution Trust Claims Administrator granted complete authority to "administer, dispute, object to, compromise, or otherwise resolve Personal Injury Claims subject to the terms of" the debtors' chapter 11 plan); *In re PG&E Corp.*, Case No. 19-30088 (DM) (Bankr. N.D. Cal. June 20, 2020) [Dkt. 8053-1] (Fire Victim Trustee granted authority and power to "administer, object to or settle Fire Victims Claims" subject

[8] The BSA also agrees with Century that the Claim Form that has already been distributed should not be amended. Noticing all parties cost the bankruptcy estates $6.8 million dollars, *see* APP186, Bankr. Dkt. 556 at ¶ 5, and any order requiring that the notice process be restarted would require much of the $6.8 million cost of the notice plan to be incurred a second time. Additionally, re-noticing may require delaying the Bar Date in order to give claimants enough notice of the currently set Bar Date of November 16, and may risk imposing trauma on the sexual abuse claimants who have already received and completed the existing Claim Form.

to the Fire Victim Trust Agreement and debtors' chapter 11 plan); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del.. Feb. 21, 2018) [Dkt. 2120-1] (trust established to assume and "administer, process, settle, resolve, liquidate, satisfy and pay" all personal injury and wrongful death claims); *In re Blitz U.S.A., Inc.*, Case No. 11-13603 (PJW) (Bankr. D. Del. Jan. 30, 2014) [Dkt. 2008-1] (trust established to assume and "administer, process, settle, resolve and liquidate" all personal injury claims); *In re Archdiocese of Milwaukee*, Case No. 11-20059 (SVK) (Bankr. E.D. Wisc. Nov. 13, 2015) [Dkt. 3322] (abuse survivor claims channeled to plan trust).

Importantly, in each of these cases, the bankruptcy court entered a bar date order just like the Bar Date Order entered here. Specifically, the courts *did not* purport to change the legal effect given to proofs of claim, and *did not* include language like what Century requests in this Court. *See e.g.*, *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) (Bankr. D. Del. July 15, 2019) [Dkt. 294]; *In re PG&E Corp.*, Case No. 19-30088 (DM) (Bankr. N.D. Cal. July 1, 2019) [Dkt. 2806]; *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del.. Oct. 4, 2017) [Dkt. 959]; *In re Blitz U.S.A., Inc.*, Case No. 11-13603 (PJW) (Bankr. D. Del. Aug. 14, 2013) [Dkt. 1619]; *In re Archdiocese of Milwaukee*, Case No. 11-20059 (SVK) (Bankr. E.D. Wisc. July 14, 2011) [Dkt. 331]. Instead, there—as here—personal injury claims were channeled to a trust, without any

order declaring that proofs of claim would not be treated as *prima facie* evidence of the validity of the claim. Century can identify no reason for adopting a novel legal proposition—one that is contradicted by the Bankruptcy Code and Bankruptcy Rules—for this case alone.

CONCLUSION

By requesting a new Bar Date Order be issued that will preclude a returned Claim Form from establishing the *prima facie* validity of a claim, Century is seeking the ultimate result that proof of claim forms can only be used for voting with respect to sexual abuse survivors. The BSA has no disagreement with this ultimate result, as it is the BSA's intention that all Abuse Claims will be subject to court-approved trust distribution procedures, as set forth in any plan of reorganization. But as the bankruptcy court held, Century's proposed means of achieving this end result is unworkable. It would require altering the legal effect of proofs of claim in a manner that is inconsistent with the Bankruptcy Code and Bankruptcy Rules. Therefore, the Court should deny Century's requested relief and affirm the bankruptcy court's ruling.

Respectfully Submitted,

Dated: August 26, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Bankruptcy Procedure 8015(h), the undersigned certifies that the above memorandum complies with the applicable type-volume limitation of Federal Rule of Bankruptcy Procedure 8015(a)(7)(B)(i) because, excluding the parts of the memorandum exempted by Federal Rule of Bankruptcy Procedure 8015(g), this brief contains 8,165 words. The above brief also complies with the typeface requirements of Federal Rule of Bankruptcy Procedure 8015(a)(5) and type-style requirements of Federal Rule of Bankruptcy Procedure 8015(a)(6).

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