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-00798 (RGA)
CENTURY INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and WESTCHESTER SURPLUS LINES INSURANCE COMPANY, Appellants, v. BOY SCOUTS OF AMERICA and DELAWARE BSA, LLC, Appellees.	On appeal from the U.S. Bankruptcy Court for the District of Delaware Bankruptcy Case No. 20-10343 (LSS) Bankruptcy BAP No. 20-13

APPENDIX TO APPELLANTS' OPENING BRIEF

TABLE OF CONTENTS

PAGES

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 14 ..... APP000001 – APP000058

DECLARATION OF BRIAN WHITTMAN IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS
BANKR. DKT. 16 ..... APP000059 – APP000162

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPOINTING A JUDICIAL MEDIATOR, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 17 ..... APP000163 – APP000176

DEBTORS' MOTION, 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, FOR AUTHORITY TO (I) ESTABLISH DEADLINES FOR FILING PROOFS OF CLAIM, (II) ESTABLISH THE FORM AND MANNER OF NOTICE THEREOF, (III) APPROVE PROCEDURES FOR PROVIDING NOTICE OF BAR DATE AND OTHER IMPORTANT INFORMATION TO ABUSE VICTIMS, AND (IV) APPROVE CONFIDENTIALITY PROCEDURES FOR ABUSE VICTIMS.
BANKR. DKT. 18 ..... APP000177 – APP000206

CHAPTER 11 PLAN OF REORGANIZATION FOR BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC
BANKR. DKT. 20. ..... APP000207 – APP000296

DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF REORGANIZATION FOR BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC.
BANKR. DKT. 21. ..... APP000297 – APP000378

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 74 ..... APP000379 – APP000384

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, AND (C) MAINTAIN EXISTING BUSINESS FORMS; AND (II) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(B); AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 83 ..... APP000385 – APP000400

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTY PURSUANT TO 11 U.S.C. §§ 105(A), 361, 362, 363 AND 507; (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B); AND (IV) GRANTING RELATED RELIEF
BANKR. DKT. 90 ..... APP000401 – APP000427

DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETRENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 204. ..... APP000428 – APP000442

EXHIBIT B: DECLARATION OF JESSICA C. K. BOELTER IN SUPPORT OF DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETRENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 204-3. ..... APP000443 – APP000525

CENTURY INDEMNITY COMPANY'S LIMITED OBJECTION TO THE OFFICIAL TORT CLAIMANTS' COMMITTE'S MOTION FOR AN ORDER CLARIFYING THE REQUIREMENTS TO PROVIDE ACCESS TO CONFIDENTIAL OR PRIVILEGED INFORMATION [DKT. NO. 332]
BANKR. DKT. 368. ..... APP000526 – APP000529

DECLARATION OF CHARLES SLANINA
BANKR. DKT. 429. ..... APP000530 – APP000538

AMENDED DECLARATION OF JANINE PANCHOK-BERRY IN SUPPORT OF CENTURY'S OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 437. ..... APP000539 – APP000645

EXHIBIT 1 TO DECLARATION OF JESSICA C.K. BOELTER IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, NUNC PRO TUNC TO THE PETITION DATE
BANKR. DKT. 500-1 ..... APP000646 – APP000653

EXHIBIT 2 TO DECLARATION OF JESSICA C.K. BOELTER IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, NUNC PRO TUNC TO THE PETITION DATE
BANKR. DKT. 500-2. ..... APP000654 – APP000657

RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE [UNREDACTED VERSION]
BANKR. DKT. 529. ..... APP000658 – APP000710

EXHIBIT A: CENTURY'S REPLY IN FURTHER SUPPORT OF OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 530-1 ..... APP000711 – APP000774

REDACTED DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 532. ..... APP000775 – APP000788

EXHIBIT 1 TO REDACTED DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 532-1. ..... APP000789 – APP000791

EXHIBIT 2 TO REDACTED DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 532-2. ..... APP000792 – APP000793

EXHIBIT 5 TO REDACTED DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 532-5. ..... APP000794 – APP000798

DECLARATION OF JOSHUA R. SCHWARTZ
BANKR. DKT. 539 ..... APP000799 – APP000881

DECLARATION OF CHRISTOPHER CELENTANO
BANKR. DKT. 542 ..... APP000882 – APP000886

EXHIBIT 1 TO DECLARATION OF CHRISTOPHER CELENTANO
BANKR. DKT. 542-1 ..... APP000887 – APP000890

TRANSCRIPT OF HEARING HELD 5/4/2020
BANKR. DKT. 572 ..... APP000891 – APP001162

SUPPLEMENTAL BRIEF IN SUPPORT OF CENTURY'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF REVISED MEDIATION ORDER FILED ON MAY 15, 2020 [DKT. 640] SEEKING (I) APPOINTING A JUDIICAL MEDIATOR, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 646 .....APPP001163 – APP001175

APPENDEX A TO SUPPLEMENTAL BRIEF IN SUPPORT OF CENTURY'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF REVISED MEDIATION ORDER FILED ON MAY 15, 2020 [DKT. 640] SEEKING (I) APPOINTING A JUDIICAL MEDIATOR, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF
BANKR. DKT. 646-1 .....APP001176 – APP001183

CENTURY'S JOINDER IN PART TO HARTFORD'S OBJECTION [DKT. 651] AND OBJECTION TO DEBTORS' MOTION, 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 FOR AUTHORITY TO (I) ESTABLISH DEADLINES FOR FILING PROOFS OF CLAIM, (II) ESTABLISH THE FORM AND MANNER OF NOTICE THEREOF, (III) APPROVE PROCEDURES FOR PROVIDING NOTICE OF BAR DATE AND OTHER IMPORTANT INFORMATION TO ABUSE VICTIMS, AND (IV) APPROVE CONFIDENTIALITY PROCEDURES FOR ABUSE VICTIMS
BANKR. DKT. 656 .....APP001184 – APP001193

CENTURY'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING CONFIDENTIALITY AND PROTECTIVE ORDER [DKT. 613]
BANKR. DKT. 697 .....APP001194 – APP001212

BENCH RULING DELIVERED MAY 29, 2020 ON DEBTORS APPLICATION TO RETAIN SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION
BANKR. DKT. 755 .....APP001213 – APP001228

ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 758 ..... APP001229 – APP001230

EXHIBIT 13 TO REDACTED DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE
BANKR. DKT. 532-13. ..... APP001231 – APP001233

REVISED EXHIBIT 1 TO DECLARATION OF JOSHUA R. SCHWARTZ BANKR. DKT. 593-1 ..... APP001234 – APP001257

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 (___) (Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF

The Boy Scouts of America (the "BSA") and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), submit this motion (this "Motion"), pursuant to sections 105(a), 363(b), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an interim order (the "Proposed Interim Order") and final order (the "Proposed Final Order"), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (i) authorizing the Debtors to (a) pay their outstanding Prepetition Employee Obligations (as defined below) and (b) maintain their existing Compensation and Benefits Programs (as defined below), (ii) authorizing

[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 West Walnut Hill Lane, Irving, Texas 75038.

applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent such checks or transfers relate to any of the foregoing, (iii) modifying the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers' Compensation Program (as defined below), and (iv) granting related relief, including scheduling a hearing to consider entry of the Proposed Final Order authorizing the Debtors to continue the Non-Insider Severance Program (as defined below) on a final basis (the "Final Hearing"). The facts and circumstances supporting this Motion are set forth in the *Declaration of Brian Whittman in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed concurrently herewith.[2] In further support of this Motion, the Debtors respectfully state as follows:

STATUS OF THE CASES AND JURISDICTION

1. On the date hereof (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). Concurrently with the filing of this Motion, the Debtors have requested joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate and maintain their non-profit organization and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and other predicates for the relief requested herein are sections 105(a), 363(b), and 507 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1.

BACKGROUND OF THE DEBTORS

5. The BSA is a federally chartered non-profit corporation under title 36 of the United States Code. The BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Founded in 1910 and chartered by an act of Congress in 1916, the BSA is one of the largest youth organizations in the United States and one of the largest Scouting organizations in the world, with approximately 2.2 million registered youth participants and approximately 800,000 adult volunteers. As a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. The BSA's mission is to prepare young people for life by instilling in them the values of the Scout Oath and Law,[3] encouraging them to be trustworthy, kind, friendly and helpful, while also training youth in responsible citizenship, skills development and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older ages,

[3] **Scout Oath:** "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight." **Scout Law:** "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."

career-oriented programs in partnership with community organizations. Delaware BSA, LLC ("Delaware BSA") is a non-profit limited liability company incorporated under the laws of Delaware and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. BSA is the sole member of Delaware BSA.

6. To carry out its mission of developing youth leaders of character and integrity, the BSA grants charters to thousands of local organizations across the country, including faith-based institutions, clubs, civic associations, educational institutions, and businesses. These chartered organizations, in turn, form Scouting units—referred to as "packs" for Cub Scouts, "troops" for Scouts BSA (formerly known as Boy Scouts), "crews" for Venturing, "ships" for Sea Scouts, "labs" for STEM Scouts, and "posts" for Exploring. Scouting units are led by adult volunteers appointed by the chartered organization. Each of the BSA's approximately 81,000 Scouting units in the United States is organized, registered, and supported by one of 261 local councils (collectively, the "Local Councils") that are chartered by the BSA and oversee the Scouting program in an assigned geographic area. Each local council is separately incorporated under the non-profit laws of its respective state, maintains an independent board of directors and senior management, and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The BSA does not hold any equity interest in any local council, chartered organization, or Scouting unit, and only the BSA and its wholly owned subsidiary, Delaware BSA, are debtors in these chapter 11 cases. Additional information regarding the BSA, its mission and operations, and the events and circumstances preceding the Petition Date is set forth in the First Day Declaration and the *Debtors' Informational Brief*, filed concurrently herewith.

RELIEF REQUESTED

7. By this Motion, the Debtors request entry of the Proposed Interim Order and Proposed Final Order:

(i) authorizing, but not directing, the Debtors to:

(a) pay or cause to be paid all or a portion of the Prepetition Employee Obligations;

(b) continue paying and/or funding the Compensation and Benefits Programs (and amounts related thereto), including administrative obligations to certain third parties in connection therewith, during these chapter 11 cases in the ordinary course as such Compensation and Benefits Programs were in effect as of the Petition Date and as such may be modified, terminated, amended, or supplemented by the Debtors;

(c) to reissue checks, wire transfers, automated clearing house payments, electronic payments, or other similar methods of payment on account of Compensation and Benefits Programs where such method of payment has been dishonored postpetition;

(ii) modifying the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers' Compensation Program (as defined below);

(iii) authorizing, but not directing, applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent that those checks or transfers relate to any of the foregoing; and

(iv) granting related relief, including scheduling the Final Hearing to consider entry of the Proposed Final Order authorizing the Debtors to continue the Non-Insider Severance Program (as defined below) on a final basis.[4]

DEBTORS' WORKFORCE

8. As of the Petition Date, the BSA employs approximately 1,650 individuals to deliver the Scouting program at the national level across the BSA organization and overseas to

[4] The Debtors expressly reserve, and do not waive, the right to modify or terminate any Prepetition Employee Obligations or Compensation and Benefits Programs to the extent that such right exists under the terms of the Prepetition Employee Obligations or Compensation and Benefits Programs or as may be permitted or required by applicable law or further order of the Court.

serve U.S. citizens. These individuals include corporate, legal, technology, human resources, marketing, finance, communications, and registration systems managers and personnel, national events personnel, print and magazine publications staff, training and leadership employees for youth, employees, volunteers and professional adult leaders, registration systems employees, business and quality control services employees, warehouse, logistics and distribution staff, customer service personnel, retail sales associates, and a variety of staff providing management and support for the BSA's high adventure facilities, including general managers, cowboys, butchers, boat captains, and back country rangers (the "BSA Employees").[5] All of the BSA Employees are located in the United States and U.S. territories.[6]

9. The BSA Employees include approximately: (i) 1,000 full-time, salaried BSA Employees (*i.e.*, BSA Employees who work 30 hours or more per week) (the "Full-Time Employees"), (ii) 500 part-time, hourly BSA Employees (the "Part-Time Employees"), and (iii) 150 full-time, seasonal, salaried BSA Employees (*i.e.*, BSA Employees who work for 30 hours or more per week for a limited period of the year at the high adventure facilities) (the "Seasonal Employees"). The BSA Employees are located at the Debtors' national headquarters in Irving, Texas, at the Debtors' national warehouse and distribution center in Charlotte, North Carolina, at approximately 175 Official BSA Scout Shops (the "Scout Shops") across the United States and at four high adventure facilities located in Florida and the U.S. Virgin Islands, New Mexico, West Virginia, and Minnesota and parts of Canada.

[5] Approximately 30 BSA Employees are on paid leave as of the Petition Date.

[6] There are typically one to three seasonal employees located in Canada who are employed annually from April to September. These employees are employed by Atikaki Youth Ventures Inc., a Non-Debtor Related Entity (as defined below). For the avoidance of doubt, this Motion does not seek relief with respect to these employees. A description of and relief related to these employees is sought within the Shared Services Motion, filed concurrently herewith.

10. The Debtors supplement their workforce by retaining independent contractors (the "Independent Contractors") and temporary workers (the "Temporary Workers") to perform various tasks including, but not limited to, providing illustrating, copywriting, and photography services for the BSA's multiple national magazine publications, IT development and support services, software engineering services, marketing support, and supply-chain and customer service support. As of the Petition Date, approximately 60 Independent Contractors and 135 Temporary Workers were providing services to the Debtors or their affiliates. The Debtors contract directly with the Independent Contractors, who are paid directly by the Debtors. The Debtors procure the services of the Temporary Workers through third-party staffing agencies (the "Staffing Agencies"). The Debtors pay the Staffing Agencies, and the Staffing Agencies, in turn, pay the wages and benefits (as applicable) of the Temporary Workers.

11. As described more fully in the First Day Declaration and the Shared Services Motion, certain of the BSA's non-debtor affiliates that are directly or indirectly wholly owned or controlled by the BSA (the "Related Non-Debtor Entities") do not maintain their own employees or management. Instead, the Related Non-Debtor Entities are parties to certain shared services arrangements with the BSA, whereby approximately 32 BSA Employees allocate some or all of their time to the Related Non-Debtor Entities. The BSA is responsible for the compensation and benefits provided to these BSA Employees, and the associated Related Non-Debtor Entity allocates payment to the Debtors for these services via intercompany transactions under a shared services arrangement.[7] The relief being requested in this Motion includes the BSA Employees who allocate some or all of their time to the Related Non-Debtor Entities.

[7] The allocation of these costs from the BSA to the Related Non-Debtor Entities and the shared services arrangement is described more fully in the Shared Services Motion.

12. The Local Councils are locally funded and operate with limited staffs, focusing their efforts at the community level. The BSA's national scope and size provide the BSA with the ability to support the Local Councils in various ways, including offering Employee Benefits Programs (as defined herein) to approximately 6,600 eligible full-time employees of the Local Councils (the "Local Council Employees"), many of whom would not otherwise be able to receive these vital benefits. For the avoidance of doubt, except as specifically set forth herein, the relief being requested in this Motion is limited solely to the Compensation and Benefits Programs (as defined below) that the BSA provides to the BSA Employees for services performed on behalf of the BSA and the Related Non-Debtor Entities, and excludes the benefits offered to the Local Council Employees. Contemporaneously herewith, the Debtors are seeking authority to pay and continue the benefits offered to the Local Council Employees pursuant to the Shared Services Motion.[8]

BSA EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS

13. The BSA Employees, Independent Contractors, and Temporary Workers (through the Staffing Agencies) are an indispensable part of the Debtors' organizational operations, and their skills, knowledge, and understanding of the Debtors' organization and infrastructure are essential to preserving the stability and efficiency of the Debtors' organization. Such employees' continued services are critical to ensuring the success of the Debtors' reorganization under chapter 11 of the Bankruptcy Code and the continuation of the BSA's charitable mission. Like many similarly-situated organizations, the Debtors maintain certain compensation and benefits programs and pay various administrative fees and insurance premiums in connection therewith

[8] The allocation and reimbursement of the cost of the benefit programs provided by the BSA to the Local Council Employees is described in greater detail in the Shared Services Motion.

(collectively, the "Compensation and Benefits Programs"), including the following (each as defined herein):

(i) Employee Compensation Obligations;
(ii) Payroll Taxes and Deductions;
(iii) Reimbursable Expenses;
(iv) Health Insurance Plans;
(v) Health Savings Account Program;
(vi) COBRA Benefits;
(vii) Life and AD&D Insurance;
(viii) Scout Executives' Alliance;
(ix) Disability Insurance;
(x) Workers' Compensation Program
(xi) Non-Insider Severance Program;
(xii) Retirement Plans and Employer Matching Obligation;
(xiii) PTO and Other Leave Programs; and
(xiv) Other Benefits Programs.

14. A significant number of the BSA Employees rely exclusively or primarily on the compensation and benefits they receive from the Debtors under the Compensation and Benefits Programs to pay their daily living expenses. The BSA Employees and their families would be subject to significant financial hardship if the Debtors could not honor prepetition obligations that may be outstanding as of the Petition Date under the Compensation and Benefits Programs or continue to administer the Compensation and Benefits Programs without interruption during the pendency of the Debtors' chapter 11 cases. Further, the Debtors' failure to honor their obligations to the BSA Employees in connection with the Compensation and Benefits Programs could likely result in substantial attrition at a time when the Debtors need the BSA Employees to maintain the BSA organization's operations and ultimately reorganize.

15. Subject to Court approval and the terms and conditions set forth herein, the Debtors intend to continue to administer the Compensation and Benefits Programs in the ordinary course, though the Debtors may elect to exercise their business judgment and modify, change, and/or discontinue any such programs in their discretion in the ordinary course. The Debtors estimate that, as of the Petition Date, they owe approximately $5,090,000 in connection with the Compensation and Benefits Programs (the "Prepetition Employee Obligations").[9] Pursuant to the Proposed Interim Order, the Debtors request authority, on an interim basis prior to the Final Hearing (the "Interim Period"), to pay an aggregate amount not to exceed $4,800,000 in Prepetition Employee Obligations that may come due prior to the Final Hearing. The Prepetition Employee Obligations comprise the following categories of Compensation and Benefits Programs and amounts that accrued prepetition and will become due after the Petition Date, during the Interim Period and cumulatively on a final basis after the Final Hearing:

Compensation and Benefits Programs[10]	**Interim**	**Final (Cumulative)**
Unpaid Compensation	$2,000,000	$2,000,000
Payroll Taxes and/or Deductions	$200,000	$200,000
Reimbursable Expenses	$720,000	$960,000
Health Insurance Plans	$790,000	$790,000
Health Savings Account Program	$95,000	$95,000
COBRA Benefits	$20,000	$20,000
Life and AD&D Insurance	$130,000	$130,000
Scout Executives' Alliance	$15,000	$15,000
Disability Insurance	$170,000	$200,000
Non-Insider Severance Program and Severance Obligations	$0	$20,000
Retirement Plans	$350,000	$350,000
Employer Matching Obligation	$180,000	$180,000
Other Benefits Programs	$130,000	$130,000
Total	**$4,800,000**	**$5,090,000**

[9] This excludes estimated self-insurance claims, a large portion of which will likely be funded from the Welfare Benefits Trust (as defined below) prior to its exhaustion or otherwise come from funds set aside for this purpose, as described below.

[10] All capitalized terms used in this table have the meanings ascribed to such terms herein.

16. The Prepetition Employee Obligations that the Debtors are obligated to pay to, or fund on account of, any BSA Employee or Independent Contractor, excluding the PTO obligations and Health Benefit Claims (each as defined and described in greater detail below), do not exceed the $13,650 priority cap of sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

I. Employee Compensation and Withholdings

17. The Debtors incur payroll obligations in the ordinary course of their operations, including wages, salaries, and other compensation provided to the BSA Employees, Temporary Workers (through the Staffing Agencies), and Independent Contractors, as well as all related withholdings, deductions and expense reimbursement obligations (collectively, and together with any related obligations and administrative costs outlined or referenced in this Section I, the "Employee Compensation Obligations"). By this Motion, the Debtors are requesting authority to pay all accrued but unpaid Employee Compensation Obligations (collectively, the "Unpaid Compensation"), substantially all of which will become due and owing during the Interim Period. The Debtors also request authority to continue to pay, fund, or otherwise honor the Employee Compensation Obligations on a postpetition basis in the ordinary course consistent with their prepetition practices. The components of the Employee Compensation Obligations are discussed in detail below.

A. Unpaid Compensation

18. The Debtors pay hourly wages or salary to the BSA Employees and Independent Contractors either in arrears or on a current basis, with either bi-weekly or semi-monthly payments.[11] Specifically, Full-Time Employees are paid semi-monthly on the 15th and last day of each month on a current basis, Part-Time Employees are paid bi-weekly approximately one

[11] If a payroll date falls on a weekend or holiday, BSA Employees are paid on the preceding Thursday or Friday, or the business day preceding the holiday, respectively.

week in arrears, and Seasonal Employees are paid semi-monthly approximately five business days in arrears. The Debtors' aggregate average semi-monthly payroll for Full-Time Employees is approximately $3.6 million, the average bi-weekly payroll for Part-Time Employees is approximately $110,000, and the average semi-monthly payroll for Seasonal Employees is approximately $135,000.[12] The Debtors use Paychex, Inc. ("Paychex") as their third-party payroll administrator.[13] Paychex generally debits funds from the Debtors' payroll disbursement account two days before each payroll date and then electronically transfers the funds via direct deposit to the BSA Employees' personal bank accounts.[14] The Debtors pay certain of the Seasonal Employees through pay cards that are administered through ADP. Paychex generally debits funds from the Debtors' payroll disbursement account two days prior to each payroll date and then electronically transfers the funds to the Seasonal Employees' ADP pay cards.

19. The Debtors estimate that, as of the Petition Date, they owe approximately $2.0 million in Unpaid Compensation, all of which was earned within 180 days of the Petition Date. The Debtors estimate that all of these amounts will become due and owing during the Interim Period. The Debtors are requesting authority to pay all of this amount under the Proposed Interim Order and on a final basis.

B. Independent Contractor and Temporary Worker Compensation

20. As discussed above, the Debtors rely on Independent Contractors and Temporary Workers in the ordinary course of their organizational operations to perform a wide range of services critical to the Debtors' mission, including, among other things, providing publication

[12] The Debtors' aggregate payroll for the Seasonal Employees ranges from approximately $85,000 in the low season to $1.2 million during the high season.

[13] The Debtors pay approximately $6,000 in average monthly processing fees to Paychex. The Debtors estimate that, as of the Petition Date, they owe approximately $600 in unpaid processing fees to Paychex.

[14] All BSA Employees paid through Paychex are paid via ACH/direct deposit or pay cards.

services for the BSA's national magazines, IT and software support, and various other functions. The Debtors rely on the support of Independent Contractors and, through the Staffing Agencies, Temporary Workers to complete discrete projects in furtherance of the Debtors' organization and to fill short-term positions that are not economically feasible to employ on a full- or part-time basis.

21. The authority to continue paying the Debtors' Independent Contractors and the Staffing Agencies is critical to minimizing disruption of the Debtors' continued organizational operations. As of the Petition Date, as part of the Unpaid Compensation described above, the Debtors owe approximately $1.5 million on account of accrued and unpaid wages of Independent Contractors and Temporary Workers, all of which will become due and owing within the Interim Period. The Debtors are requesting authority to pay or remit all of this amount under the Proposed Interim Order and on a final basis, and to continue honoring such obligations on a postpetition basis in the ordinary course of their operations and consistent with past practice.

C. Withholding and Deduction Obligations

22. The Debtors are required by law to withhold from the BSA Employees' wages, salaries, and other compensation certain amounts related to federal, state, and local income taxes and Social Security, Medicare, and imputed taxes for remittance to the appropriate taxing authorities (collectively the "Withholdings"). Further, the Debtors must match Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment and disability insurance (the "Employer Payroll Taxes" and, together with the Withholdings, the "Payroll Taxes") from their own funds. The Payroll Taxes total approximately $2.0 million per month. Paychex debits the total amount of Payroll Taxes due from the applicable accounts of the Debtors two days before each payroll date and then remits the Payroll Taxes to the appropriate taxing authorities on behalf of the Debtors on the

dates such Payroll Taxes are due. The BSA remits Payroll Taxes due to taxing authorities in the U.S. Virgin Islands and Puerto Rico directly for BSA Employees in those locations.

23. In addition to the Withholdings, the BSA routinely deducts certain amounts from the BSA Employees' paychecks for child support and other garnishments, as well as deductions on account of the Compensation and Benefits Programs discussed in detail below (such as the BSA Employees' share of dental plan premiums and retirement plan contributions) (collectively, the "Deductions"). The Debtors forward the Deductions to the appropriate recipients. On average, the Debtors deduct approximately $1.1 million per month in Deductions from the BSA Employees' paychecks and remit these amounts to the appropriate providers.

24. The Debtors estimate that there are approximately $200,000 of accrued Payroll Taxes and/or Deductions outstanding as of the Petition Date, all of which is estimated to come due in the Interim Period. In addition, due to the commencement of these chapter 11 cases, certain prepetition Payroll Taxes may not have been remitted by Paychex or forwarded to the appropriate recipient by the Debtors before the Petition Date. The Debtors therefore respectfully request authority (i) to process, or to direct Paychex to process, any unpaid or unremitted Payroll Taxes and Deductions as of the Petition Date on an interim and final basis and (ii) to continue to honor and process, or to direct Paychex and to continue to process, Payroll Taxes and Deductions on a postpetition basis, in the ordinary course and consistent with their prepetition practices.[15]

D. Reimbursable Expenses

25. At any given time, the Debtors may have outstanding obligations to certain of the BSA Employees and a related third-party administrator for reimbursement of reasonable and

[15] Concurrently herewith, the Debtors have sought authority, but not direction, to pay certain prepetition taxes, assessments, fees, and other charges in the ordinary course pursuant to the Tax Motion. By this Motion, the Debtors do not seek authority to pay prepetition claims that may be covered by the relief sought in the Tax Motion.

customary out-of-pocket organizational expenses incurred on behalf of the Debtors in connection with their employment (the "Reimbursable Expenses").[16] The Reimbursable Expenses include expenses for travel such as airfare, rental cars or mileage reimbursement, lodging, meals, and other organizational expenses paid directly by the BSA Employees. The BSA Employees submit Reimbursable Expenses through the Debtors' standard expense report process, which is administered by third-party expense management platform Deem. The BSA Employees are reimbursed by the Debtors within one week through their accounts payable system. On average, the Debtors reimbursed approximately $330,000 per month in 2019. As of the Petition Date, the Debtors estimate that they owe approximately $960,000 in accrued but unpaid Reimbursable Expenses, $720,000 of which will come due during the Interim Period, and that no administrative fees are owed to Deem.[17] The Debtors are requesting authority to pay up to $720,000 owed on account of the Reimbursable Expenses during the Interim Period and $960,000 on a final basis, and to continue honoring such obligations postpetition in the ordinary course and consistent with their prepetition practices.

II. Employee Benefits Programs and Related Obligations

26. In addition to the Employee Compensation Obligations discussed above, the Debtors offer comprehensive benefits to eligible BSA Employees, Retirees (as defined below), and the survivors of eligible BSA Employees and Retirees. These benefits include medical,

[16] In connection with the Reimbursable Expenses, the Debtors also maintain a purchase card program with JPMorganChase Bank, N.A., as further described in the Cash Management Motion, filed contemporaneously herewith (the "Purchase Card Program"). Under the Purchase Card Program, the Debtors provide company-sponsored credit cards to certain eligible employees for authorized organizational purchases and expenses for the high adventure facilities. Additional information regarding the processing of payments under the Purchase Card Program is contained in the Cash Management Motion. As discussed above, certain of the BSA Employees are also compensated via purchase card, and relief related to such compensation is being sought pursuant to this Motion. Relief with respect to the Purchase Card Program as it relates to Reimbursable Expenses is being sought pursuant to the Cash Management Motion, and the information contained herein is solely presented for illustrative purposes.

[17] Because the Debtors cannot track the Reimbursable Expenses until they are entered into their system, this estimate is based on the monthly average Reimbursable Expenses for 2019.

dental, and vision plans, life insurance, disability coverage, the Workers' Compensation Program (as defined below), various retirement plans and benefits, and other employee benefits described in greater detail in this Section II (collectively, the "Employee Benefits Programs"). In connection with the Employee Benefits Programs, the Debtors utilize the administrative services of Morneau Shepell, which include the administration of the Debtors' health and welfare benefits plans, and the maintenance of a call center and website to support annual enrollment and ongoing administration. Morneau Shepell also administers the Pension Plan (as defined below) for BSA Employees. Morneau Shepell charges a monthly administrative fee of $54,000 for Pension Plan administration and $65,000 for health and benefits plans administrative services. As of the Petition Date, the Debtors owe approximately $290,000 to Morneau Shepell.[18]

27. On average, the Debtors pay approximately $1.9 million per month in respect of the Employee Benefits Programs, including administrative fees and exclusive of Health Benefit Claims (as defined and described below).[19] As of the Petition Date, the Debtors estimate that approximately $1,930,000 is accrued and unpaid on account of the Employee Benefits Programs, and are requesting authority to pay or remit up to $1,880,000 of this amount under the Proposed Interim Order. The Debtors are seeking to continue funding the Employee Benefits Programs on a postpetition basis in the ordinary course and consistent with their prepetition practices.

---

[18] The Debtors utilize Willis Towers Watson, LCG Associates, and other firms as additional advisors for the Employee Benefits Programs. These advisors provide certain necessary health and welfare consulting services, including, among other things, health plan strategy and management, communications, and actuarial services. The Debtors estimate that total amounts owed to Morneau Shepell and other advisors as of the Petition Date is approximately $405,000 for both Pension Plan and health and benefits plans administration.

[19] As set forth in the Shared Services Motion, the Debtors use their national scope and size to offer certain Employee Benefits Programs to both BSA and Local Council employees. Many of the third parties who charge administrative fees in connection with administering the Employee Benefits Programs view the BSA as the obligor with respect to amounts that come due under such programs. Thus, the BSA would be required to pay an entire invoice in order to continue a given Employee Benefit Program for both the BSA and Local Council Employees. In recognition of this, for certain of the Employee Benefits Programs discussed below the Debtors are seeking authority in this Motion to pay certain prepetition and postpetition third-party administrative fees with respect to both BSA and Local Council employees.

A. Health Insurance Plans

28. The Debtors offer medical, dental, prescription, and vision coverage and Medicare benefits (collectively, the "Health Insurance Plans") to all Full-Time and Seasonal BSA Employees and their dependents, to certain eligible retirees of the BSA (the "Retirees"),[20] and to the survivors of eligible BSA Employees or Retirees (the "Survivors").[21] In connection with the self-funding of certain of the Health Insurance Plans, the BSA established that certain Boy Scouts of America Employee Welfare Benefit Trust, dated as of August 24, 2016 (the "Welfare Benefits Trust"). Historically, the BSA deposited certain employee and employer contributions related to the Health Insurance Plans into the Welfare Benefits Trust, which is classified as a voluntary employees' beneficiary association (VEBA) trust, and paid self-insured claims out of this trust. More recently, the BSA has instead segregated these contributions in an investment account maintained exclusively for this purpose and elected not to make these deposits and plans to make claims payments directly once the Welfare Benefits Trust is exhausted, which is expected to occur by April 2020.

1. Medical and Dental Plans

29. The Debtors offer three medical plans—a PPO plan and two high deductible health plans—administered by UnitedHealthcare ("United"). The Debtors also offer self-funded supplemental Medicare benefits to Retirees, survivors, participants in the Long-Term Disability Insurance (as defined and discussed below), and dependents of such parties who are under 65

[20] Retirees include BSA Employees who have retired from the BSA and are members of the BSA Retirement Plan; Retirees who retired on or after January 1, 2005 are required to have at least ten years of benefits eligible service in order to be eligible for continuing Health Insurance Plan benefits.

[21] Employees who were hired on or before May 31, 2004 who work twenty-one (21) hours or more per week year-round with the BSA, and Full-Time Employees hired on or after June 1, 2004 (*i.e.*, working thirty or more hours per week year-round with the BSA) are eligible to participate in the Health Insurance Plans. Survivors eligible for Health Insurance Plans include the spouse and/or dependent children of a deceased BSA Employee who was enrolled in the Pension Plan. Survivors of BSA Employees who did not retire from the BSA are not eligible for the Health Insurance Plans, other than eligibility continuation under COBRA, as required by law.

years old, enrolled in Medicare Parts A and B, and not enrolled in a Medicare prescription drug plan or other Medicare supplement plan (together with the PPO plan and the high deductible health plans, the "Medical Plans"), also administered by United. United provides day-to-day administrative assistance in connection with the Health Insurance Plans. The Debtors pay United approximately $210,000 per month in administrative fees, and an additional $20,000 to $100,000 per month for access to shared savings network discounts, which is highly variable depending on claims paid for each month. Under United's services, the Debtors provide prescription drug coverage through a program administered by OptumRx.

30. The Debtors offer one self-insured dental assistance plan (the "Dental Plan") administered through MetLife Insurance Company ("MetLife"). The Debtors pay MetLife approximately $22,000 per month in administrative fees. The Dental Plan generally covers dental services and basic restorative services, and offers a preferred dentist program, which is a network of in-network dental providers that offer services at reduced rates. The Dental Plan premiums, deductibles, co-pays, and out-of-pocket costs vary depending on whether a preferred dentist program provider is selected and whether dependents are covered by the Dental Plan. The costs of the Medical and Dental Plans are partially borne by the Debtors, but BSA Employees pay an estimated 35% of the total contributions to the Medical and Dental Plans through Deductions to pay for each month's coverage, with contributions varying by plan.[22]

31. As self-insured Medical and Dental Plans, the Debtors fund and insure all claims submitted to the relevant health benefits providers on account of services provided to the participants (the "Health Benefit Claims"). Health Benefit Claims are paid as they are processed by the health benefit providers, but there is typically a lag time in receiving claims and the

[22] Participating Retirees and survivors are billed a premium for the BSA Employee costs of the Medical Plans, or, if they receive a large enough benefit under the Pension Plan, premiums are deducted from their checks.

Debtors are unable to determine the precise amount of Health Benefit Claims that have accrued and are owing as of the Petition Date. The average monthly amount of Health Benefit Claims has been approximately $3.9 million. By this Motion, the Debtors are requesting authority to pay any Health Benefit Claims owed as of the Petition Date under the Proposed Interim Order and on a final basis, and to continue paying the Health Benefit Claims on a postpetition basis in the ordinary course and consistent with their prepetition practices.

32. Also in connection with self-funding the Medical and Dental Plans, the Debtors maintain a stop-loss insurance policy with Sun Life Assurance Company of Canada to cover catastrophic medical claims (the "Stop-Loss Insurance"). The Debtors pay premiums on account of the Stop-Loss Insurance, which are approximately $554,000 per year, generally paid in the first quarter of the year. As of the Petition Date, the Debtors estimate that they have accrued prepetition obligations of approximately $88,000 on account of the Stop-Loss Insurance. The Debtors seek authority to pay any prepetition amounts that come due on account of the Stop-Loss Insurance. Further, by this Motion, the Debtors respectfully request authority to continue the Stop-Loss Insurance in the ordinary course on a postpetition basis.

33. The Debtors estimate that the total cost of the Medical and Dental Plans, including the Stop-Loss Insurance and administrative fees, is approximately $460,000 per month on average. As of the Petition Date, the Debtors estimate that the amount of accrued and outstanding prepetition obligations under the Medical and Dental Plans, excluding Health Benefit Claims, is approximately $790,000, and the Debtors seek to pay all accrued and outstanding obligations under the Medical and Dental Plans during the Interim Period and on a final basis, and maintain the Medical and Dental Plans in the ordinary course.

2. Vision Plan

34. The Debtors offer vision benefits through a plan insured and administered by Vision Service Plan ("VSP"). The Vision Plan generally provides benefits covering annual eye examinations, corrective lenses, frames, and contact lenses. Premiums vary based on whether the Employee, Retiree, or Survivor has dependents covered by the Vision Plan. The Vision Plan is a fully insured plan, so administrative fees paid to VSP in connection with the Vision Plan are included in the premiums. Participants in the Vision Plan are responsible for the payment of premiums.

B. Health Savings Account Program

35. The BSA Employees who participate in certain of the Medical Plans with high deductibles may contribute a portion of their pre-tax compensation to health savings accounts through a program (the "Health Savings Account Program") administered by United and OptumHealth Bank ("Optum"), which funds may be used for incidental medical expenses. Annually, the BSA also contributes a lump-sum of $500 to each health savings account opened between January 1 and June 30, and $250 to each account opened on or after July 1. Participating BSA Employees can make pre-tax contributions to the Health Savings Account Program through Deductions to cover reimbursements annually of up to $7,100 for family coverage and up to $3,550 for individual coverage. As of the Petition Date, approximately 450 BSA Employees and Retirees are enrolled in the Health Savings Account Program. On average, the Debtors deduct a total of approximately $77,500 per month from participating parties' paychecks (the "Employee HSA Deductions") on account of contributions to their respective Health Savings Account Programs. The Debtors request authority, on an interim and final basis, to (i) remit Employee HSA Deductions of up to $95,000 withheld from BSA Employees' prepetition paychecks but not yet forwarded to Optum and to (ii) continue honoring their

obligations under the Health Savings Account Program postpetition in the ordinary course and consistent with their prepetition practices.

C. COBRA

36. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), certain former BSA Employees covered by the Health Insurance Plans ("COBRA Participants") may continue insurance coverage under the Medical Plans, the Dental Plan, the Vision Plan, and the Health Savings Account Program (the "COBRA Benefits"). COBRA Participants are entitled by law to continue to receive COBRA Benefits for up to 18 months, and in certain instances up to 36 months, after termination of their employment. As of the Petition Date, there are approximately 10–20 former BSA Employees who are COBRA Participants. COBRA Participants are responsible for paying all premiums associated with the COBRA Benefits. The Debtors use WageWorks to administer the COBRA Benefits, including to provide all required notifications, bill and collect premiums, coordinate enrollment information with the Medical Plan administrators, and providing customer service and support for COBRA Participants. The Debtors pay approximately $6,500 per month to WageWorks in administrative fees (the "COBRA Administration Fee"). As of the Petition Date, the Debtors estimate that they owe approximately $20,000 to WageWorks on account of the COBRA Administration Fee, all of which will become due and owing during the Interim Period. The Debtors are requesting authority to pay up to $20,000 of the prepetition amount under the Proposed Interim Order and on a final basis, and to continue honoring such obligations postpetition in the ordinary course and consistent with their prepetition practices.

D. Life and AD&D Insurance

1. Life and AD&D Insurance

37. The Debtors provide basic life and accidental death and dismemberment insurance (the "Basic Life and AD&D Insurance") and optional supplemental life insurance for Full-Time and Seasonal Employees of the BSA, Retirees, their spouses, and dependents (the "Supplemental Life Insurance" and, together with the Basic Life and AD&D Insurance, the "Life and AD&D Insurance"). The Life and AD&D Insurance is insured and administered by MetLife. The Debtors' total monthly costs in connection with premiums and related administrative fees under the Life and AD&D Insurance are approximately $101,000. The Debtors do not pay any amounts for the Supplemental Life Insurance, which is fully funded through Deductions or billing to participants. As of the Petition Date, the Debtors owe approximately $130,000 for accrued and unpaid premiums and administrative fees paid to MetLife, all of which will become due and owing within the Interim Period. The Debtors are requesting authority to pay up to all of this amount under the Proposed Interim Order and on a final basis, and to continue honoring their obligations under the Life and AD&D Insurance postpetition in the ordinary course and consistent with their prepetition practices.

2. Scout Executives' Alliance

38. Certain commissioned professional, executive, and professional-technical BSA Employees and Retirees with the BSA are eligible to enroll and become members of the Scout Executives' Alliance fellowship fund (the "Alliance"), which provides supplemental life insurance benefits to its members. The Alliance is insured and administered through Metlife. Members of the Alliance make contributions entirely through Deductions based on salary levels, and Retirees make contributions through their annual pensions or via check transfers. In turn, the BSA pays for group term life insurance for these individuals with employee contributions in

excess of the premium cost held in a segregated account as a buffer against any future cost increases. As of the Petition Date, the Debtors owe approximately $15,000 for accrued and unpaid premiums and administrative fees paid to MetLife, all of which will become due and owing during the Interim Period. The Debtors are requesting authority to pay up to all of this amount under the Proposed Interim Order and on a final basis, and to continue honoring their obligations to Metlife in respect of the Alliance postpetition in the ordinary course and consistent with their prepetition practices.

E. Disability Insurance

39. The Debtors provide Full-Time and Seasonal BSA Employees with short-term disability insurance coverage (the "Short-Term Disability Insurance"), long-term disability insurance (the "Long-Term Disability Insurance"), and salary continuation for medical leaves of absence (the "Salary Continuation for Medical Leave" and, together with the Short-Term and Long-Term Disability Insurance, the "Disability Insurance"). The Short-Term Disability Insurance and Salary Continuation for Medical Leave is insured and administered by Unum Life Insurance Company ("Unum") and the Long-Term Disability Insurance is insured and administered by MetLife.

40. Salary Continuation for Medical Leave is available to Full-Time Employees with serious health conditions for up to 120 calendar days in a rolling twelve-month period. Salary continuation is available once a Full-Time Employee remains out of work for a period of personal illness or injury of at least seven calendar days, and pays such employees 60% of their regular rate of pay. The BSA funds the Salary Continuation for Medical Leave.

41. The Short-Term Disability Insurance complements the Salary Continuation for Medical Leave and replaces a portion of an eligible party's compensation for up to seventeen (17) weeks when such party is unable to work due to a non-work related injury or illness. The

Short-Term Disability Insurance applies after seven days of disability, at which time eligible BSA Employees are paid 25% of their pre-disability earnings, with a minimum weekly benefit of $25.00 and a maximum of $2,500. The Short-Term Disability Insurance is fully funded by premium payments made by the BSA Employee on an after-tax basis, which are made through Deductions.

42. The Long-Term Disability Insurance replaces a portion of the eligible BSA Employee's compensation when such employee is unable to work due to a non-work related injury or illness. The Long-Term Disability Insurance applies after 120 days and pays BSA Employees 60% of their monthly pre-disability pay, up to a maximum of $22,500 per month, until they recover or reach normal retirement age. The BSA funds the Long-Term Disability Insurance.

43. The Debtors pay Unum and Metlife approximately $20,100 and $120,300 per month, respectively, in premiums and administrative fees in connection with the Disability Insurance. As of the Petition Date, the Debtors owe approximately $55,000 to Unum and $145,000 to Metlife on account of premiums and related administrative fees in connection with the Disability Insurance, of which up to $170,000 is estimated to come due in the Interim Period and up to $200,000 in the aggregate on a final basis. The Debtors are requesting authority to pay up to $170,000 in the aggregate under the Proposed Interim Order and up to $200,000 on a final basis, and to continue honoring such obligations postpetition in the ordinary course and consistent with their prepetition practices.

F. Workers' Compensation Program

44. Under applicable state laws, the Debtors are required to (i) provide the BSA Employees with workers' compensation insurance coverage for claims arising from or related to their employment (the "Workers' Compensation Program") and (ii) satisfy the Debtors'

obligations to insurers, third party administrators, state funds, and/or the BSA Employees, including, without limitation, all premiums, charges, claims, deductibles, retentions, administrative fees and all other obligations relating to the Workers' Compensation Program (the "Workers' Compensation Obligations"). The Debtors maintain two insurance policies with Twin City Fire Insurance Company and Property/Casualty Insurance Co. of Hartford on account of the Workers' Compensation Program, which are maintained to cover claims in Wisconsin and all of the remaining states in which the Debtors operate, respectively (including those states in which there is state-mandated workers' compensation insurance fund coverage). The Debtors are required to pay monthly insurance premium installments in respect of the state programs in order to pay workers' compensation claims as they are adjudicated.

45. The Debtors estimate that they pay, on average, approximately $32,000 per month in Workers' Compensation Obligations. As of the Petition Date, there are approximately 26 pending claims under the Workers' Compensation Program, which the Debtors estimate aggregate to a total liability of approximately $422,000.

46. The Debtors employ ESIS Inc. as a third-party administrator to investigate, administer, and pay claims arising under the Workers' Compensation Program (the "Third-Party Administrator"). For those claims arising under the Debtors' Workers' Compensation Program that total $10,000 or less, the Third-Party Administrator will pay the appropriate party and request repayment from the BSA. For claims totaling more than $10,000, the Third-Party Administrator will submit a "large loss" invoice to the BSA, and once the BSA funds the invoice, the Third-Party Administrator will release the payment to the claimant. The Third-Party Administrator also provides loss prevention services and certain other administrative and advisory services.

47. By this Motion, the Debtors are requesting authority to (i) continue and maintain the Workers' Compensation Program in the ordinary course, (ii) pay any obligations arising under or in connection with the Workers' Compensation Program—including all accrued but unpaid prepetition amounts related to the Workers' Compensation Program during the Interim Period and on a final basis, workers' compensation claims, settlements, assessments, and other obligations, and the posting of any collateral in connection therewith, (iii) modify the automatic stay to allow the BSA Employees to assert claims under the Workers' Compensation Program to the extent applicable, and (iv) continue honoring their obligations to the Third-Party Administrator in the ordinary course, including paying any administrative fees that may be due and owing as of the Petition Date or that come due and owing during these chapter 11 cases.

G. Non-Insider Severance Program

48. In the ordinary course of their operations, the Debtors maintain a severance program for the benefit of BSA Employees who have been terminated without cause (the "Non-Insider Severance Program"). The Non-Insider Severance Program compensates eligible BSA Employees for the financial disruption caused by the Debtors' termination of their employment. Upon termination, eligible BSA Employees are entitled to receive ongoing payments equal to one week of their base salary for each year of service, up to a maximum of 26 weeks' base salary. Additionally, as of the Petition Date, the Debtors owe approximately $15,000 in severance to one former non-insider BSA Employee. By this Motion, the Debtors are requesting authority, solely upon entry of the Proposed Final Order, to (i) pay up to $20,000 on account of prepetition Non-Insider Severance Program and other severance obligations in the ordinary course, and (ii) continue the Non-Insider Severance Program in the ordinary course as such program was in effect prepetition, and (iii) to pay any benefits under the Non-Insider Severance

Program to BSA Employees who are not "insiders" as such term is defined by section 101(31) of the Bankruptcy Code.[23]

H. Retirement Plans

49. The Debtors offer two retirement plans (the "Retirement Plans") to Full-Time and Seasonal BSA Employees, which are described in further detail below.

1. Pension Plan

50. Certain of the Full-Time BSA Employees with at least one year of service[24] and Retirees participate in a defined benefit pension plan (the "Pension Plan"), originally established by the BSA in 1938. The Pension Plan is a qualified retirement plan subject to sections 401(a)(17) and 415 of the Internal Revenue Code. Entry into the Pension Plan was frozen on December 31, 2018, and no BSA Employees have been permitted to become active participants under the Pension Plan after such date.

51. On and after January 1, 2019, the Pension Plan was amended to become a two-tiered plan. Pursuant to the amendment, "grandfathered employees" with fifteen (15) years of service and age plus service equal to sixty (60) years were permitted continue to participate in the Pension Plan, while "non-grandfathered employees" were automatically enrolled into the Match Savings Plan described and defined below. There are currently approximately 289 "grandfathered" BSA Employees participating in the Pension Plan. These BSA Employees are required to contribute 4.25% of their salary to the Pension Plan, while the BSA makes discretionary contributions. The BSA spends 7.75% of each eligible BSA Employee's wages on retirement-related costs, which is first used to satisfy obligations under the Match Savings Plan

[23] Prior to the Petition Date, the Debtors offered an annual incentive program (the "AIP") designed to maximize and enhance certain BSA Employee performance based on achieving certain annual target metrics. For the avoidance of doubt, the Debtors are not seeking any relief related to the AIP pursuant to this Motion.

[24] Employees hired on or before May 31, 2004 working 21 or more hours per week are also eligible.

(described and defined below), followed by administrative costs with respect to the Pension Plan, with the remainder contributed to the Pension Plan. Approximately 1,200 Retirees and beneficiaries participate in the Pension Plan.

52. For the 2019 plan year, the BSA contributed approximately $3.0 million to the Pension Plan on behalf of the BSA Employees and Retirees and made an additional contribution of $60 million. Total BSA Employee contributions to the Pension Plan in the 2019 plan year were approximately $1.14 million. The BSA's total administrative and actuarial fees related to the Pension Plan in 2019 were approximately $775,000. As of the Petition Date, the Debtors have withheld but not yet remitted approximately $70,000 in BSA Employee contributions to the Pension Plan, and owe approximately $140,000 on account of employer contributions. The Pension Plan is managed by the BSA and is administered by Morneau Shepell. As of the Petition Date, the Debtors owe approximately $230,000 to Morneau Shepell and other Pension Plan advisors on account of administrative fees, all of which is estimated to become due and owing during the Interim Period. By this Motion, the Debtors are requesting authority to (i) remit unpaid prepetition BSA Employee contributions to the Pension Plan of up to $70,000 on an interim and final basis, (ii) remit up to $140,000 on account of employer contributions on an interim and final basis as part of the Employer Matching Obligations described and defined below, and (iii) pay up to $230,000 of administrative fees on an interim and final basis.

2. Match Savings Plan

53. The BSA sponsors a 403(b) defined contribution retirement plan, which is available to employees of exempt organizations and is similar to a 401(k) retirement plan (the "Match Savings Plan"). All eligible BSA Employees may enroll in the Match Savings Plan, which enables the BSA Employees to make pre-tax Deductions up to limits set by the Internal Revenue Code.

54. As of the Petition Date, approximately 1,050 current BSA Employees participate in the Match Savings Plan. Each month the Debtors deduct and withhold approximately $440,000 in Employee Contributions for the Match Savings Plan. The Match Savings Plan is managed by Fidelity Workplace Services. As is customary, Fidelity Workplace Services makes deductions from participants' Match Savings Plan funds in respect of administrative fees (the "Fidelity Administrative Fees"). The Debtors disburse the Employee Contributions and Employer Matching Obligations (as defined below) from their operating account within one week after the applicable payroll date. As of the Petition Date, the Debtors have withheld but not yet remitted approximately $50,000 on account of Employee Contributions for the prepetition period.

3. Employer Matching Obligation

55. The Debtors have a limited matching program under the Pension Plan and Match Savings Plan (the "Employer Matching Obligation"). For "grandfathered" BSA Employees receiving benefits under the Pension Plan, the BSA matches 50% of Employee Contributions up to 6% of pay. With respect to non-grandfathered BSA Employees under the Match Savings Plan, the BSA makes an automatic contribution of 1.75% of a BSA Employee's pay regardless of whether a BSA Employee makes an Employee Contribution, and matches 100% of Employee Contributions up to 6% of pay. The Debtors paid approximately $6.5 million in 2019 on account of the Employer Matching Obligation. As of the Petition Date, the Debtors estimate that they owe approximately $180,000 on account of the Employer Matching Obligation with respect to the Retirement Plans, all of which will become due and owing in the Interim Period.

56. Many of the BSA Employees' sole or primary source of retirement savings consist of the amounts they have saved and received pursuant to the Retirement Plans. Further, many of the BSA Employees choose to participate in the Match Savings Plan because of the

Employer Matching Obligation. Continuing the Employer Matching Obligation is essential to maintaining BSA Employee morale and protecting the expectations of the BSA Employees. In addition, the Debtors assert that the Employee Contributions are generally held in trust by the Debtors and are not property of their estates. Accordingly, the Debtors are requesting authority to pay all of the outstanding Employer Matching Obligations and any unpaid Fidelity Administrative Fees on an interim and final basis, and to continue honoring such obligations postpetition in the ordinary course and consistent with their prepetition practices.[25]

I. PTO and Other Leave Programs

57. Pursuant to the Debtors' paid time-off ("PTO") policy as of the Petition Date, which combines vacation, sick days, and any other personal time off, Full-Time BSA Employees are paid their regularly scheduled wages for each day of PTO up to the maximum number of days accrued based on years of service, which ranges from 24 to 36 days per year. The PTO policy also provides that for BSA Employees terminating their employment with the Debtors, accrued and unused vacation days are monetized and paid to such BSA Employees in cash. In general, PTO in excess of ten days at the end of a calendar year is not eligible to be carried over to the next year, unless required by applicable state law. Part-time Employees of the BSA may be eligible for PTO benefits only as required by applicable state and local laws.

58. The Debtors estimate that, as of the Petition Date, the aggregate value of accrued but unpaid PTO is approximately $3.85 million were it to be fully monetized. However, because PTO is typically not monetized until a BSA Employee's termination, the Debtors do not

[25] Prior to the Petition Date, the Debtors also offered: (i) a non-qualified defined benefit retirement plan under section 457(f) of the Internal Revenue Code that provided supplemental retirement benefits to certain Retirement Plan participants whose compensation exceeded the annual compensation limit (the "Restoration Plan"); and (ii) a non-qualified deferred compensation plan offered under section 457(b) of the Internal Revenue Code (the "457(b) Plan"). For the avoidance of doubt, the Debtors are not seeking any relief related to the Restoration Plan or the 457(b) Plan at this time.

currently owe any cash amounts on account of accrued but unpaid PTO. Pursuant to this Motion, the Debtors are requesting authority to (i) honor the BSA Employees' ordinary course use of PTO under the PTO policy in existence as of the Petition Date, whether accrued pre- or postpetition, without regard to statutory cap imposed by section 507(a)(4) of the Bankruptcy Code, and (ii) modify the PTO policy to pay the value of accrued PTO to any of the BSA Employees terminated on or after the Petition Date up to the cap imposed by section 507(a)(4) of the Bankruptcy Code.

59. The Debtors also provide for the BSA Employees to take the following categories of leave under certain circumstances: (i) Family and Medical Leave Act, (ii) personal leave, (iii) military caregiver leave, (iv) uniformed services leave, (v) bereavement leave, and (vi) civic duty leave for jury duty or appearing in court as a witness (collectively, "Other Leave"). By this Motion, the Debtors are requesting authority to maintain their Other Leave programs for BSA Employees in the ordinary course of their operations.

J. Other Benefits Programs

60. The Debtors also provide the following additional Employee Benefits Programs to certain eligible BSA Employees (collectively, the "Other Benefits Programs"):

- **Vehicle Program**. The Debtors provide leased vehicles to certain executives, regional directors, and various other BSA Employees (the "Vehicle Program"). The Debtors pay Automotive Rentals Inc. ("Automotive Rentals") approximately $45,000 per month on account of the Vehicle Program. As of the Petition Date, the Debtors estimate that they owe approximately $90,000 to Automotive Rentals for leased vehicles on account of BSA Employees.

- **125 Plan**. The Debtors offer the 125 Premium Only Plan (the "125 Plan") to active eligible BSA Employees. Through the 125 Plan, eligible BSA Employees can reduce their taxable income by subtracting such employees' cost for coverage under certain Employee Benefits Programs from a BSA Employee's salary before taxes are calculated.

- **Employee Assistance Program**. BSA Employees can obtain confidential support for issues such as stress, abuse, alcohol and other drug problems, anxiety, depression, financial or legal concerns, gambling, child and elder care, and relationship issues and concerns (the "Employee Assistance Program"). The program is administered by United. The Debtors make the Employee Assistance Program available to all BSA Employees at no cost for eligible Employees up to a certain number of visits. The cost to the Debtors is included in the administrative fees paid to United.

- **Wellness Program**. The Debtors are in the process of offering a comprehensive wellness program to BSA Employees (the "Wellness Program") through Vitality. The Wellness Program provides incentives for benefit-eligible BSA Employees to improve their health, in the form of points that may be converted to gift cards and other rewards. No amounts are outstanding as of the Petition Date on account of this program.

- **Naturally Slim Program**. The Debtors offer Naturally Slim to BSA Employees, which is a web-based education program focused on improving eating habits, losing weight, and decreasing risk factors that lead to metabolic syndrome (the "Naturally Slim Program"). The Debtors make the Naturally Slim Program available to all BSA Employees at no cost as long as the program requirements are completed. The Debtors pay Naturally Slim approximately $15,000 per month based on the number of BSA Employees in connection with the Naturally Slim Program. As of the Petition Date, the Debtors estimate that they owe approximately $15,000 to Naturally Slim on account of the Naturally Slim Program.

- **Additional Insurance Program.** The Debtors offer additional personal insurance options to their employees, allowing them to purchase additional coverages at a discount through Liberty Mutual (auto, home, renter) and AFLAC (catastrophic injury) (together, the "Additional Insurance Program"). The BSA deducts amounts from participating employee's payroll checks and remits the amounts to the appropriate provider on a monthly basis in arrears. The Debtors pay approximately $25,000 per month to Liberty Mutual and AFLAC on account of the Additional Insurance Program. As of the Petition Date, the Debtors estimate that they owe approximately $25,000 to Liberty Mutual and AFLAC on account of the Additional Insurance Program.

- **Professional Services.** The Debtors offer financial planning and advisory and tax planning services to certain BSA Employees (the "Professional Services"). The BSA pays for the Professional Services on behalf of the participating BSA Employees, and such employees are then taxed for these services through payroll deductions. As of the Petition Date, no amounts are outstanding on account of this program.

As of the Petition Date, the Debtors estimate that they owe approximately $130,000 in connection with the Other Benefits Programs, and are requesting authority to pay up to this entire amount during the Interim Period and on a final basis. The Debtors are requesting authority to continue the Other Benefits Programs in the ordinary course on a postpetition basis.

BASIS FOR RELIEF

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Programs.

A. Certain Compensation and Benefits Programs Are Entitled to Priority Treatment.

61. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits Programs owed to the BSA Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (i) wages, salaries, or commissions, including sick leave pay earned by an individual and (ii) contributions to an employee benefit plan). Thus, granting the relief sought herein should only affect the timing of certain payments to the BSA Employees, and does not negatively affect recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Compensation and Benefits Programs at this time enhances value for the benefit of all interested parties. See In re Equalnet Commc'ns Corp., 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.").

B. Payment of Certain Compensation and Benefits Programs Is Required by Law.

62. The Debtors are requesting authority to pay the applicable Withholdings to the appropriate third-party entities. These amounts principally represent BSA Employee earnings that taxing authorities, BSA Employees, and judicial authorities have designated for deduction from the BSA Employees' paychecks. Indeed, certain Withholdings are not property of the Debtors' estates because the Debtors withhold such amounts from the BSA Employees' paychecks on another party's behalf. See 11 U.S.C. §§ 541(b)(1), (d); see also Begier v. I.R.S., 496 U.S. 53, 59 (1990) (holding that "[b]ecause the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate'" (citation omitted)).

63. Further, federal and state laws require the Debtors to withhold certain tax payments from the BSA Employees' paychecks and pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); see also City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); In re DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes); In re Chabrand, 301 B.R. 468, 475–81 (Bankr. S.D. Tex. 2003) (same). Because the Withholdings may not be property of the Debtors' estates, the Debtors are requesting that the Court authorize them to transmit, or direct Paychex to transmit, the Withholdings on account of the BSA Employees to the proper parties in the ordinary course.

64. Similarly, pursuant to applicable state laws, the Debtors are required to maintain a Workers' Compensation Program to ensure prompt and efficient payment of applicable claims.

If the Debtors fail to maintain the Workers' Compensation Program, they may be prohibited by law from operating in those states without making significant adjustments or risk fines and other penalties. Accordingly, the Debtors submit that the continuance of the Workers' Compensation Program on an uninterrupted basis and the payment of any prepetition obligations thereunder in the ordinary course of business is crucial to the Debtors' ongoing restructuring efforts and preservation of the estates' value.

II. Debtors May Honor and Pay the Compensation and Benefits Programs in the Ordinary Course of Operations.

65. The ability to compensate the BSA Employees, Independent Contractors, and Temporary Workers (through Staffing Agencies) in the ordinary course of operations is necessary to facilitate the Debtors' reorganization and is authorized under section 363(c) of the Bankruptcy Code, which provides that a debtor in possession may continue to operate in the ordinary course. See 11 U.S.C. § 363(c)(1) (providing that, so long as "the business of the debtor is authorized to be operated under [section 1108 of the Bankruptcy Code] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business, without notice or a hearing"); 11 U.S.C. § 1108 (providing that a debtor in possession, as trustee, may operate the debtor's business unless a court orders otherwise). As discussed above, the BSA Employees are vital to the Debtors' organization and the fulfillment of their charitable mission. Over 60 percent of the BSA Employees have worked for the BSA for at least five years, and have indispensable skills and understanding of the unique nature of the BSA organization. The BSA Employees fulfill a diverse range of needs across the BSA, which range from operating a series of high adventure facilities that annually accommodate over 70,000 participants, to managing the Debtors' large

scale retail sales operations and wholesale supply chain across approximately 175 Scout Shops nationwide. Accordingly, sufficient cause exists to allow the Debtors to maintain and pay Employee Compensation and Benefits on a post-petition basis in the ordinary course.

III. Payment of the Prepetition Employee Obligations Is a Sound Exercise of the Debtors' Business Judgment and Is in the Best Interests of the Debtors' Estates.

66. The payment of the Prepetition Employee Obligations and the maintenance of the Compensation and Benefits Programs on a post-petition basis are in the best interests of the Debtors' estates and these actions are authorized under sections 363(b) and 105(a) of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors, as debtors in possession, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Moreover, the "fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs." NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984). The payment of the Prepetition Employee Obligations requested in this Motion, as well as the continued payment of the Compensation and Benefits Programs on a postpetition basis, is in the interest of all parties because such payments will facilitate the continued operation of the Debtors' organization, help implement the restructuring contemplated under the Plan and thereby avoid liquidation of the estates, and preserve the organization's going-concern value. See In re Lehigh & N.E. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981).

67. Consistent with a debtor in possession's fiduciary duties and the overriding purpose of reorganization under chapter 11, courts have authorized the payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. See 11 U.S.C. § 363(b)(1) (allowing the debtor to "use, sell, or lease, other than in

the ordinary course of business, property of the estate" upon order of the court); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (requiring debtor to show a "sound business purpose" to justify use of assets under section 363 of the Bankruptcy Code); see also In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing debtor's payment of prepetition claims as necessary to protect debtor's business). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions . . . courts will generally not entertain objections to the debtor's conduct." In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); see also In re Tower Air, Inc., 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

68. Additionally, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), and supports the Court's ability to authorize the Debtors to pay the Prepetition Employee Obligations. A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, 98 B.R. at 175. Federal courts have consistently permitted the postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport C. & S.W.R. Co., 106 U.S. 286, 311–12 (1882) (permitting payment of a pre-receivership claim prior to reorganization to prevent "stoppage of [crucial] business relations"); In re Lehigh & N.E. Ry. Co., 657 F.2d at 581; In re Just for Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) ("The Supreme Court, the Third Circuit and the District

of Delaware all recognize the court's power to authorize payment of prepetition claims when such payment is necessary for the debtor's survival during chapter 11.").

69. This "doctrine of necessity" functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not expressly authorized by the Bankruptcy Code. See, e.g., In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the doctrine of necessity "permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid"); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business). The doctrine is frequently invoked early in a reorganization, particularly in connection with the provisions of chapter 11 relating to the payment of prepetition claims. Where the payment of prepetition claims "is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately," courts have authorized such payments pursuant to section 105(a). In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (internal quotation marks omitted). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

70. The Debtors submit that the requested relief is a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. As addressed above, any interruption or failure by the Debtors to pay the Prepetition Employee Obligations or maintain the Compensation and Benefits Programs and pay related administrative obligations during these

chapter 11 cases would jeopardize the Debtors' relationship with the BSA Employees, Temporary Workers, and Independent Contractors and, in turn, adversely impact morale and prompt valuable members of the Debtors' workforce to seek employment elsewhere. At this early stage in the Debtors' cases, the Debtors simply cannot risk the substantial and potentially irreparable damage to the BSA organization that would accompany any failure to pay the Prepetition Employee Obligations or pay the Compensation and Benefits Programs in the ordinary course during these chapter 11 cases. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

71. For the reasons discussed herein, in the overwhelming majority of large organizational chapter 11 filings, including in this District, courts have approved payment of employee prepetition claims for, and continued maintenance of, employee compensation and benefits similar to those described herein.[26] Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay the Prepetition Employee Obligations and to continue funding the Compensation and Benefits Programs on a post-petition basis in the ordinary course and consistent with prepetition practices.

IV. The Non-Insider Severance Program Is a Reasonable and Sound Exercise of the Debtors' Business Judgement.

A. The Non-Insider Severance Program Is Authorized Under Section 363(c)(1) of the Bankruptcy Code.

72. The Debtors further request that they be authorized to continue to honor the Non-Insider Severance Program in the ordinary course of their organizational operations. The Debtors submit that the Non-Insider Severance Program should be reviewed under section 363(c)(1) of the Bankruptcy Code rather than section 503(c) because the Non-Insider Severance

[26] See, e.g., In re Hexion Holdings LLC, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019), ECF No. 92; In re Checkout Holding Corp., Case No. 18-12794 (KG) (Bankr. D. Del. Dec. 13, 2018), ECF No. 101; In re Mattress Firm, Inc., Case No. 18-12241 (CSS) (Bankr. D. Del. Oct. 9, 2018), ECF No. 177.

Program is a preexisting program that the Debtors have maintained in the ordinary course and desire to continue on a postpetition basis. Further, no insiders are part of the Non-Insider Severance Program. See In re Blitz U.S.A. Inc., 475 B.R. 209, 215 (Bankr. D. Del. 2012) (holding that a prepetition employee incentive plan was an ordinary course transaction made with sound business judgment and in good faith under section 363 of the Bankruptcy Code).

B. The Non-Insider Severance Program Is Authorized Under Sections 363(b) and 503(c)(3) of the Bankruptcy Code.

73. Alternatively, to the extent that the Non-Insider Severance Program is not authorized under section 363(c)(1) of the Bankruptcy Code, the Debtors submit that payment of the Non-Insider Severance Program is also authorized under sections 363(b) and 503(c) of the Bankruptcy Code. Importantly, because the Debtors do not propose to pay any insiders on account of the Non-Insider Severance Program, such program is not subject to the heightened standards of sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code. See 11 U.S.C. § 503(c)(1) and (2) (applying only to insiders).

74. Instead, pursuant to section 503(c)(3) of the Bankruptcy Code, the Non-Insider Severance Program only requires a showing that it is "justified by the facts and circumstances of the Debtors' chapter 11 cases." See 11 U.S.C. § 503(c)(3). This standard, in turn, is essentially the same as the business judgment standard that applies under section 363(b) of the Bankruptcy Code. See In re Velo Holdings Inc., 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("Courts have held that the 'facts and circumstances' language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."); In re Glob. Home Prods. LLC, 369 B.R. 778, 783 (Bankr. D. Del. 2007) ("If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.").

75. The Debtors submit that continuing to maintain the Non-Insider Severance Program is a sound exercise of their business judgment and is in the best interests of the estates. The Non-Insider Severance Program is a longstanding component of the Debtors' overall Employee Compensation and Benefits and serves an important objective: protecting BSA Employees against financial hardship in the event of termination. Therefore, the Debtors believe that it is necessary to continue this program—which applies only to BSA Employees who are not "insiders" within the meaning of section 101(31) of the Bankruptcy Code—on a postpetition basis. Courts in this District and others have granted relief similar to that requested herein in other complex chapter 11 cases. See, e.g., In re Insys Therapeutics, Inc., Case No. 19-11292 (KG) (Bankr. D. Del. Sept. 19, 2019), ECF No. 639; In re Mattress Firm, Inc., Case No. 18-12241 (CSS) (Bankr. D. Del. Nov. 7, 2018), ECF No. 757; In re TK Holdings Inc., Case No. 17-11375 (BLS) (Bankr. D. Del. July 26, 2017), ECF No. 330. Accordingly, the Debtors request that the Court authorize the Debtors to continue the Non-Insider Severance Program in the ordinary course of operations, including payment of prepetition obligations related thereto, if any.

V. The Court Should Authorize Banks and Other Financial Institutions to Honor and Pay Checks and Other Transfers Related to the Compensation and Benefits Programs.

76. The Debtors further request that the Court authorize, but not direct, applicable banks and other financial institutions to receive, process, honor and pay any and all checks and wire transfer requests relating to the Compensation and Benefits Programs, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such disbursements. The Debtors represent that each such check or transfer can be readily identified as relating directly to payment of the Compensation and Benefits Programs. Accordingly, the Debtors assert that there is minimal risk that checks or transfer

requests that have not been authorized by the Court will be inadvertently made. Nevertheless, in the interest of ensuring the prompt and efficient payment of the Compensation and Benefits Programs, the Debtors request that the banks be authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid on account of the Compensation and Benefits Programs without any duty of further inquiry and without liability for following the Debtors' instructions.

77. The Debtors also request authorization for, and/or ratification of: (i) their banks' honoring of prepetition checks and transfers on or after the Petition Date in connection with Compensation and Benefits Programs, (ii) banks to process and honor all other checks issued for payments approved by this Motion, and (iii) reissuance of checks, wire transfers, automated clearing house payments, electronic payments, or other similar methods of payment authorized by this Motion where the applicable check is dishonored post-petition.

REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

78. Bankruptcy Rule 6003 empowers the Court to issue an order, within 21 days after the Petition Date, granting a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" if such requested relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). For the reasons discussed above, entry of the Proposed Interim Order is integral to the Debtors' ability to successfully transition into chapter 11 without workforce disruptions that would harm their ability to carry out the BSA's charitable mission. As described above, the relief requested is necessary to avoid a severe disruption in the Debtors' operations at this critical juncture and, in turn, preserve the ongoing value of the Debtors' operations and to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they

have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

RESERVATION OF RIGHTS

79. Nothing contained herein is intended or should be construed as (a) an admission as to the validity of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion, the Proposed Interim Order, or the Proposed Final Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease, pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h) REQUIREMENTS

80. In addition, by this Motion, the Debtors seek a waiver of any notice requirements under Bankruptcy Rule 6004(a) and any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the Debtors require immediate relief to continue ordinary organizational operations for the benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

81. Similarly, for the reasons stated above, the Debtors respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent they are deemed applicable.

NOTICE

82. Notice of this Motion will be provided to (i) the U.S. Trustee; (ii) the twenty-five (25) law firms representing the largest numbers of abuse victims asserting claims against the Debtors; (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, other than abuse-related claims; (iv) counsel to JPMorgan Chase Bank, N.A.; (v) the County Commission of Fayette County (West Virginia), as issuer of those certain Commercial Development Revenue Bonds (Arrow WV Project), Series 2010A, 2010B and 2012; (vi) representatives of the prepetition Ad Hoc Committee of Local Councils; (vii) counsel to the prepetition Future Claimants' Representative; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims; (ix) the United States Attorney's Office for the District of Delaware; (x) the Internal Revenue Service; (xi) the United States Department of Justice; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Interim Order and Proposed Final Order, substantially in the forms attached hereto, granting the relief requested herein and any further relief the Court may deem just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: February 18, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Eric W. Moats (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@mnat.com
jbarsalona@mnat.com
emoats@mnat.com
ptopper@mnat.com

– and –

SIDLEY AUSTIN LLP
James F. Conlan (*pro hac vice* pending)
Thomas A. Labuda (*pro hac vice* pending)
Michael C. Andolina (*pro hac vice* pending)
Matthew E. Linder (*pro hac vice* pending)
Blair M. Warner (*pro hac vice* pending)
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Email: jconlan@sidley.com
tlabuda@sidley.com
mandolina@sidley.com
mlinder@sidley.com
blair.warner@sidley.com

– and –

SIDLEY AUSTIN LLP
Jessica C. K. Boelter (*pro hac vice* pending)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Email: jboelter@sidley.com

PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

Proposed Interim Order

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 (___) (Jointly Administered) **Ref. Docket No. __**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order (this "Interim Order"), pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1, (i) authorizing the Debtors to (a) pay their outstanding Prepetition Employee Obligations and (b) maintain their existing Compensation and Benefits Programs, (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The Final Hearing on the Motion shall be held on _____, 2020 at ___:___ __.m., prevailing Eastern Time. Any objections or responses to entry of a final order (the "Final Order") on the Motion shall be filed no later than 4:00 p.m., prevailing Eastern Time, on _____, 2020 (the "Objection Deadline") and served on the following parties: (i) the Debtors, Boy Scouts of America, 1325 West Walnut Hill Lane, Irving, Texas 75038, Attn: Steven P. McGowan; (ii) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Jessica C.K. Boelter, and One South Dearborn, Chicago, Illinois 60603, Attn: Matthew E. Linder; (iii) proposed co-counsel to the Debtors,

Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Derek C. Abbott; (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder and Hannah M. McCollum; (v) counsel to the prepetition Future Claimants' Representative, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert S. Brady and Edwin J. Harron; (vi) counsel to JPMorgan Chase Bank National Association, Norton Rose Fulbright US LLP, 2200 Ross Avenue, Dallas, Texas 75201-7932, Attn: Louis R. Strubeck and Kristian W. Gluck; (vii) representatives of the prepetition Ad Hoc Committee of Local Councils, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Richard G. Mason and Joseph C. Celentino; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims, Pachulski, Stang, Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067, Attn: James I. Stang; (ix) counsel to the County Commission of Fayette County (West Virginia), Steptoe & Johnson PLLC, Chase Tower – 8th Floor, 707 Virginia Street East, Charleston, West Virginia 25301, Attn: John Stump; (x) counsel to any statutory committee appointed in these chapter 11 cases; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002.

3. The Debtors are authorized, but not directed, to (a) pay the Prepetition Employee Obligations (either directly or to third parties for payment or remittance, as applicable), provided that no payment shall be made on account of the Prepetition Employee Obligations in excess of the limits provided for by Bankruptcy Code sections 507(a)(4) or 507(a)(5), other than as provided herein, (b) maintain and continue to honor and pay, in their discretion, amounts with respect to the Debtors' Compensation and Benefits Programs as such were in effect as of the

Petition Date and as such may be modified or supplemented from time to time in the ordinary course, and (c) make all Withholdings, Payroll Taxes, and Deductions relating to the Compensation and Benefits Programs as required by applicable law, up to a maximum aggregate cap of $4,800,000 for all amounts authorized to be paid under this Interim Order. For the avoidance of doubt, the payment of Health Benefit Claims pursuant to the self-insured Medical and Dental Plans and any amounts owed under the Workers' Compensation Program shall be excluded from the cap.

4. The Debtors are authorized, but not directed, to continue to maintain their Compensation and Benefits Programs with respect to the BSA Employees, Retirees, Temporary Workers, and Independent Contractors, provided, that, pending entry of an order granting relief with respect to the Non-Insider Severance Program and other severance obligations, the Debtors shall not pay any such amounts that may become due and owing.

5. The automatic stay is modified, solely to the extent necessary, to authorize, but not direct, the Debtors to permit the BSA Employees to proceed with any valid claims they may have under the Workers' Compensation Program, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors' applicable insurance policies and proceeds from non-debtor sources.

6. Notwithstanding any other provision of this Interim Order, pending entry of a final order, nothing in this Interim Order shall authorize the Debtors to make any cash payment to or on behalf of any BSA Employee on account of wages and other compensation obligations in excess of the statutory caps set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, including cash payment of PTO obligations with respect to any terminated BSA Employees. For the avoidance of doubt, this Interim Order shall have no impact on the Debtors'

ability to honor the BSA Employees' ordinary course use of PTO days in accordance with the PTO policy, whether accrued prepetition or postpetition, nor shall it affect the Debtors' reimbursement of Health Benefit Claims to BSA Employees in excess of the statutory caps.

7. The Debtors are authorized, but not directed, to initiate the Wellness Program and to honor and pay any amounts that may come due, as such may be modified or supplemented from time to time in the ordinary course.

8. Nothing in the Motion or this Interim Order shall be deemed to authorize the payment of any amount in satisfaction of bonus or severance obligations to insiders subject to section 503(c) of the Bankruptcy Code.

9. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or transfers in respect of the payments authorized to be paid pursuant to this Interim Order that are dishonored or rejected.

10. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors'

rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Interim Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

11. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claims held by, any party.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

13. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are waived by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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 (___) (Jointly Administered) **Ref. Docket No. __**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order (this "Final Order"), pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1, (i) authorizing the Debtors to (a) pay their outstanding Prepetition Employee Obligations and (b) maintain their existing Compensation and Benefits Programs, (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing, and, if necessary, at a final hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on a final basis as set forth herein.

2. The Debtors are authorized, but not directed, to (a) pay the Prepetition Employee Obligations (either directly or to third parties for payment or remittance, as applicable), provided that no payment shall be made on account of the Prepetition Employee Obligations in excess of the limits provided for by Bankruptcy Code sections 507(a)(4) or 507(a)(5), other than as provided herein, (b) maintain and continue to honor and pay, in their discretion, amounts with respect to the Debtors' Compensation and Benefits Programs as such were in effect as of the Petition Date and as such may be modified or supplemented from time to time in the ordinary course, and (c) make all Withholdings, Payroll Taxes, and Deductions relating to the

Compensation and Benefits Programs as required by applicable law, up to a maximum aggregate cap of $5,090,000 for all amounts authorized to be paid under this Final Order. For the avoidance of doubt, the payment of Health Benefit Claims pursuant to the self-insured Medical and Dental Plans and any amounts owed under the Workers' Compensation Program shall be excluded from the cap.

3. The Debtors are authorized, but not directed, to continue to maintain their Compensation and Benefits Programs with respect to the BSA Employees, Temporary Workers, and Independent Contractors.

4. The automatic stay is modified, solely to the extent necessary, to authorize, but not direct, the Debtors to permit the BSA Employees to proceed with any valid claims they may have under the Workers' Compensation Program, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors' applicable insurance policies and proceeds from non-debtor sources.

5. The Debtors are authorized, on a final basis, to continue the Non-Insider Severance Program and to make payments on account of such program and other severance obligations.

6. Nothing in the Motion or this Final Order shall be deemed to authorize the payment of any amount in satisfaction of bonus or severance obligations to insiders subject to section 503(c) of the Bankruptcy Code.

7. Notwithstanding any other provision of this Final Order, nothing in this Final Order shall authorize the Debtors to make any payment to or on behalf of any BSA Employee, Temporary Worker, or Independent Contractor on account of wages and other compensation obligations in excess of the statutory caps set forth in section 507(a)(4) and 507(a)(5) of the

Bankruptcy Code, including cash payment of PTO obligations with respect to any terminated BSA Employees. For the avoidance of doubt, this Final Order shall have no impact on the Debtors' ability to honor the BSA Employees' ordinary course use of PTO days in accordance with the PTO policy, whether accrued prepetition or postpetition, nor shall it affect the Debtors' reimbursement of Health Benefit Claims to BSA Employees in excess of the statutory caps.

8. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Final Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or transfers in respect of the payments authorized to be paid pursuant to this Final Order that are dishonored or rejected.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Final Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a

waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

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 (___) (Joint Administration Requested)

DECLARATION OF BRIAN WHITTMAN IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS

Brian Whittman, being duly sworn, states the following under penalty of perjury:

1. I am a Managing Director at Alvarez & Marsal North America, LLC ("A&M"), a limited liability corporation, which has served as a restructuring advisor to the Boy Scouts of America (the "BSA") and Delaware BSA, LLC ("Delaware BSA"), the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), since October 2018. I have twenty-five years of financial restructuring and bankruptcy experience.[2] I have served as a Managing Director in A&M's Restructuring & Turnaround group since 2008 and the group's co-head of the Midwest region since 2019. During my tenure at A&M I also served as interim chief financial officer of Horizon Global in 2018–19, chief restructuring officer of UCI International in 2016, and interim chief financial officer of PSAV, Inc. in 2014. Prior to joining A&M in 2002, I spent seven years working as a director in restructuring at a former "Big Five" accounting firm.

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] For the past twenty-five years I have advised companies requiring performance improvement or financial restructuring across a wide range of industries, including automotive, communications, distribution, manufacturing, media, mining and retail. I have also led complex engagements for companies, secured lenders and creditors, serving in both interim management and advisory roles. I am a Certified Insolvency and Restructuring Advisor and a Certified Public Accountant.

2. On the date hereof (the "Petition Date"), both of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). As the lead Managing Director at A&M responsible for this engagement since August 2019, I had a lead role in preparing the Debtors' chapter 11 filings, developing the Debtors' business plans, and providing diligence to and negotiating with certain of the Debtors' key constituencies. In doing so, I have familiarized myself with the Debtors' day-to-day operations, financial affairs, and books and records through review of certain financial documents and discussions with management.

3. To enable the Debtors to minimize the adverse effects of the commencement of the chapter 11 cases on their non-profit operations, the Debtors are requesting various types of relief in certain "first day" pleadings (each, a "First Day Motion" and collectively, the "First Day Motions"). The First Day Motions seek relief aimed at, among other goals, (a) obtaining authorization to utilize cash collateral on a post-petition basis; (b) preserving certain customer, Scout, and donor programs and other prepetition practices and honoring related obligations; (c) maintaining vendor confidence; (d) ensuring the continued payment of employee wage and benefits obligations; (e) ensuring that the Debtors' ability to continue to use their prepetition cash management systems without interruption; (f) obtaining authorization to continue to perform under certain essential shared services arrangements and services agreements with certain of the Debtors' non-debtor affiliates and related entities; (g) establishing certain administrative procedures to facilitate a seamless transition into chapter 11; and (h) promoting the efficient and expedited global resolution of claims. The achievement of the aforementioned goals will be critical to the success of these chapter 11 cases and the Debtors' reorganization efforts.

4. I submit this declaration (the "Declaration") in support of the First Day Motions. I am authorized to submit this Declaration on behalf of each of the Debtors. I am familiar with the contents of each First Day Motion, and I believe that the relief sought therein (a) is necessary to ensure the Debtors' continued capability to carry out the mission of the BSA and (b) is integral to the successful reorganization of the Debtors.

5. Except as otherwise stated in this Declaration, all facts set forth herein are based on my personal knowledge, materials provided by, or my discussions with, members of the Debtors' management team, information provided by the Debtors' advisors, or information obtained from my personal review of relevant documents.[3] Additionally, the views asserted in this Declaration are based upon my experience and knowledge of the Debtors' operations, financial condition, and liquidity. If called upon to testify, I would competently testify to the facts set forth herein.

PRELIMINARY STATEMENT

6. The BSA is a non-profit corporation founded in 1910 and chartered by an act of Congress on June 15, 1916. The BSA's mission is to train youth in responsible citizenship, character development, and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older age levels, career-oriented programs in partnership with community organizations. I understand that, since its inception 110 years ago, more than 130 million Americans have participated in the BSA's youth programs and more than 35 million volunteers have helped carry out the BSA's mission. Today, the BSA remains one of the largest youth organizations in the United States and one of the largest Scouting organizations in the

[3] Certain information set forth herein relates to matters (a) contained in the Debtors' books and records and (b) within the knowledge of other A&M employees, and is based on information provided by such employees.

world, with approximately 2.2 million registered youth participants and approximately 800,000 adult volunteers as of December 2019.

7. As has been widely reported, the BSA is currently a defendant in numerous lawsuits relating to historical acts of sexual abuse in its Scouting programs. I understand that there are currently approximately 275 lawsuits pending in state and federal courts across the United States asserting abuse-related claims against the BSA. In addition, attorneys for abuse victims have provided information asserting approximately 1,400 additional claims that have not yet been filed, for a total of approximately 1,700 known asserted abuse claims. Based on my review of the relevant data, approximately 90% of these pending and asserted claims relate to abuse that occurred over thirty years ago.

8. The number of abuse claims asserted against the BSA has sharply increased in recent years, an increase which I understand to coincide with a trend of states' enacting legislation to allow victims of sexual abuse to assert claims that would previously have been barred by applicable statutes of limitations. The recent increase in the number of abuse claims filed against the BSA has placed tremendous financial pressure on the organization. The BSA spent more than $150 million on settlements and legal and related professional costs from 2017 through 2019 alone. In view of these developments, the BSA determined that it could not continue to address abuse litigation in the tort system on a case-by-case basis without jeopardizing its capability to carry out its mission. In late 2018, the BSA retained legal and financial advisors, Sidley Austin LLP and A&M, respectively, to explore strategic options for achieving a global resolution of abuse claims.

9. The Debtors explored certain restructuring options throughout 2019. As discussed in detail below and in the *Debtors' Informational Brief*, filed concurrently herewith

(the "Informational Brief"), these options included efforts by the Debtors to reach a global settlement with a substantial number of abuse victims that could be implemented through a prearranged chapter 11 proceeding. These efforts were unsuccessful.

10. Ultimately, the Debtors and their advisors turned their attention to preparing for the commencement of these chapter 11 proceedings. The Debtors' dual objectives in these chapter 11 cases are (a) timely and equitably compensating victims of abuse in Scouting and (b) ensuring that the Debtors emerge from bankruptcy with the capability to continue carrying out its charitable mission. As a non-profit corporation that relies on member fees and donations to sustain its operations, the BSA recognizes that prolonged bankruptcy cases would be costly, would deplete funds available to compensate abuse victims, and would endanger the BSA's capability to continue to carry out its mission after emergence. Accordingly, as discussed below and in the Informational Brief, both prior to and immediately upon the commencement of these cases, the BSA took several decisive steps designed to ensure that these chapter 11 cases would proceed expeditiously. The Debtors believe that, with the measures they have implemented at the outset of these cases, all stakeholders will be well positioned to efficiently work toward a global resolution.

11. Part I of this Declaration provides an overview of the Debtors' non-profit operations and a summary of their prepetition indebtedness. Part II discusses the events and circumstances leading to the commencement of these chapter 11 cases, including an overview of the Debtors' restructuring efforts. Part III sets forth the relevant facts in support of each of the First Day Motions.

PART I
OVERVIEW OF THE BOY SCOUTS OF AMERICA

A. The Boy Scouts of America.

12. The BSA was incorporated in the District of Columbia in 1910 and chartered by Congress in 1916 as a non-profit corporation under Title 36 of the United States Code. I am informed that, as a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. The BSA's mission is "to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law":

- **Scout Oath**: "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight."
- **Scout Law**: "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."

The BSA also trains young men and women in responsible citizenship, character development, and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older ages, career-oriented programs in partnership with community organizations. In support of this mission, the BSA supports and supervises Scouting in the United States, including through its local partners that implement the BSA's Scouting programs. An organizational chart depicting the Debtors and their affiliated and related entities is attached hereto as **Exhibit A**.

13. As discussed in greater detail in Part I.C below, a core function of the BSA is to grant charters to local organizations that deliver the Scouting programs to the youth of America. The BSA's Scouting programs include Cub Scouts for children in kindergarten through fifth grade, Scouts BSA for youth ages 11 to 17, Venturing and Sea Scouts for young men and women

ages 14 to 20, and STEM Scouts for children and young adults in elementary school through high school. These programs and others are discussed in detail in the Informational Brief.

14. Another core function of the BSA is to provide services that are critical to the delivery of high-quality Scouting opportunities. These services include, among other things, providing core program content; procuring and selling uniforms and equipment; maintaining information technology and digital resources; training adult professional and volunteer "Scouters" to serve in Local Councils (as defined below); coordinating Scouting communications and publishing magazines and other periodicals for Scouts, their families, adult leaders and alumni; organizing national Scouting events; operating and maintaining registration systems; and implementing quality control measures. In addition, every four years, the BSA hosts a National Jamboree, where tens of thousands of Scouts gather together to celebrate Scouting, learn about teamwork and leadership, and meet other Scouts from around the country. In 2019, for the first time in more than fifty years, the BSA hosted the World Jamboree, an official educational event of the World Organization of the Scout Movement. The 2019 World Scout Jamboree was the largest World Scout Jamboree ever, attended by more than 45,000 Scouts from 167 countries.

15. The national headquarters of the BSA is located in Irving, Texas. The BSA employs approximately 1,650 individuals, all of whom are located in the United States and its territories. The BSA's employees are located at its headquarters, at the BSA's national warehouse and distribution center in Charlotte, North Carolina, at approximately 175 official BSA Scout Shops located throughout the United States and Puerto Rico and at the BSA's four high adventure facilities located in Florida, Minnesota and parts of Canada, New Mexico, and West Virginia.

16. The BSA is funded by membership fees, donor contributions, legacies and bequests, corporate sponsorships, grants from foundations, and supply sales. In 2019, the BSA's gross revenues were approximately $393 million. Of this total, approximately 30% of gross revenues were attributable to sales of merchandise at Scout Shops, on its website, and directly to Local Councils (as defined below); approximately 16% to membership fees; approximately 15% to high adventure facility operations; approximately 13% to income on investments; approximately 8% from donor contributions, legacies, and bequests; and approximately 8% to event fees.

B. Delaware BSA.

17. The BSA is the sole member of Delaware BSA, a non-profit limited liability company that was incorporated under the laws of Delaware on July 11, 2019. Delaware BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Delaware BSA has pledged substantially all of its assets to secure the obligations of the BSA and Arrow (as defined below) under the Prepetition Secured Agreements and Bond Agreements (each as defined below). Delaware BSA's principal asset is a depository account located in Delaware.

C. Local Councils and Chartered Organizations.

18. To carry out its Scouting programs, the BSA has granted charters to 261 local councils assigned to specific geographic areas across the United States (collectively, "Local Councils"). I understand that each Local Council (a) is separately incorporated under the non-profit laws of its respective state, (b) is exempt from federal income tax under section 501(c)(3)

of the Internal Revenue Code, and (c) has an independent board of directors[4] and senior management. None of the Local Councils are debtors in these chapter 11 cases.

19. The primary function of Local Councils is to recruit and oversee the local organizations that administer the BSA's Scouting programs and to own and operate local camp grounds that are part of delivering the BSA's outdoor programing. In particular, Local Councils lead the effort to partner with local organizations to sponsor units of Scouts and adult leaders involved in Scouting. These organizations (collectively, "Chartered Organizations") are typically faith-based institutions, clubs, civic associations, educational institutions, businesses, and groups of citizens. Chartered Organizations, in turn, form Scouting units — referred to as "packs" for Cub Scouts, "troops" for Scouts BSA (formerly known as Boy Scouts), "crews" for Venturing, "ships" for Sea Scouts, "labs" for STEM Scouts, and "posts" for Exploring. Chartered Organizations assist with the recruitment of adult leaders and other volunteers and provide meeting spaces and other monetary and in-kind support to the packs and troops that they sponsor. Scouting units are led by adult volunteers appointed by their affiliated Chartered Organization. There were approximately 81,000 Scouting units in the United States as of December 2019.

20. A corps of qualified and trained professional Scouters and volunteers is essential to the ability of Local Councils to carry out the BSA's mission. Accordingly, each Local Council is led by adult volunteers and paid professional Scouters, including a professional Scout executive, a volunteer council president and a volunteer council commissioner. These positions are referred to within Scouting as the "Key 3." These personnel manage the day-to-day operations of the Local Councils, including coordinating the recruitment of new chartered

[4] In certain instances, one or more directors of a local council may also serve as a director of the BSA's National Executive Board (the "Board").

organizations, leading fundraising efforts, maintaining program facilities, enforcing the BSA's policies, rules, and regulations on a local level, and numerous other important services

21. Local Councils generally do not receive financial support from the BSA; instead, they rely upon their own fundraising through donations, product sales, special events, and corporate gifts. The BSA does, however, use its national reach and resources to provide certain corporate and administrative support to Local Councils in exchange for certain fees and reimbursements, as well as for the assistance of Local Councils in collecting membership fees and delivering the Scouting mission. This support includes, among other things, general insurance liability coverage, human resources, access to training facilities, and marketing services. Additional details regarding shared services between the BSA, Local Councils, and other related entities are set forth in Part III below.

22. Although not a precise analogue, the relationship between the BSA and the Local Councils is similar to that of a franchisor and franchisee. The BSA is responsible for developing and disseminating the structure and content of the Scouting program, owns and licenses intellectual property, and provides training and support services, including corporate services such as human resources, legal functions, and information technology. The BSA, in addition to holding the power to grant charters to Local Councils, may also revoke a Local Council's charter for failing to meet national standards. Local Councils, for their part, play a key role in delivering the Scouting programs. Local Councils also serve the vital function of collecting member fees and remitting such funds to the BSA. Each of these Local Councils is crucial to the BSA's ability to carry out its mission.

D. Related Non-Debtor Entities.

23. In addition to Local Councils and Chartered Organizations, the BSA also has several subsidiaries and maintains affiliate relationships with several non-stock, non-profit

entities. The subsidiaries of the BSA and affiliated entities with material assets or operations are described below.[5] None of the entities described below are debtors in these chapter 11 cases.

1. BSA Asset Management, LLC.

24. BSA Asset Management, LLC ("BSAAM") is a Delaware limited liability company of which the BSA is the sole member. The BSA receives investment management and advisory services from BSAAM, which provides the BSA and certain of the BSA's Related Non-Debtor Entities with discretionary oversight and management of their long-term assets (the "BSAAM Services"). Such services include the management of the BSA's and certain Local Councils' investments through the BSA Commingled Endowment Fund, LP (the "Partnership"),[6] a Delaware limited partnership of which BSAAM is the general partner. BSAAM charges to and directly collects fees from the Partnership for such investment services. In addition to its role as general partner of the Partnership, BSAAM is also the settlor of the BSA Endowment Master Trust (the "Endowment Trust").

25. In addition, I am informed that BSAAM generally oversees the management of the funds making up the various benefits programs and trusts of the BSA, along with providing management and investment services for the BSA's unrestricted endowment and donations to the BSA.[7] BSAAM provides these services for the BSA's various benefits, trusts, and unrestricted endowment pursuant to that certain *Letter of Agreement* between the BSA and BSAAM, dated as

---

5 In addition to the entities listed in Part I.D, additional entities affiliated with the BSA include NewWorld 19, LLC ("NewWorld"), which was formed in connection with the 2019 World Jamboree, and Texas BSA, LLC ("Texas BSA"), a non-profit limited liability company that was incorporated under the laws of Texas on July 12, 2019. The BSA is the sole member of Texas BSA. As of the Petition Date, NewWorld and Texas BSA are inactive entities.

6 The BSA and certain Local Councils are limited partners of the Partnership. Each limited partner receives units of partnership interest in proportion to, and in exchange for, its financial contributions to the Partnership.

7 These include the BSA Employee Welfare Benefits Trust, BSA Retirement Benefits Trust, and BSA Master Pension Trust (each as defined below).

of May 9, 2011 (the "BSAAM Agreement"), which sets forth a fee schedule for BSAAM's services, charged monthly. Under the terms of the BSAAM Agreement, the BSA performs certain payroll, benefits, insurance, travel and other miscellaneous cost-related services for BSAAM. BSAAM has an investment staff of four (4) BSA employees who provide services to BSAAM. Historically, the BSAAM Agreement has facilitated an efficient means of managing the BSA's assets and investments on a consolidated basis.

26. On average, the BSA pays approximately $50,000 per month on behalf of BSAAM pursuant to the terms of the BSAAM Agreement. In 2019, the total amount charged to the BSA by BSAAM on account of the BSAAM Services was approximately $591,000.

2. BSA Endowment Master Trust.

27. The Endowment Trust is a trust established under the laws of Delaware exclusively for the purpose of investing funds contributed to the Partnership by the BSA and participating Local Councils. I understand that the Endowment Trust is a multiple pooled account trust arrangement established to provide economies of scale and efficiency of administration to eligible entities that elect to invest their funds in the Endowment Trust. Global Trust Co. is the trustee of the Endowment Trust as of the Petition Date. In addition, the Endowment Trust is also a limited partner of the Partnership.

3. National Boy Scouts of America Foundation.

28. The National Boy Scouts of America Foundation (the "Foundation") is a non-stock, non-profit corporation under the laws of the District of Columbia and exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code and governed by a separate board of directors. The Foundation exists to help secure the future of Scouting at the Local Council level by providing support for major-gift fundraising efforts across the organization. I am informed that the Foundation provides donors with the ability to implement a donor-advised

fund with the BSA, and to specify where each donor would like the funds to be used. Each gift that comes in to the BSA Foundation is charged an administrative or annual fee, which funds the employment of fifteen (15) major gifts directors. These major gifts directors, who are employees of the BSA, are able to provide needed fundraising and major gifts expertise to the Local Councils for an additional fee to the BSA Foundation. I am informed that twenty-five (25) BSA employees, including the fifteen major gifts directors noted above, provide full-time services on behalf of the Foundation.

29. I am informed that the BSA pays the taxes, payroll, benefits, insurance, travel costs, and other miscellaneous operating expenses of the BSA employees that provide full-time services on behalf of the Foundation, and disburses and receives funds on behalf of the Foundation. These costs are allocated back to the Foundation.

30. I have been advised that the Foundation's expertise with philanthropy and major gifts is essential to the BSA's mission and to secure the future of Scouting. The Foundation supports the BSA and Local Councils in their major gift fundraising efforts across the entire organization. The balance of major gifts at the end of 2019 totaled over $73 million. I am informed that the Foundation also manages the distribution of donor-advised funds such as scholarships, funds for rebuilding camps and high adventure facilities including after the occurrence of natural disasters, and funding for major Scouting events such as the National Jamboree. If the Debtors were forced to do without the services of the Foundation, the procurement and management of major gifts and donations would suffer. I understand that these fundraising activities are core to the BSA's survival as a nonprofit corporation and ability to continue to impact approximately 2.2 million participants

4. Learning for Life.

31. Learning for Life is a non-stock, non-profit corporation under the laws of the District of Columbia that is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code and governed by a separate board of directors. The mission of Learning for Life is to empower students to build exceptional character and leadership skills by guiding them through an innovative, research-based curriculum that enhances the learning experience and teaches the skills necessary to succeed both academically and throughout their lives. Learning for Life also administers the Exploring club career education program for young men and women. The Exploring program teaches important life and career skills to young people from all backgrounds through immersive career experiences and mentorship provided by thousands of local, regional and national businesses and organizations, which offer career-specific posts or clubs that help youth pursue their special interests, grow and develop. Learning for Life also manages the Learning for Life Foundation, which works through the Local Councils to identify funding sources and projects for the Learning for Life programs.

32. I understand that there are three BSA employees who are dedicated to providing services to Learning for Life, which costs are allocated back to Learning for Life. I am informed that, on average, Learning for Life is charged approximately $355,000 per month by the BSA pursuant to the Learning for Life Shared Services Arrangement. Additionally, the BSA collects program fees of approximately $250,000 per month on behalf of Learning for Life.

33. I have been advised that Learning for Life is a core component of the BSA's mission, and provides essential integrated academic and character development programs, anti-bulling and cyber intimidation programs, and leadership development programs. Since its founding in 1991, Learning for Life has served more than 25.5 million youth. As such, the

Debtors believe, and I agree, that Learning for Life is central to the Debtors' mission and operations.

5. *Arrow WV, Inc.*

34. Arrow WV, Inc. ("Arrow") is a non-stock, non-profit corporation under the laws of West Virginia that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and is governed by a separate board of directors. Arrow was formed in 2009 to facilitate the acquisition and development of the BSA's newest high adventure facility, the 14,000 acre Summit Bechtel Family National Scout Reserve (the "Summit")[8], located in the New River Gorge area of West Virginia. Arrow owns the real property and improvements that comprise the Summit and leases the Summit to the BSA for nominal consideration pursuant to that certain *Shared Services Agreement and Lease of Premises*, dated as of February 13, 2017 (the "Arrow Agreement"). Under the Arrow Agreement, the BSA provides the necessary services required to operate the Summit Bechtel Reserve in West Virginia. This includes, among other things, the payment of certain amounts to third parties on Arrow's behalf, such as utility services, certain taxes, construction, and maintenance costs.

35. I understand that the BSA's expertise in operating the Summit is essential to its successful operation. The Summit is one of the BSA's preeminent high adventure facilities, which also operates as a camp for BSA members and leadership training center for the millions of youth and adult leaders involved in Scouting. The Summit offers a range of unique program activities, including mountain biking, BMX, skate boarding, archery, shooting, zip lines and ropes courses, climbing and rappelling, and other outdoor adventures. The Summit also hosts large national events for the BSA, including the World Scout Jamboree in 2019 and the annual

[8] Construction of the Summit was accomplished in part with the proceeds of two tax-free bond issuances, as discussed in Part I.E below.

National Scout Jamboree. As such, the Summit Bechtel Reserve, and the BSA's services to Arrow in respect of this location, are essential to the Debtors' mission and operations.

6. *Canadian Entities.*

36. Atikaki Youth Ventures Inc. ("Atikaki") and Atikokan Youth Ventures Inc. ("Atikokan") are non-share capital corporations formed under the laws of Canada, with registered addresses in Winnipeg, Manitoba. Atikaki and Atikokan are each governed by a separate board of directors.

37. I am informed that approximately one to three Canadian employees work seasonally at the Northern Tier high adventure facility (the "Northern Tier") locations in Canada from April to October. Atikaki maintains Bissett, Manitoba base for the Northern Tier, which base offers canoe trips into the Atikaki Provincial Park and Woodland Caribou Provincial Park. Atikokan maintains the Don Rogert Canoe Base for the Northern Tier in Atikokan, Ontario, Canada, which base offers canoe trips into the Quetico and Crown Lands. I am informed that the Canadian employees who manage the seasonal Canadian operations at the Northern Tier locations are employed and compensated by Atikaki. Atikaki processes payroll via Ceridian HCM, Inc., funds for which come out of a Northern Tier bank account at Royal Bank of Canada controlled by the BSA. I have been advised that the operations and employees at the Northern Tier provided by Atikaki and Atikokan are essential to the success and servicing of the many Scouts who annually visit these locations.

E. Summary of Prepetition Indebtedness.

38. As of the Petition Date, the Debtors were liable to the Prepetition Secured Parties (as defined below) pursuant to the Prepetition Loan Documents (as defined below) for the aggregate principal amount not less than (a) $61,542,720 in respect of letters of credit issued on behalf of the BSA under the 2019 RCF Agreement (as defined below), if such letters of credit are

ultimately drawn; (b) (i) $11,250,000 in respect of term loans made to the BSA, (ii) $25,212,317 in respect of revolving loans made to the BSA, and (iii) $44,299,743 in respect of letters of credit issued on behalf of the BSA, if such letters of credit are ultimately drawn, each under the 2010 RCF Agreement (as defined below); (c) $40,137,274 under the 2010 Bond Agreement (as defined below); and (d) $145,662,101 under the 2012 Bond Agreement (as defined below), in each case excluding accrued interest, fees, expenses, and other costs and obligations. The total of the Debtors' prepetition funded indebtedness plus outstanding letters of credit is $328,104,155. The obligations referenced in this paragraph are collectively referred to herein as the "Prepetition Obligations."

39. The Prepetition Obligations are guaranteed by the Debtors and their non-debtor affiliate, Arrow (the Debtors and Arrow, collectively, the "Loan Parties")[9] pursuant to the terms of (a) that certain *Third Amended and Restated Security Agreement* dated as of March 21, 2019, by and among the BSA and Arrow, as debtors, JPMorgan Chase Bank, N.A. ("JPM"), as lender and collateral agent (in both capacities, the "Prepetition Secured Parties"), and the Issuer (as defined below) and (b) that certain *Consent and Security Agreement* dated as of February 3, 2020, by and among the Debtors and JPM (the agreements referenced in clauses (a) and (b), together, the "Prepetition Secured Agreements"). The Prepetition Obligations are secured by the "Prepetition Collateral," which consists of (i) a first-priority lien on the "accounts" and certain property arising out of or otherwise relating to "accounts," "deposit accounts," "securities accounts," and "investment property" (each as defined in Article 9 of the Uniform Commercial Code) and the "proceeds and products of any or all of the foregoing" of the Debtors, but

[9] Although Arrow is a guarantor of the Prepetition Obligations, prior to the Petition Date, on February 17, 2020, the Debtors and Prepetition Secured Parties entered into that certain *Limited Waiver*, waiving certain existing and prospective events of default with respect to Arrow under the Prepetition Loan Documents. As noted above, Arrow is not a debtor in these chapter 11 cases.

excluding certain amounts that are donor-restricted funds and certain funds designated by the Board for specific purposes; and (ii) first-priority mortgages on the Debtors' headquarters in Texas and high adventure facilities in Florida, New Mexico, and Minnesota/Canada.[10] The Prepetition Obligations are secured on a *pari passu* basis under the Prepetition Secured Agreements.

1. *2010 RCF Agreement*.

40. On August 11, 2010, the BSA entered into that certain Credit Agreement (as amended from time to time, the "2010 RCF Agreement"), pursuant to which JPM, as lender, provided the BSA with a revolving line of credit in the original aggregate principal amount of up to $100,000,000. The 2010 RCF Agreement has two components — a $75,000,000 revolving credit facility, which provides for the issuance of secured letters of credit by JPM on behalf of the BSA (the "2010 Revolver"), and a $25,000,000 term loan (the "2010 Term Loan").

41. Borrowings under the 2010 RCF Agreement bear interest at a fluctuating rate per annum measured by reference to either adjusted LIBOR, plus an applicable margin, or an alternative base rate. The BSA also pays certain fees, commissions and related charges and expenses under the 2010 RCF Agreement. Amortization payments under the 2010 Term Loan are due on a quarterly basis and interest payments under both the 2010 Term Loan and the 2010 Revolver are due on a monthly or quarterly basis depending on the interest rate election. The 2010 Revolver is scheduled to mature on March 2, 2020, and the 2010 Term Loan is scheduled to mature on March 2, 2022.

[10] The Prepetition Secured Parties do not have a mortgage on the Summit, but the Prepetition Secured Parties do have a lien on the proceeds of that certain $350.0 million *Promissory Note* with the BSA as lender and Arrow as borrower, dated June 30, 2019 (as amended, the "Intercompany Promissory Note"). The Intercompany Promissory Note is secured by a mortgage on the Summit property. As such, the Summit is not considered part of the Prepetition Collateral.

42. As of the Petition Date, $36,462,317 was outstanding under the 2010 RCF Agreement, which is comprised of $25,212,317 of revolving loans made, and $11,250,000 of term loans made. In addition there are $44,299,743 of undrawn letters of credit.

2. ***2019 RCF Agreement***.

43. On March 21, 2019, the BSA entered into that certain Credit Agreement (the "2019 RCF Agreement"), pursuant to which JPM, as lender, provided the BSA with a revolving line of credit of up to $71,500,000. The 2019 RCF Agreement provides for the issuance of secured letters of credit by JPM on behalf of the BSA.

44. Borrowings under the 2019 RCF Agreement bear interest at a fluctuating rate per annum measured by reference to either adjusted LIBOR, plus an applicable margin, or an alternative base rate. The BSA also pays certain fees, commissions and related charges and expenses under the 2019 RCF Agreement. Interest payments under the 2019 RCF Agreement are due on a quarterly basis. The 2019 RCF Agreement was originally scheduled to mature on March 21, 2020. On January 16, 2020, JPM consented to an extension of the maturity date of the 2019 RCF Agreement to March 21, 2021.

45. As of the Petition Date, the Debtors' outstanding obligations under the 2019 RCF Agreement were comprised entirely of approximately $61,542,720 in undrawn letters of credit, all of which are secured by a segregated cash account that is part of the Debtors' cash collateral. The BSA's line of credit under the 2019 RCF Agreement was frozen as of November 22, 2019, and remained frozen as of the Petition Date.

3. **Bond Agreements**.

a. ***2010 Bond Agreement***.

46. On November 5, 2010, the Loan Parties entered into that certain Bond Purchase and Loan Agreement with The County Commission of Fayette County (West Virginia), as issuer

(the "Issuer"), and JPM, as lender and purchaser (as amended, restated, supplemented or otherwise modified from time to time, the "2010 Bond Agreement"), pursuant to which the Issuer issued The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond (Arrow WV Project), Series 2010A in an aggregate principal amount of $50,000,000 (the "Series 2010A Bonds") and Series 2010B in an aggregate principal amount of $50,000,000 (the "Series 2010B Bonds," and together with the Series 2010A Bonds, the "2010 Bonds"), the proceeds of which were loaned to BSA. The 2010 Bonds are due November 5, 2020. Interest on the 2010 Bonds accrues at 3.22%.

47. On November 5, 2015, the BSA repaid the Series 2010A Bonds in full. As of the Petition Date, the Debtors' outstanding principal obligations under the 2010 Bond Agreement on account of the Series 2010B Bonds was approximately $40,137,274.

b. *2012 Bond Agreement*.

48. On March 9, 2012, the Loan Parties entered into that certain Bond Purchase and Loan Agreement with the Issuer, as issuer, and JPM, as lender and purchaser (as amended, restated, supplemented or otherwise modified from time to time, the "2012 Bond Agreement," and together with the 2010 Bond Agreement, the "Bond Agreements," and the Bond Agreements, 2010 RCF Agreement, and 2019 RCF Agreement, collectively, the "Prepetition Loan Documents"), pursuant to which the Issuer issued The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond (Arrow WV Project) Series 2012 in the initial aggregate principal amount of $175,000,000 (the "2012 Bonds"). The 2012 Bonds are due March 9, 2022. Interest on the 2012 Bonds accrues at 2.94%.

49. The Issuer loaned the aggregate proceeds of the 2012 Bonds to the BSA pursuant to that certain Promissory Note – 2012, executed by the BSA, as borrower, and payable to the order of the Issuer in the aggregate principal amount of $175,000,000 (the "2012 Note"). The

Issuer pledged the 2012 Note to JPM to secure the repayment of the 2012 Bonds. The BSA then loaned the proceeds of the 2012 Bonds to Arrow to fund the development of the Summit High Adventure Facility under the Arrow Intercompany Note. Arrow's obligations under the Intercompany Note are due March 31, 2029.

50. As of the Petition Date, the Debtors' outstanding principal obligations under the 2012 Bond Agreement on account of the Series 2012 Bonds was approximately $145,662,101.

4. Trade and Other Indebtedness.

51. I have been informed that, in addition to the Prepetition Obligations, as of the Petition Date, the Debtors estimate that they have approximately $20 million of outstanding unsecured trade accounts payable and related accrued liabilities. The BSA also sponsors a defined benefit pension plan that was approximately 89% funded with an underfunding of approximately $183 million as of February 1, 2019. Since that time, the underfunding has been reduced by contributions and investment return. In addition, as of the Petition Date, the BSA owes approximately $16 million on account of benefits outstanding under certain non-qualified retirement benefit plans under sections 457(b) and 457(f) of the Internal Revenue Code.[11] Further, as of the Petition Date, the BSA owes an estimated $30 million for ordinary-course accrued liabilities such as accrued payroll and benefits, self-insured medical claims, and taxes.

PART II
EVENTS AND CIRCUMSTANCES PRECEDING THESE CHAPTER 11 CASES

52. As stated above, the BSA is currently a defendant in numerous lawsuits relating to historical acts of sexual abuse in its Scouting programs. I understand that there are currently approximately 275 lawsuits pending in state and federal courts across the United States asserting

[11] This amount does not include approximately $8 million on account of benefits outstanding for Local Council employees under these non-qualified benefit plans.

abuse-related claims against the BSA. In addition, attorneys for abuse victims have provided information regarding approximately 1,400 additional claims that have not yet been filed, for a total of approximately 1,700 known asserted abuse claims. Based on the information provided, approximately 90% of pending and asserted claims relate to abuse that occurred before 1988, when the BSA strengthened its existing youth protection programs,[12] which I understand included a more comprehensive volunteer screening database, additional supervision requirements and reporting obligations designed to keep would-be abusers away from youth, and improved training and other literature addressing ways to prevent, recognize, and respond to sexual abuse.

53. The number of abuse claims asserted against the BSA has sharply increased in recent years, an increase which I understand coincides with a trend of states' enacting legislation to allow victims of sexual abuse to assert claims that would previously have been barred by applicable statutes of limitations. The BSA recognized that it could not continue to address abuse litigation on a case-by-case basis. For example, as noted above, the BSA spent more than $150 million on settlements and related legal and professional costs from 2017 through 2019. For these reasons, among others, beginning in late 2018, the BSA began to explore strategic options for achieving an equitable global resolution of abuse claims with the assistance of legal and financial advisors.[13]

---

[12] A more detailed overview of the history of sexual abuse and youth protection efforts generally and within the BSA is set forth in the Informational Brief.

[13] The BSA's declining Scout membership and associated revenue in recent years is another factor that prompted the BSA to review its strategic options. As of December 2019, the BSA had approximately 2.2 million registered Scouts, down from approximately 2.6 million Scouts as of 2012. Compounding this decline, as of December 31, 2019, the Church of Jesus Christ of Latter-day Saints concluded its 105-year relationship as a chartered organization with all Scouting programs around the world, including the BSA. The effect of this change is expected to remove approximately 400,000 Scouts from the BSA's Scouting programs. The inability to resolve abuse claims continues to put pressure on the BSA's membership and donations, which is further driving the BSA to seek a global resolution through a chapter 11 proceeding.

54. The BSA determined at the outset of this strategic review to pursue a potential agreement with a critical mass of abuse victims and other relevant stakeholders that could be implemented through a prearranged chapter 11 plan. A prearranged bankruptcy filing was the most desirable option, as the BSA believed it represented the quickest, most efficient, and least costly bankruptcy process that could be achieved under the circumstances. As a non-profit corporation, considerations of economy and speed are of the utmost importance to the BSA.

55. In connection with these strategic efforts, the BSA recognized that it would ultimately need to structure a settlement around a plan of reorganization that provides for channeling injunctions with respect to both current and potential future abuse claims.[14] Accordingly, the BSA determined, in consultation with its advisors, that it was necessary and appropriate to engage an independent third-party representative for future abuse claimants. After considering possible candidates for the role, the BSA selected James L. Patton, Jr. to serve as prepetition future claimants' representative. The BSA selected Mr. Patton due to his significant experience in complex mass tort cases in the chapter 11 context and his reputation for integrity in serving as a fiduciary in bankruptcy proceedings. Mr. Patton, in turn, retained legal and financial advisors to assist him in conducting an analysis of the BSA's liabilities and assets and in negotiations with the BSA and other stakeholders.

[14] Unlike a future claim in other mass tort contexts, there is no latency period for abuse. In the abuse context, I understand that a future claim is properly understood as a claim related to abuse that has already occurred but which is held by an individual who (a) has not attained eighteen (18) years of age, (b) suffers from "repressed memory" such that he or she is not aware that he or she holds an abuse claim, or (c) has not discovered the injury or the connection between the injury and the abuse and who could not in the exercise of reasonable care have discovered the injury or connection between the injury and the abuse. Given (i) the significant advertising and publicity surrounding abuse in scouting over the past year; (ii) the highly publicized nature of this restructuring; and (iii) the robust and comprehensive claims and noticing procedures that the BSA will implement through these cases, the BSA expects that the vast majority of potential claimants will be identified as part of this noticing process and does not expect that there will be significant future claims relating to prior abuse in the BSA's Scouting programs.

56. The BSA also engaged in discussions with an ad hoc group of attorneys representing significant numbers of abuse claimants. The ad hoc group was advised on restructuring matters by James Stang of the firm Pachulski Stang Ziehl & Jones LLP. The BSA provided information to these attorneys, including Mr. Stang, regarding its liabilities and assets, and some attorneys for abuse victims provided information to the BSA regarding additional abuse claims that they asserted would be filed against the BSA in the future. In particular, the attorneys asserted that they represented hundreds of abuse victims who had not yet filed suit.

57. In addition, the BSA engaged in discussions with certain of its insurers about the nature and extent of available coverage for pending and potential additional abuse claims. The BSA has procured commercial general liability policies from multiple insurers since 1962 to protect itself from risks including claims of sexual abuse or sexual misconduct. Local Councils were subsequently included as "additional insureds" under these policies. I understand, based on my discussions with the BSA's legal advisors, that the amount of remaining coverage under these policies is substantial, and that the BSA expects that the proceeds of these policies will comprise a substantial portion of the assets contributed to any victims compensation trust.

58. These prepetition restructuring efforts involved several meetings with attorneys representing many abuse victims, including in a two-day mediation in early November 2019 with these attorneys, as well as the prepetition future claimants' representative and some of the BSA's insurers. Unfortunately, the mediation was unsuccessful. It became apparent that attorneys for abuse victims believed certain Local Councils with significant abuse liabilities have significant assets that could also be used to compensate victims. Further, it became clear that attorneys for abuse victims would only accept information about the nature and extent of the BSA's available assets if provided through a court-supervised process. The abuse victims' attorneys have

indicated a strong preference for the BSA to file for relief under chapter 11 so they can compel the production of information regarding the BSA's and local councils' liabilities and assets, as well as other data relating to abuse claims. Accordingly, the BSA recognized in late 2019 that there were no meaningful prospects for a global resolution of abuse claims without the commencement of chapter 11 proceedings.

59. Beginning after the conclusion of the November 2019 mediation, the BSA and its advisors turned their attention to preparing for a chapter 11 filing. The BSA recognized that prolonged bankruptcy proceedings would be costly and deplete funds available to compensate abuse victims. As a non-profit that relies on member fees and donations to sustain its operations, the BSA believes, and I agree, that delays caused by protracted litigation and discovery, for example, would also negatively impact these revenue sources and ultimately jeopardize the BSA's ability to carry out its mission. Accordingly, both prior to and immediately upon the commencement of these cases, the BSA took several steps designed to ensure that its chapter 11 cases would proceed expeditiously and to ensure that all stakeholders would be well positioned to work efficiently toward a global resolution of abuse claims. These steps are discussed in detail in the Informational Brief.

PART III
FIRST DAY MOTIONS

60. The Debtors have filed a number of First Day Motions, consisting of administrative motions and motions relating to the Debtors' business operations. The Debtors believe, and I agree, that approval of each First Day Motion is an important element of their reorganization efforts and is necessary to ensure a seamless transition into chapter 11 with minimal disruption to their operations. I have reviewed each of the First Day Motions or had their contents explained to me, including the exhibits thereto, and believe that the Debtors would

suffer immediate and irreparable harm absent the ability to continue their business operations as requested in First Day Motions. Factual information with respect to each First Day Motion is provided below and in each First Day Motion. Capitalized terms, to the extent not defined herein, have the meanings provided in the respective First Day Motions.

I. Administrative Motions.

A. *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* (the "Joint Administration Motion").

61. These chapter 11 cases involve two affiliated Debtors, Boy Scouts of America and Delaware BSA, LLC. Because the Debtors' financial affairs and operations are closely related, most, if not all, of the motions, hearings, and orders in the bankruptcy proceedings will affect both of the Debtors. In the Joint Administration Motion, the Debtors are requesting consolidation for procedural purposes only. Accordingly, my understanding is that no party's substantive rights will be adversely impacted if the cases are jointly administered. Given the integrated nature of the Debtors' operations, joint administration of the Debtors' cases will promote efficiency and ease the administrative burden on this Court and all parties in interest.

62. Further, joint administration will significantly reduce the volume of paper that otherwise would be filed with the office of the Clerk of the Bankruptcy Court (the "Clerk"), will render the completion of various administrative tasks less costly, and will minimize the number of unnecessary delays. Moreover, the joint administration of these chapter 11 cases will simplify supervision of these cases by the Office of the United States Trustee (the "U.S. Trustee"). Accordingly, the Debtors believe, and I agree, that joint administration of these chapter 11 cases is in the best interests of the Debtors' respective estates, creditors and all other parties in interest.

B. *Debtors' Motion for Entry of an Order Extending Time to File (I) Schedules of Assets and Liabilities and Statements of Financial Affairs and (II) Rule 2015.3 Reports* (the "Schedules and Statements Motion").

63. There are potentially hundreds of creditors in these jointly administered cases. The Debtors run a massive national charitable organization with approximately 2.2 million registered youth members and 800,000 registered adult leaders across 261 Local Councils, in addition to operations at numerous properties, including, without limitation, High Adventure facilities located in Florida, Minnesota, New Mexico, and West Virginia, and approximately 175 Scout Shops across the country. In contrast, the Debtors only have a limited number of employees with requisite expertise to consult with the Debtors' professionals. To prepare the schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules and Statements"), the Debtors must first close their books as of the Petition Date, which is occurring in the middle of a month, and then compile information from their books, and records relating to creditor claims, as well as the Debtors' assets, liabilities, executory contracts, and unexpired leases. This information is voluminous. Collecting the necessary information requires a significant expenditure of time and effort on the part of the Debtors, their employees, and their professional advisors in the near term, and such parties are simultaneously tasked with addressing the immediate needs of the Debtors' day-to-day operations.

64. In addition, the Debtors directly and indirectly own three non-debtor subsidiaries for which they are required to file reports under Bankruptcy Rule 2015.3 (the "2015.3 Reports"). I believe that the scope and complexity of the Debtors' organization, coupled with the initiation of litigation and related protocols at the outset of these chapter 11 cases, necessitates an extension of the deadline to file the 2015.3 Reports. As discussed above, the Debtors have a limited number of employees with competing demands on their time at this critical juncture of these chapter 11 cases. In addition, submitting the 2015.3 Reports and the Statements &

Schedules at the same time will facilitate uniform information as it relates to intercompany balances.

65. The Debtors' available resources to marshal the required information are strained, and collecting the necessary information to prepare both the Schedules and Statements and 2015.3 Reports requires a significant coordinated expenditure of time and effort from the Debtors, their employees, and their professionals. Because focusing the attention of key personnel on critical operational and chapter 11-related issues during the early days of these chapter 11 cases will facilitate a smooth transition into chapter 11, I believe that the Debtors' request for a total of 58 days from the Petition Date to file their Schedules and Statements and 2015.3 Reports will maximize the value of their estates for the benefit of all parties in interest.

66. The Debtors believe, and I agree, that the extensions requested in the Schedules and Statements Motion will aid the Debtors' efforts to ensure the accuracy and completeness of the Schedules and Statements and 2015.3 Reports which in turn will promote efficient administration of these chapter 11 cases. Accordingly, it is both essential and in the best interests of the Debtors' respective estates and creditors that an interim order be entered extending the deadline to file the Schedules and Statements and 2015.3 Reports by an additional 30 days, for a total of 58 days from the Petition Date, without prejudice for the Debtors to request additional time if necessary.

C. ***Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to File (A) a Consolidated List of Counsel Representing the Largest Numbers of Abuse Victims and (B) a Consolidated List of Other Unsecured Creditors of the Debtors, (II) Authorizing and Approving Special Noticing and Confidentiality Procedures, (III) Authorizing and Approving Procedures for Providing Notice of Commencement, and (IV) Granting Related Relief*** **(the "Notice and Confidentiality Procedures Motion").**

67. Pursuant to the Notice and Confidentiality Procedures Motion, the Debtors are seeking entry of interim and final orders (i) authorizing the Debtors to file a list of the twenty-

five (25) law firms representing the largest numbers of abuse victims asserting claims against the Debtors (the "Top Plaintiffs' Counsel List"), and a consolidated list of creditors holding the thirty (30) largest unsecured claims against the Debtors other than abuse-related claims (the "Unsecured Creditors List"), (ii) authorizing and approving special noticing and confidentiality procedures to protect the identities and personal contact information of victims of abuse, minors, employees, and volunteers, (iii) authorizing the Debtors to implement certain procedures for the mailing and publication of the notice announcing the commencement of these chapter 11 cases, and (iv) granting related relief.

68. I understand that, pursuant to Bankruptcy Rule 1007(d), a chapter 11 debtor must file with its voluntary petition a list setting forth the names, addresses and claim amounts of the creditors, excluding insiders, that hold the twenty largest unsecured claims in the debtor's case (the "Top 20 List").

69. As noted above, there are approximately 275 lawsuits pending in state and federal courts across the United States asserting abuse-related claims against the BSA (the "Abuse Lawsuits"). Many of these individuals have asserted their claims as "John Doe" claimants in the public record (collectively, the "Doe Claimants"). Given the sensitive nature of the Abuse Lawsuits, the Debtors seek to protect the identity of the abuse victims. Additionally, the Debtors cannot determine which of the Abuse Claims are the largest for purposes of a Top 20 List given the unliquidated nature of the claims asserted in the Abuse Lawsuits. Accordingly, the Debtors believe, and I agree, that it would be appropriate to provide the Top Plaintiffs' Counsel List in lieu of listing individuals in the Abuse Lawsuits on the Top 20 List in order to (i) protect those victims involved in the Abuse Lawsuits, including the Doe Claimants, against public disclosure of their identities and personal contact information, and (ii) provide supplemental information in

lieu of liquidated claim information that satisfies the intent of the Top 20 List. The Top Plaintiffs' Counsel List was compiled based on information from the pending Abuse Lawsuits and claims raised during the Debtors' prepetition discussions with attorneys for holders of Abuse Claims.

70. In addition to the Top Plaintiffs' Counsel List, the Debtors are also filing the Unsecured Creditors list, which provides a list of the largest thirty creditors of each Debtor other than holders of abuse claims, including beneficiaries of nonqualified benefits plans, trade vendors, and non-abuse litigants. The Debtors believe, and I agree, that filing the Top Plaintiffs' Counsel List and the Unsecured Creditors List will facilitate the disclosure of information required by the Bankruptcy Rules, given the limitations of the known information regarding the individual holders of Abuse Claims in these chapter 11 cases and the importance of protecting the privacy of abuse victims.

71. The Debtors are also seeking to protect the confidentiality of the identities, home addresses, and/or other personal contact information of the Doe Claimants, certain named holders of Abuse Claims, minors, and current and former employees and volunteers of the BSA through the implementation of redaction procedures for the creditor matrix and any documents filed in these chapter 11 cases containing such information. In recognition of the sensitivity of disclosure related to the Doe Claimants and minor litigants, I respectfully submit that the Court approve the confidentiality procedures described in the Notice and Confidentiality Procedures Motion to protect the privacy of abuse victims and minors and preserve their identities from public disclosure. Additionally, I believe that the circumstances of these chapter 11 cases warrant the redaction of personal contact information and addresses for current and retired employees and volunteers of the BSA. I submit that it is appropriate to authorize the Debtors to

redact from any paper filed with the Court in these chapter 11 cases address and contact information of the Debtors' employees and volunteers because such information could be used to perpetrate identity theft. The threat of identity theft is of particular importance in these proceedings, which the Debtors expect to garner substantial media publicity.

D. *Debtors' Application for Appointment of Omni Agent Solutions as Claims and Noticing Agent* Nunc Pro Tunc *to the Petition Date* (the "Claims Agent Application").

72. I understand that this Court is authorized to utilize agents and facilities other than the Clerk for the administration of bankruptcy cases. I believe that if Omni Agent Solutions is retained as the claims and noticing agent (the "Claims and Noticing Agent") in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited and the Clerk will be relieved of the administrative burden of processing what may be an overwhelming number of claims. I have also reviewed the Claims and Noticing Agent's engagement letter and the description of services that the Claims and Noticing Agent has agreed to provide and the compensation and other terms of the engagement as provided in the application of the Claims and Noticing Agent. Based on that review, I believe that the Debtors' estates, creditors, parties in interest, and the Court will benefit from the Claims and Noticing Agent's experience and cost-effective methods. The Debtors assert, and I agree, that the appointment of the Claims and Noticing Agent is the most effective and efficient manner by which to provide noticing and claims processing services in the chapter 11 cases and is necessary and in the best interests of the Debtors and their estates.

II. Operational Motions.

A. *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Party Pursuant to 11 U.S.C. §§ 105(a), 361, 362, 363, 364 and 507; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief* (the "Cash Collateral Motion").

73. As discussed in Part I.E above, the Debtors' Prepetition Obligations to the Prepetition Secured Parties are secured by liens on the Debtors' accounts and investment property and proceeds thereof, excluding certain deposit accounts and securities accounts. During these chapter 11 cases, the Debtors must obtain consent of the Prepetition Secured Parties, or without the consent of the Prepetition Secured Parties, court authorization to continue using "cash collateral" ("Cash Collateral") of the Prepetition Secured Parties.

74. I believe that the Debtors' continued use of Cash Collateral as requested in the Debtors' Cash Collateral Motion is essential to preserve and maintain the going-concern value of the Debtors' estates. The Debtors' ability to continue their operations without interruption is essential for the Debtors to maximize the value of their estates for the benefit of all stakeholders and avail themselves of the "breathing room" afforded by a chapter 11 restructuring. Accordingly, the Debtors urgently require Cash Collateral to continue to operate their capital-intensive businesses and to fund the administration of these chapter 11 cases.

75. Absent the relief requested in the Cash Collateral Motion, the Debtors will not have sufficient liquidity to continue to fund their operations, fund employee payroll and benefits obligations, pay vendors of necessary goods and services, and satisfy other operational requirements during their restructuring. All of the foregoing expenditures are essential to preserve the value of the Debtors' estates as a going concern. The Debtors believe, and I agree,

that any delay in the Debtors' ability to access Cash Collateral would irreparably harm the Debtors and their estates.

76. As a condition to their consent to the Debtors' use of Cash Collateral, the Prepetition Secured Parties seek the following forms of adequate protection against the post-petition diminution in value of their interest in the Cash Collateral resulting from the Debtors' use of such property: (a) replacement liens on all of the Prepetition Collateral of the Debtors' estates to the extent of any actual post-petition diminution in value; (b) allowed superpriority administrative expense claims against the Debtors as, I understand, is provided for in section 507(b) of the Bankruptcy Code, to the extent of any actual diminution in value of the Prepetition Collateral; and (c) periodic payments of (i) accrued and unpaid prepetition and post-petition interest, fees, and costs due and payable under the Prepetition Loan Documents and (ii) the reasonable and documented fees and expenses payable to the Prepetition Agent under the Prepetition Loan Documents. The Debtors believe, and I agree, that the adequate protection provided in the Cash Collateral Motion is the product of extensive arms-length negotiations between the Debtors and Prepetition Secured Parties, is fair and reasonable under the circumstances, and is in the best interests of the Debtors, their estates, and all parties in interest.

B. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Use Their Cash Management System, Including Existing Bank Accounts, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Exiting Business Forms, (II) Waiving the Requirements of 11 U.S.C. § 345(b) and (III) Granting Related Relief* (the "Cash Management Motion").

77. The Debtors maintain an integrated, centralized cash management system in the ordinary course of their operations to collect, transfer, invest and disburse funds generated by the BSA's operations and charitable donations made to the BSA by third parties (the "Cash Management System"). The Cash Management System facilitates the Debtors' cash monitoring,

forecasting, and reporting and enables the Debtors to maintain control over the administration of their bank accounts. As part of the Cash Management System, the Debtors maintain 66 bank accounts (together with any other bank accounts that the Debtors may open in the ordinary course, collectively, the "Bank Accounts") at 23 banks and financial institutions (collectively, the "Banks").

78. I understand that the Cash Management System is generally similar to the systems commonly employed by complex organizations comparable to that of the Debtors, but it is also unique in that the BSA is one of the only federally charted non-profit organizations of its magnitude. The Debtors essentially maintain two segregated Cash Management Systems—one Cash Management System for restricted funds (the "Restricted Cash Management System") and one Cash Management System for unrestricted funds (the "Unrestricted Cash Management System"). I have been advised that the cash management restrictions and requirements set forth in section 345 of the Bankruptcy Code only apply to "money of the estate," which does not include Restricted Cash Management System, but the Debtors nevertheless are requesting relief with respect to their entire Cash Management System out of an abundance of caution.

1. The Restricted Cash Management System.

79. I have been advised that the Restricted Cash Management System comprises funds that are either subject to valid restrictions on the use of such funds imposed by a donor at the time of their contribution or bequest to the Debtor or otherwise being held in trust for non-debtors. The Restricted Cash Management System consists of eight Bank Accounts at five Banks. Specifically, donations made via check or cash[15] are deposited by the BSA directly into a

[15] Donations in the form of equity securities are transferred into one of two Brokerage Accounts (as defined below) and promptly liquidated, at which time the proceeds are transferred to the Primary Concentration Account, if the funds are not subject to use restrictions, or the Donations Account, if the funds are subject to a donor's use restrictions.

donations account with JPM (the "Donations Account"). The vast majority of donations and bequests received by the BSA contain donor restrictions, and as a result, all funds in the Donations Account are treated as restricted unless the BSA's treasury department later determines that particular funds were donated without requisite donor restrictions. Any such unrestricted funds are ultimately transferred out of the Donations Account to the Debtors' primary concentration account, which holds unrestricted funds as described below. The remaining Bank Accounts in the Restricted Cash Management System consist of the following accounts:

- **Restricted Donations Investment Account.** If the BSA determines that restricted donations will not be spent in the forthcoming twelve-month period, the BSA transfers such funds from the Donations Account to a restricted donations investment account held at Goldman Sachs & Co. ("Goldman Sachs").

- **Summit Investment Account.** The BSA invests restricted donations received for the benefit of the Summit Bechtel Reserve (the "Summit") in a separate investment account held at Goldman Sachs.

- **SBRSA Account**. The Summit Bechtel Reserve Staff Association (the "SBRSA") collects association dues for purposes of granting scholarships to Scouts and holds the funds in a general account at JPM (the "SBRSA Account"). Dues paid by cash or check are deposited directly into the SBRSA Account and dues paid by credit card are deposited into the Credit Card Depository Account (as defined below) and then transferred through the Primary Concentration Account to the SBRSA Account.

- **SBRSA Investment Account.** If the BSA determines that funds in the SBRSA Account will not be spent in the forthcoming twelve-month period, the BSA transfers funds from the SBRSA Account to a restricted investment account at BlackRock, Inc. ("BlackRock").

- **Local Council Unemployment Investment Account.** The BSA invests funds contributed by Local Councils that have opted out of their respective state unemployment programs in an investment account held at Goldman Sachs, which funds are used to reimburse the respective state for claims paid out to former employees.

- **Deferred Compensation Investment Account (Local Council Sub-Account).** The BSA invests funds for a non-qualified deferred compensation plan, created pursuant to section 457(b) of the Internal Revenue Code (the "457(b) Plan"), in an investment

account (the "Deferred Compensation Investment Account") held at Fidelity Investments ("Fidelity"). The Deferred Compensation Investment Account contains two subaccounts: one for BSA employees and one containing funds contributed by and held in the name of certain Local Councils with employees who participate in the 457(b) Plan. I am advised that funds in this investment account are invested from a menu of funds at the direction of the individual participants in the 457(b) Plan.

- **California Gift Annuity Investment Account.**[16] The BSA invests funds from California-based charitable gift annuity donations in a segregated investment account with State Street Bank and Trust Co. ("State Street"), which funds are ultimately due and payable to the individual donors over time.

80. As discussed in Part I.D above, the BSA makes direct investments in the Partnership and the Endowment Master Trust, which is also a limited partner of the Partnership. The BSA makes capital contributions to the Partnership from time to time in exchange for partnership units in proportion to, and in exchange for, such contributions. I understand that as of the Petition Date, the value of the BSA's interest in the Partnership was approximately $83 million total (including approximately $5 million held by the Endowment Trust), all of which consists of donor-restricted funds.

2. Unrestricted Cash Management System.

81. The primary Bank in the Unrestricted Cash Management System is JPM, with which the BSA maintains 23 of its unrestricted Bank Accounts. The BSA also maintains 36 Bank Accounts with a number of other Banks, which are listed on Exhibit 1 to Exhibit A of the Cash Management Motion. The unrestricted Bank Accounts generally fall into one of five broad categories: (a) Concentration Accounts, which are used to facilitate the collection of cash

[16] California state law imposes a minimum reserve requirement for the benefit of California Annuitants, and requires that the reserves be held in trust for the benefit of such California Annuitants in a segregated account which is separate from reserves for the benefit of Annuitants of any other state. See CAL. INS. § 11521.1 (West 2018). Various other states also impose minimum reserve and segregation requirements, but do not require that those reserves be held separately from the reserves for Annuitants from other states. See, e.g., N.Y. INS. LAW § 1110(b) (McKinney 2019); FLA. STAT. § 627.481(2)(a) (2019). To comply with applicable state law, the BSA maintains two Gift Annuity Accounts at State Street: one for California Annuitants, and one for all other Annuitants.

received by the Debtors; (b) Depository Accounts, which are used to collect the organization's revenues and transfers funds into other Bank Accounts in the Cash Management System; (c) Disbursement Accounts, which are used to pay general operating costs (such as rent, insurance premiums, and taxes, among other things); (d) Investment Accounts, which are used to invest the BSA's working capital and other funds awaiting disbursement, as well as certain funds I understand are held in trust for certain related non-debtor entities; and (e) the L/C Cash Collateral Account, which I understand holds cash that collateralizes a standby letter of credit issued by JPM on behalf of the BSA for the benefit of Old Republic International Corporation in connection with the BSA's general liability insurance program. I understand that, as of the Petition Date, the Debtors hold approximately $265 million in unrestricted cash and investments in the Unrestricted Cash Management System.

82. With respect to the Investment Accounts that are part of the Unrestricted Cash Management System, other than the Deferred Compensation Investment Account, I am informed that such Investment Accounts either invest solely in short-term government treasury obligations through the State Street 1-3 Year U.S. Agency Index (CM2SNON) and the State Street 1-3 Year U.S. Treasury Index (CM2QNON) (the "Government Bond Funds") or the following money market funds (the "Money Market Funds"): the BlackRock FedFund (TFDXX); the Federated Government Obligations Fund (GOFXX); the Goldman Sachs Financial Square Government Fund (FFTXX); and the JPMorgan United States Government Money Market Fund (OGVXX). I have been advised that each of the Money Market Funds have the highest money market fund rating and invest exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements, as shown in the prospectuses attached as Exhibits C-1 – C-4 to the Cash Management Motion. I have been advised that funds in the

Deferred Compensation Investment Account are invested from a menu of funds at the direction of participants in the 457(b) Plan and the BSA has no control over such investments.

83. I am also informed that in the ordinary course of business, the Banks charge, and the Debtors pay, honor or allow the deduction from the appropriate account, certain service charges and other fees, costs and expenses (collectively, the "Bank Fees"). Historically, the Debtors estimate that they are charged approximately $25,000 in total Bank Fees per month. I am informed that approximately $17,500 of accrued but unpaid Bank Fees are outstanding as of the Petition Date (collectively, the "Prepetition Bank Fees"), approximately all of which will become due and owing within the first 30 days of these chapter 11 cases and prior to entry of a final order (the "Interim Period").

84. The Debtors also maintain a purchase card program (the "Purchase Card Program") with JPM. Under the Purchase Card Program, the Debtors have issued credit cards to eligible employees to be used for preauthorized travel and other expenses related to the BSA's operations, which expenses are typically limited to point-of-purchase expenditures. The purchase cards are not utilized for paying for items such as invoices for goods or services or large recurring expenses. As of the Petition Date, only 14 of the Debtors' employees held cards issued and authorized for use under the Purchase Card Program with a total aggregate maximum balance of $225,000 under the Purchase Card Program. The Purchase Card Program is critical to the Debtors' ability to carry out their ongoing operations without disruption because they enable eligible employees to engage in business travel and pay for small but necessary expenses incurred in the Debtors' daily operations without undue delay. Payments under the Purchase Card Program are automatically debited from the Primary Concentration Account on the 10th

day of each month (or on the next business day, as applicable). The Debtors' average aggregate monthly expenditures under the Purchase Card Programs are approximately $180,000.

85. I understand that the U.S. Trustee Operating Guidelines for this district require debtors in possession to, among other things, (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-possession account for all estate monies required for payment of taxes, including payroll taxes; (c) physically set aside all monies required by law to be withheld from employees or collected from others for taxes; (d) open a new set of books and records as of the commencement date of the case; (e) use new business forms indicating the debtor-in-possession status of the chapter 11 debtor; and (f) make all disbursements of estate funds by check with a notation representing the reason for the disbursement.

86. I believe that the enforcement of these provisions of the U.S. Trustee Operating Guidelines during these chapter 11 cases would be expensive and burdensome, and would severely disrupt the Debtors' operations however, because of the nature and complexity of the BSA's operations and the significant volume of collections, disbursements, and movement of funds through the Cash Management System on a daily basis. Indeed, I understand the Debtors' treasury department does not have enough staff to run another, separate cash management system. By contrast, I believe that maintaining the current Cash Management System, including the Purchase Card Program, will facilitate the Debtors' smooth transition into these chapter 11 cases by, among other things, minimizing delays in paying post-petition debts and eliminating administrative inefficiencies. Finally, I believe that maintaining the current Cash Management System will allow the Debtors' treasury and accounting employees to focus on their daily

responsibilities as opposed to the non-accretive task of reconstructing the Cash Management System.

87. Moreover, I do not believe that any parties in interest will be harmed by maintaining the Cash Management System. I understand that the Debtors have implemented appropriate measures to ensure that Debtor entities will not make unauthorized payments on account of prepetition obligations.

88. Additionally, I believe that according certain flexibility to the Banks, as requested in the Cash Management Motion, is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether the Debtors may pay a particular item in accordance with a Court order or otherwise. Considering the nature and complexity of their operations, the Debtors need to conduct transactions by debit, electronic fund, ACH payments, and other similar methods. I therefore believe that if the Debtors are denied the opportunity to conduct transactions by debit, electronic fund, ACH payments, or other methods used in the ordinary course, the Debtors' operations would be disrupted unnecessarily, burdening the Debtors and their creditors with additional costs.

89. Finally, I believe that it is appropriate for the Court to authorize the Debtors to continue to pay the Bank Fees, including any prepetition Bank Fees. I believe that material benefit of maintaining the Cash Management System to avoid disruption and costly delay is warranted in comparison to the relatively modest amount of the Bank Fees.

C. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Obligations Under Shared Services Arrangements, (II) Authorizing Continued Performance of Obligations Under Intercompany and Shared Services Arrangements, and (III) Granting Related Relief* (the "Shared Services Motion").

1. Local Council Shared Services Arrangements.

90. As discussed in Part I above, the BSA carries out its mission through Local Councils. The most important functions served by Local Councils are their recruiting of Chartered Organizations and their oversight of the operation of the Scouting units that those Chartered Organizations create. Local Councils also provide other services essential to Scouting, including: funding of local Scouting programs and initiatives; recruiting of Scouts and volunteer leaders; Scout and volunteer training; opportunities for rank advancement; local enforcement of the BSA's policies, rules, and regulations; and registration of members and leaders. In addition, many Local Councils own and operate service centers, camps, and other facilities that provide the local resources necessary for delivery of a successful Scouting program to the approximately 2.2 million youth participants of the BSA.

91. The Local Councils generally do not receive financial support from the BSA, but as described above, the BSA uses its national scope and size to provide other types of support to the Local Councils. For example, the BSA offers health and welfare and retirement benefits programs to eligible, full-time employees of the Local Councils (the "Local Council Benefits Programs"). These benefits are paid for by the BSA, which in turn obtains monthly reimbursement from the Local Councils—many of which would not otherwise be able to provide these vital benefits to their employees without expending significant amounts of Local Councils' limited financial resources.

92. In addition to the Local Council Benefits Programs, the BSA facilitates back-office accounting, human resources, information technology, member recruitment support and

fundraising, marketing communications, leadership training, and other related support to the Local Councils. The BSA also provides liability insurance at the national level for the Local Councils, local units, and their volunteers and leaders. The various management, administrative, and support services that the BSA provides to the Local Councils (the "Local Council Shared Services Arrangements") have historically been of an integrated nature and generally can be performed more efficiently and effectively for all entities in the organizational structure, rather as opposed to requiring performance by each Local Council alone. The Local Councils would be incapable of operating their organizations in their respective geographic regions absent the services provided under the Local Council Shared Services Arrangements.

a. ***Overview of Local Council Shared Services Arrangements.***

93. I am informed that the Local Council Shared Services Arrangements include, without limitation, the following services provided by the BSA:

- human resources services, including with respect to employee benefits, online training from Scouting University for positions within the BSA, human resources software and recommended policies and procedures through an employee handbook template used by most Local Councils;
- accounting technical support, including accounting software, systems, and procedures, and IT support, including network connectivity, firewalls, and support services;
- training support services for Local Council staff and professional development training for Scouters, and program tools and training for year-round camp operation;
- program services, including the production of literature such as handbooks, merit badge pamphlets, brochures, and supplemental training materials;
- supply chain services, including the provision of uniforms, equipment, and program supplies and shipping of such merchandise;
- bulk purchasing of custom patches for Scout rank and merit achievements;

- national primary general liability insurance coverage for all registered volunteer leaders and Local Councils on a worldwide basis (the "Insurance Program");

- legal services, including youth protection resources, training, and background checks for all registered volunteers and staff;

- corporate affairs and community involvement and relationship services, including setting and maintaining program standards to ensure national consistency across Local Councils and maintaining and developing new relationships with organizations that use the Scouting program;

- marketing and communications support services, including the coordination of a communications network via publications such as *Boys' Life* and *Scouting* magazine; and

- office support services, including office planning and evaluation, extensive financial counseling, planned giving and fundraising information, and professional personnel support.

94. In addition, I am informed that the Local Council Shared Services Arrangements include, without limitation, the following services provided by the Local Councils:

- collection of member dues and payment of various fees to the BSA;

- oversight of programming at the unit level and delivery of Scouting programs;

- organization, registration, and support of all Chartered Organizations to form units led by adult volunteers;

- recruitment and retention of membership and volunteer leaders;

- use of Local Council office space for significant Scout Shop retail merchandise and product sales;

- local enforcement and maintenance of the BSA's policies, rules, and regulations; and

- ownership and operation of hundreds of camps, facilities, activities, and events for members of the BSA.

95. During 2019, approximately $100 million in total was billed by the BSA to the Local Councils for services under the Local Council Shared Services Arrangements (excluding the remittance of membership registration fees), and a similar amount is expected for 2020. The

BSA bills the Local Councils monthly for these services, with payments from the Local Councils typically remitted within thirty (30) days.

b. *Fees Charged*.

96. I am informed that the BSA charges a series of fees to the Local Councils in respect of the Local Council Shared Services Arrangements. The fees are not intended to precisely compensate the BSA for services provided to the Local Councils, as the Local Councils do not charge the BSA for services rendered to the BSA.

- **National Service Fee**. The BSA charges a national service fee based on a percentage of budgeted Local Council wages of approximately $8.7 million annually, aggregated across all of the Local Councils and billed in ten installments.

- **Charter Renewal Fees**. In connection with the annual renewal process for Local Council charters, the BSA charges a $100 charter fee per Local Council.

- **Information Services Fee**. The BSA charges a monthly fee for a portion of the IT services provided to the Local Councils, related primarily to firewalls, connectivity, and related support. In 2019, the average monthly fee across the Local Councils was approximately $675 per Local Council.

97. In addition to the above, I understand that the BSA provides certain third-party services to the Local Councils at cost, billed to the Local Councils on an as-requested basis. The BSA charges the Local Councils for actual third-party costs associated with providing Local Council Benefits Programs to Local Council Employees (as defined below), director and officers' insurance, shipping and freight charges for wholesale product purchases, training courses, fees for conferences, camp schools, registration shared services, fund development, and magazine subscriptions.

c. *Local Council Benefits Programs*.

98. The BSA offers the same comprehensive health and welfare and retirement benefits available to eligible employees of the BSA (the "Local Council Benefits") to

approximately 6,600 eligible full-time[17] employees of the Local Councils (the "Local Council Employees") and their dependents, as well as their eligible survivors[18] (the "Local Council Survivors") and retirees[19] (the "Local Council Retirees"). The Local Council Benefits Programs include the following:

- **Health Insurance Plans**: The Debtors offer Health Insurance Plans (as defined below) to Local Council Employees, Local Council Survivors, and Local Council Retirees. The Debtors are responsible for paying claims on the self-insured Health Insurance Plans and premiums on the other Health Insurance Plans (the "Health Benefit Claims"). The Debtors bill the Local Councils monthly for the total estimated cost of the Health Insurance Plans in which each Local Council's Employees participate, and the Local Councils are responsible for deducting Local Council Employee contributions from their paychecks and remitting both this amount and their employer share to the Debtors. I understand that the Debtors believe that, with the exception of certain administrative costs that they would likely bear in any event on account of its own employees, the full cost of these benefits as it relates to the Local Council Employees is billed to the Local Councils.

- **Health Savings Account Program**: The Debtors offer their Health Savings Account Program (as defined below) to Local Council Employees with Health Insurance Plans qualifying as a high-deductible medical plan. Approximately 1,600 Local Council Employees participate in the Health Savings Account Program, which is administered by UnitedHealthcare and Optum. Annually, the Medical Plan (as defined below), as administered by the BSA, contributes $500 to each health savings account opened between January 1 and June 30, and $250 to each account opened on or after July 1. This contribution is covered by the employer portion of the medical premiums charged to the Local Councils.

- **COBRA Benefits:** Certain former Local Council Employees covered by the Health Insurance Plans may elect to continue insurance coverage under the Health Insurance Plans after their termination. There are currently

[17] Local Council Employees are considered "full-time" if they work 21 or more hours per week year-round and were hired on or before May 31, 2004, or if they work 30 or more hours per week year-round if hired on or after June 1, 2004.

[18] Survivors include the spouse and/or dependent children of a deceased Local Council Employee who was enrolled in the BSA Retirement Plan (as defined below).

[19] Retirees include Local Council Employees who have retired from the Local Councils and are members of the BSA Retirement Plan; Retirees who retired on or after January 1, 2005 are required to have at least ten years of service in order to be eligible for continuing Health Insurance Plan benefits. Retirees must be under age 65 to receive Local Council Benefits.

approximately 20 former Local Council Employees who are COBRA participants, and they are responsible for paying all premiums associated with the COBRA Benefits, which by statute are set at 102% of cost to cover additional administration costs, which are the responsibility of the Debtors.

- **Scout Executives' Alliance:** Certain commissioned professional, executive, and professional-technical Local Council Employees and Retirees are eligible to enroll and become members of the Alliance (as defined below), which provides supplemental life insurance benefits to its members. Approximately 2,050 Local Council Employees' contributions to the Alliance are deducted from their paychecks by the Local Councils and remitted to the Debtors for deposit in the Alliance operating account, the amount of which is equal or greater than the Debtors' cost to procure the insurance.

- **Disability Insurance:** Local Councils provide long-term disability insurance and may elect to offer short-term disability insurance to their respective Local Council Employees, which replaces a portion of an eligible party's compensation for specified periods of time when such party is unable to work due to a non-work related injury or illness. Approximately 4,300 Local Council Employees participate in the Disability Insurance (as defined below) programs. Short-Term Disability Insurance (as defined below) is funded by premium payments made by Local Council Employees, which are deducted from their paychecks by the Local Councils. Long-Term Disability Insurance (as defined below) is funded by premium payments by the Local Council. Both amounts are remitted to the BSA, which makes the premium payment to the appropriate provider.

- **Unemployment Plan:** Local Councils may elect to set aside funds for potential future unemployment claims of their respective Local Council Employees (the "Unemployment Plan"). A third-party vendor, 501(c) Services, administers the Unemployment Plan. The BSA invoices the Local Councils for their set premiums and holds the Local Councils' pooled assets in an unemployment fund. The BSA reimburses 501(c) Services for claims paid out.

- **Pension Plan:** Approximately 10,900 Full-time Local Council Employees with at least one year of service and Retirees participate in the Debtors' Pension Plan (as defined below). Entry into the Pension Plan was frozen on December 31, 2018, and no Local Council Employees have been permitted to become active participants in the Pension Plan after such date. "Grandfathered" Local Council Employees with fifteen (15) years of vesting service and age plus vesting service equal to sixty (60) years or more were permitted continue to participate in the Pension Plan, while "non-grandfathered" employees were automatically enrolled in the Match Savings Plan, described below. Local Council Employees enrolled in the Pension Plan contribute 4.25% of their salary to the Pension Plan. Each Local Council

provides 7.75% of total wages to fund retirement programs, which is first used to pay for the employer match to the Match Savings Plan (described below) and any residual is contributed into the Pension Plan. Total Local Council Employee contributions to the Pension Plan in the 2019 plan year were approximately $3.3 million, which the Local Councils deduct from such employees' paychecks and remit to the BSA after the BSA has paid such amounts to the Pension Plan on behalf of the Local Council Employees. The Pension Plan is managed by the BSA and is administered by Morneau Shepell. The Pension Plan trust pays Morneau Shepell's administrative fees on behalf of the Local Councils

- **Match Savings Plan:** On and after January 1, 2019, the Pension Plan was amended to become a two-tier plan. Pursuant to the amendment, "non-grandfathered" Local Council Employees were automatically enrolled into the Match Savings Plan. The Match Savings Plan is a 403(b) defined contribution retirement plan, pursuant to which approximately 4,000 Local Council Employees currently make pre-tax payroll deductions up to Internal Revenue Code limitations. In addition, the Local Councils make employer matching contributions. For "grandfathered" Local Council Employees receiving benefits under the Pension Plan, each Local Council matches 50% of Local Council Employee contributions up to 6% of pay. With respect to non-grandfathered Local Council Employees under the Match Savings Plan, the Local Council makes an automatic contribution of 1.75% of an employee's pay regardless of whether a Local Council Employee makes an Employee Contribution, and matches 100% of employee contributions up to 6% of pay. Each month, the Local Councils remit funds for their Local Council Employees' withholdings and employer match for the Match Savings Plan, which the Local Councils deduct from such employees' paychecks and provide from their own funds, respectively. Fidelity Workplace Services administers the Match Savings Plan, subject to payment of an administrative fee out of Match Savings Plan funds on behalf of the Local Councils.

- **Other Benefits Programs**: The Debtors offer certain other welfare benefits to Local Council Employees, including a 125 Plan to reduce taxable income by subtracting Local Council Employees' costs of coverage under certain Local Council Employee Benefits Programs from such employees' taxable income, an Employee Assistance Program for counseling as part of the Medical Plan administered by UnitedHealthcare, a Vitality Program, which offers wellness training and benefits, and a Naturally Slim Program, focused on improving eating habits.

99. I am informed that, on average, the Debtors pay approximately $1.4 million per month in respect of the Local Council Benefits Programs, which excludes certain administrative fees paid with respect to overseeing the Local Council Benefits Programs, some of which are not

directly reimbursed by the Local Councils, and excludes Health Benefit Claims. As discussed below in connection with the Wages Motion (as defined below), any of the third parties who charge administrative fees in connection with administering the Employee Benefits Programs view the BSA as the obligor with respect to amounts that come due under such programs for employees of the BSA and the Local Councils. Thus, the BSA would be required to pay an entire invoice in order to continue a given Employee Benefit Program for both the BSA and Local Council Employees. I understand that, in recognition of this, for certain of the Employee Benefits Programs, the Debtors are seeking authority in the Wages Motion to pay certain prepetition and post-petition third-party administrative fees with respect to both BSA and Local Council Employees.

100. Specifically, I am informed that the BSA pays applicable employer contributions of the Local Councils and the Local Council Employee deductions in respect of the Local Council Benefits Programs on behalf of the Local Councils and Local Council Employees, which deductions are invoiced and billed to the Local Councils on a monthly basis. The Local Councils typically remit payment to the BSA for its payment of the employer contributions and employee deductions to the benefits providers within thirty (30) days. Additionally, the Debtors pay certain administrative and claims fees on behalf of both BSA employees and Local Council Employees in connection with offering these benefits to all employees, which, in most cases, are included in the premium amounts and reimbursed by the Local Councils. I am informed that the Debtors estimate that approximately $1,726,000 in the aggregate in respect of the Local Council Benefits Programs will become due and payable within the Interim Period.

101. I understand that the Local Council Employees rely on the Debtors and the Local Council Shared Services Arrangements in order to receive vital benefits to assist them with their

daily living expenses and health and welfare. The Local Council Employees and their families, along with Retirees and Survivors of the Local Councils, would be subject to significant financial hardship if the Debtors could not honor prepetition obligations that may be outstanding as of the Petition Date under the Local Council Benefits Programs or continue to administer the Local Council Benefits Programs without interruption during the pendency of the Debtors' chapter 11 cases. I have been advised that if the Debtors were to cease providing the Local Council Benefits Programs, the Local Councils are not structured such that they would be able to offer these critical benefits, and the Local Council Employees would lose access to basic healthcare and welfare benefits. As a result, the Debtors' failure to honor these obligations pursuant to the Local Council Shared Services Arrangements would likely result in significant attrition in the Local Councils at a critical time in the BSA organization's operations.

d. *Non-Qualified Deferred Compensation Plan*.

102. I am informed that, at their election and expense, certain Local Councils have participated in the 457(b) Plan. The funds withheld from Local Council participants are remitted directly from each Local Council to the 457(b) Plan manager, Fidelity. Fidelity handles investing the funds in accordance with the participants' direction and disbursement of the funds over a period of time not to exceed ten years as the participant directs upon their retirement. There is currently approximately $960,000 held by Fidelity related to deferrals by seven (7) Local Council participants. I am informed that Fidelity's administrative fees for management of the 457(b) Plan are paid directly by the plan participants from their 457(b) Plan assets. While this account is in the name of the BSA, I am informed that the funds of the Local Council participants are segregated in a separate sub-account, and the Debtors request that Fidelity be authorized to continue to make payments to Local Council participants out of those funds on a post-petition basis. I am informed that the Debtors estimate that of the approximately $960,000

held by Fidelity on account of deferrals by the Local Council 457(b) Plan participants, approximately $10,000 will become due and owing during the Interim Period.

e. *National General Liability Insurance Program*.

103. I am informed that another central component of the Local Council Shared Services Arrangements is the BSA's provision of the Insurance Program. Under the Insurance Program, the BSA offers primary general liability insurance coverage for all registered volunteer leaders, Local Councils, Chartered Organizations and units on a worldwide basis engaged in official Scouting activities. The Insurance Program is comprised of a series of primary and excess general liability policies, which renew on March 1 of each year. The policies under the Insurance Program apply to liability exposures of the BSA, its Related Non-Debtor Entities, and the Local Councils, in addition to Chartering Organizations, units, and volunteers. I am informed that malpractice, non-owned aviation, maritime liability, and employment practices liability is included in the Insurance Program.[20]

f. *Local Council Scout Shops and Other Local Council Disbursements.*

104. As discussed in Part I, a significant portion of the BSA's annual revenue comes from retail merchandise and product sales at approximately 175 Scout Shops across the United States. Annually, these sales generate approximately $120 million in total revenue to the BSA. I am informed that approximately 135 Local Councils support these national sales efforts by designating a portion of their office space as a BSA Scout Shop (the "Local Council Scout Shops") pursuant to lease agreements with the BSA. The Local Council Scout Shops are

[20] Local Councils retain responsibility for the first $1 million per occurrence for owned automobile liability insurance and non-owned and leased or hired vehicle coverage for Local Council Employees and volunteers engaged in official Scouting activities or on Scouting or Local Council business. Local Councils are also responsible for crime/bond/fiduciary liability insurance, workers' compensation insurance for Local Council Employees, and property insurance.

locations where the BSA sells uniforms, apparel, camping equipment, and other merchandise directly to BSA members. I am informed that, in the aggregate, approximately $90.0 million in annual sales to the BSA is generated by the Local Council Scout Shops. In return for the lease of Local Councils' office space, the BSA remits monthly rent payments to such Local Councils based on a percentage of sales. I have been advised that this payment is calculated as eight percent (8%) of net sales at the Local Council-provided Scout Shop location, plus an additional five percent (5%) escalator on annual sales above $750,000 at such location. I understand that, on average, the BSA pays approximately $635,000 per month in the aggregate to the Local Councils in respect of the Local Council Scout Shops.

105. I am informed that, as a part of its support of Local Councils, the BSA makes certain other miscellaneous disbursements to the Local Councils by the BSA ("Other Local Council Disbursements"). These disbursements include grants to Local Councils and Scouts made from donor-restricted funds, Local Council fees collected on the BSA's online platforms on behalf of the Local Councils, sending amounts that the BSA collects on behalf of the Local Councils as a part of various fundraising efforts and campaigns, and reimbursing Local Council Employee travel expenses when required by the BSA for meetings or conferences. For the calendar year 2019, these amounts were approximately $7.0 million. I am informed that, as of the Petition Date, the Debtors estimate that the amount of accrued and outstanding amounts owed to the Local Councils in respect of the Local Council Scout Shops and Other Local Council Disbursements is approximately $370,000.

106. I am informed that, as of the Petition Date, approximately $11.5 million was due and owing to the BSA on account of the Local Council Shared Services Arrangements exclusive of remittance of membership registration fees. The BSA estimates that it owes approximately

$1,726,000 on account of the Local Council Benefits Programs (excluding amounts that may be owed in respect of Health Benefit Claims), and approximately $370,000 to the Local Councils on account of the BSA's use of the Local Councils' real property for Scout Shop sales and other Local Council disbursements—all of which will become due and owing during the Interim Period.

2. Related Non-Debtor Entities Shared Services.

107. As discussed in Part I.D above, under the Shared Services Arrangements, the BSA also receives services from BSAAM, Arrow, Learning from Life, the BSA Foundation, Atikokan, and Atikaki (the "Related Non-Debtor Entities"). These services include investment and foundation management, lease transactions, and conference and training support. In return, the BSA provides centralized management, cash management, tax administration, and other centralized functions that are essential to the successful operation of the Debtors' large-scale nonprofit organization. The BSA administers these shared services with the Related Non-Debtor Entities through ordinary course intercompany receivables and payables between the BSA and such entities (the "Related Entity Transactions").

108. While the Local Councils facilitate the Debtors' mission and are vital in reaching participants at a local level, the Related Non-Debtor Entities provide specialized services under the Shared Services Arrangements that are necessary to facilitate the BSA's national reach, including, among other things, investment and foundation management, management of national programs, lease transactions, and conference and training support functions. With the exception of Atikaki, these Related Non-Debtor Entities do not maintain their own employees or management. Instead, these entities are parties to certain Shared Services Arrangements through

which the BSA provides certain centralized management, cash management, tax administration, and other centralized functions.[21]

109. The BSA conducts these shared services with the Related Non-Debtor Entities through ordinary course Related Entity Transactions. The Shared Services Arrangements between the Debtors and the Related Non-Debtor Entities have historically leveraged economies of scale and promoted a more efficient use of the organization's limited non-profit resources, providing for the efficient administration of necessary services across the entire BSA organizational structure (as opposed to each Related Non-Debtor Entity acting on its own).

110. The Debtors believe, and I agree, that the Shared Services Arrangements provide increased efficiency and cost-saving measures to the Debtors' daily administrative and corporate responsibilities. Indeed, an inability to continue performance under the Shared Services Arrangements would severely disrupt the Debtors' business operations and distract the Debtors' personnel from ongoing restructuring efforts.

D. ***Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay of Related Administrative Obligations, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers, and (III) Granting Related Relief*** **(the "Wages Motion").**

111. As of the Petition Date, the BSA employs approximately 1,650 individuals to deliver the Scouting program at the national level across the BSA organization, which include corporate managers, personnel for various corporate functions including legal, technology, marketing and communications, registration systems, national events and human resources personnel, personnel for print and magazine publications of the BSA, training and leadership

[21] The BSA has approximately thirty-two (32) employees who are dedicated to the following Related Non-Debtor Entities: four (4) for BSAAM, three (3) for Learning for Life, and twenty-five (25) for the BSA Foundation.

employees for youth, employees, and professional adult leaders, as well as other business and quality control services, warehouse, shipping, distribution and customer service employees, retail sales associates, and a variety of staff providing management and support for the BSA's high adventure facilities, including general managers, cowboys, butchers, boat captains, National Scouting Museum staff, and back country rangers (the "BSA Employees").[22] All of the BSA Employees are located in the United States and U.S. territories.

112. The BSA Employees include approximately: (i) 1,000 full-time, salaried BSA Employees (*i.e.*, BSA Employees who work 30 hours or more per week) (the "Full-Time Employees"), (ii) 500 part-time, hourly BSA Employees, and (iii) 150 full-time, seasonal, salaried BSA Employees (*i.e.*, BSA Employees who work for 30 hours or more per week for a limited period of the year at the High Adventure Facilities) (the "Seasonal Employees"). The BSA Employees are located at the Debtors' national headquarters, at the Debtors' national warehouse and distribution center in Charlotte, North Carolina, at Scout Shops, and at the four High Adventure Facilities.

113. The Debtors supplement their workforce by retaining independent contractors (the "Independent Contractors") and temporary workers (the "Temporary Workers") to perform various tasks including, but not limited to, providing illustrating, copywriting, and photography services for the BSA's multiple national magazine publications, IT development and support services, software engineering services, marketing support, and supply-chain and customer service support. As of the Petition Date, approximately 60 Independent Contractors and 135 Temporary Workers were providing services to the Debtors or their affiliates. The Debtors contract directly with the Independent Contractors, who are paid directly by the Debtors. The

[22] Approximately 30 BSA Employees are on paid leave as of the Petition Date.

Debtors procure the services of the Temporary Workers through third-party staffing agencies (the "Staffing Agencies"). The Debtors pay the Staffing Agencies, and the Staffing Agencies, in turn, pay the wages and benefits (as applicable) of the Temporary Workers.

114. As discussed above in Part I.D and in connection with the Shared Services Motion, certain of the non-Debtor related entities do not maintain their own employees or management. Instead, these are parties to certain shared services arrangements with the BSA, whereby approximately 32 BSA Employees allocate some or all of their time to the non-Debtor related entities. The BSA is responsible for the compensation and benefits provided to these BSA Employees, and the sharing non-Debtor related entity allocates payment to the Debtors for these services via intercompany transactions to the non-Debtor related entities under a shared services arrangement.

115. Through the Wages Motion, the Debtors request authority to pay prepetition amounts related to certain compensation and benefits programs (the "Compensation and Benefits Programs") and continue to pay these amounts on a post-petition basis, in the ordinary course of business. The Debtors estimate that, as of the Petition Date, they owe approximately $5,090,000 in connection with the Compensation and Benefits Programs (the "Prepetition Employee Obligations").[23]

116. The Debtors assert, and I agree, that the Employees would suffer hardship without the relief requested in the Wages Motion and, in many instances, financial difficulties, since the monies associated with the Compensation and Benefits Programs are needed to enable the Employees to meet their personal obligations. In addition, without the requested relief, in my

[23] This excludes estimated self-insurance claims, a large portion of which will likely be funded from the Welfare Benefits Trust (as defined below) prior to its exhaustion or otherwise come from funds set aside for this purpose, as described below.

opinion the Debtors' stability would be undermined by the potential threat that otherwise loyal Employees at all levels would seek other employment.

1. Employee Compensation.

117. In the ordinary course of business, the Debtors incur payroll obligations in the ordinary course of their operations, including wages, salaries, and other compensation provided to the BSA Employees, Temporary Workers (through the Staffing Agencies), and Independent Contractors, as well as all related withholdings, deductions, and expense reimbursement obligations ("Employee Compensation").

a. *Unpaid Compensation*.

118. The Debtors pay hourly wages or salary to the BSA Employees and Independent Contractors either in arrears or on a current basis, with either bi-weekly or semi-monthly payments.[24] Specifically, Full-Time Employees are paid semi-monthly on the 15th and last day of each month on a current basis, Part-Time Employees are paid bi-weekly approximately one week in arrears, and Seasonal Employees are paid semi-monthly approximately five business days in arrears. I am informed that the Debtors' aggregate average semi-monthly payroll for Full-Time Employees is approximately $3.6 million, the average bi-weekly payroll for Part-Time Employees is approximately $111,000, and the average semi-monthly payroll for Seasonal Employees is approximately $135,000.[25] I understand that the Debtors use Paychex, Inc. ("Paychex") as their third-party payroll administrator.[26] Paychex generally debits funds from the Debtors' payroll disbursement account two days before each payroll date and then electronically

[24] If a payroll date falls on a weekend or holiday, BSA Employees are paid on the preceding Thursday or Friday, or the business day preceding the holiday, respectively.

[25] The Debtors' aggregate payroll for the Seasonal Employees ranges from approximately $85,000 in the low season to $1.2 million during the high season.

[26] The Debtors pay approximately $6,000 in average monthly processing fees to Paychex. The Debtors estimate that, as of the Petition Date, they owe approximately $600 in unpaid processing fees to Paychex.

transfers the funds via direct deposit to the BSA Employees' personal bank accounts.[27] The Debtors pay certain of the Seasonal Employees through pay cards that are administered through ADP. Paychex generally debits funds from the Debtors' payroll disbursement account two days prior to each payroll date and then electronically transfers the funds to the Seasonal Employees' ADP pay cards.

b. *Independent Contractor and Temporary Worker Compensation.*

119. As discussed above, the Debtors rely on Independent Contractors and Temporary Workers in the ordinary course of their organizational operations to perform a wide range of services critical to the Debtors' mission, including, among other things, providing publication services for the BSA's national magazines, IT and software support, and various other functions. The Debtors rely on the support of Independent Contractors and, through the Staffing Agencies, Temporary Workers to complete discrete projects in furtherance of the Debtors' organization and to fill short-term positions that are not economically feasible to employ on a full- or part-time basis. The Debtors assert, and I agree, that the authority to continue paying the Debtors' Independent Contractors and the Staffing Agencies is critical to minimizing disruption of the Debtors' continued organizational operations.

c. *Withholding and Deduction Obligations.*

120. The Debtors are required by law to withhold from BSA Employees' wages, salaries and other compensation certain amounts related to federal, state, and local income taxes, Social Security, and Medicare taxes for remittance to the appropriate taxing authority (the "Withholdings"). Further, the Debtors must match from their own funds Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal

[27] All BSA Employees paid through Paychex are paid via ACH/direct deposit or pay cards.

and state unemployment and disability insurance (together with the Withholdings, the "Payroll Taxes"). The Payroll Taxes total approximately $2.0 million per month. Paychex debits the total amount of Payroll Taxes due from the applicable accounts of the Debtors two days before each payroll date and then remit the Payroll Taxes to the appropriate taxing authorities on behalf of the Debtors on the dates such Payroll Taxes are due. The BSA remits Payroll Taxes due to taxing authorities in the U.S. Virgin Islands and Puerto Rico directly for BSA Employees in those locations.

121. In addition to the Payroll Taxes, the BSA routinely deducts certain amounts from the BSA Employees' paychecks for child support and other garnishments, as well as pre- and post-tax deductions payable pursuant to certain of the Compensation and Benefits Programs discussed in detail below (such as the BSA Employees' share of dental plan premiums and retirement plan contributions) (collectively, the "Payroll Deductions"). The Debtors forward the Payroll Deductions to the appropriate recipients. On average, the Debtors deduct approximately $1.1 million per month in Payroll Deductions from the BSA Employees' paychecks and remit these amounts to the appropriate providers.

122. The Debtors estimate that there are approximately $200,000 of accrued Payroll Taxes and/or Payroll Deductions outstanding as of the Petition Date, all of which is estimated to come due in the Interim Period. In addition, due to the commencement of these chapter 11 cases, certain prepetition Payroll Taxes may not have been remitted by Paychex or forwarded to the appropriate recipient by the Debtors before the Petition Date.

d. *Reimbursable Expenses*.

123. At any given time, the Debtors may have obligations to certain BSA Employees for the reimbursement of certain reasonable and customary out-of-pocket organizational expenses incurred on behalf of the Debtors in connection with their employment

(the "Reimbursable Expenses"). These Reimbursable Expenses include expenses for travel such as airfare, rental cars or mileage reimbursement, lodging, meals, and other organizational expenses paid directly by the BSA Employees. The BSA Employees submit Reimbursable Expenses through the Debtors' standard expense report process, which is administered by third-party expense management platform Deem. The BSA Employees are reimbursed by the Debtors within one week through their accounts payable system. On average, the Debtors reimbursed approximately $330,000 per month in 2019. I am informed that, as of the Petition Date, the Debtors estimate that they owe approximately $960,000 in accrued but unpaid Reimbursable Expenses, $720,000 of which will come due during the Interim Period, and that no administrative fees are owed to Deem.[28]

2. Employee Benefit Obligations and Related Obligations.

124. In addition to the Employee Compensation discussed above, the Debtors offer comprehensive benefits to eligible BSA Employees, Retirees (as defined below), and the survivors of eligible BSA Employees and Retirees. These benefits include medical, dental, and vision plans, life insurance, disability coverage, the Workers' Compensation Program (as defined below), various retirement plans and benefits, and other employee benefits described in greater detail in this Section II (collectively, the "Employee Benefits Programs"). In connection with the Employee Benefits Programs, the Debtors utilize the administration services of Morneau Shepell, which include the administration of the Debtors' health and welfare benefits plans, and the maintenance of a call center and website to support annual enrollment and ongoing administration. Morneau Shepell also administers the Pension Plan (as defined below) for BSA Employees. I am informed that Morneau Shepell charges a monthly administrative fee of

[28] Because the Debtors cannot track the Reimbursable Expenses until they are entered into their system, this estimate is based on the monthly average Reimbursable Expenses for 2019.

$54,000 for Pension Plan administration and $65,000 for health and benefits plans administrative services, and that, as of the Petition Date, the Debtors owe approximately $290,000 to Morneau Shepell.[29]

125. On average, the Debtors pay approximately $1.9 million per month in respect of the Employee Benefits Programs, including administrative fees and exclusive of Health Benefit Claims (as defined and described below). As of the Petition Date, the Debtors estimate that approximately $1,930,000 is accrued and unpaid on account of the Employee Benefits Programs, and are requesting authority to pay or remit up to $1,880,000 of this amount under the Proposed Interim Order.

a. *Health Insurance Plans.*

126. The Debtors offer medical, dental, prescription, and vision coverage and Medicare benefits (collectively, the "Health Insurance Plans") to all Full-Time and Seasonal BSA Employees and their dependents, to certain eligible retirees of the BSA (the "Retirees"),[30] and to the survivors of eligible BSA Employees or Retirees (the "Survivors").[31] In connection with the self-funding of certain of the Health Insurance Plans, the BSA has established that certain Boy Scouts of America Employee Welfare Benefit Trust, dated as of August 24, 2016 (the "Welfare Benefits Trust"). Historically, the BSA deposited certain employee and employer

[29] The Debtors utilize Willis Towers Watson, LCG Associates, and other firms as additional advisors for the Employee Benefits Programs. These advisors provide necessary health and welfare consulting services, including, among other things, health plan strategy and management, communications, and actuarial services. The Debtors estimate that the total amounts owed to Morneau Shepell and other advisors as of the Petition Date is approximately $405,000 for both Pension Plan and health and benefits plans administration.

[30] Retirees include BSA Employees who have retired from the BSA and are members of the BSA Retirement Plan; Retirees who retired on or after January 1, 2005 are required to have at least ten years of service in order to be eligible for continuing Health Insurance Plan benefits.

[31] Employees who were hired on or before May 31, 2004 who work twenty-one (21) hours or more per week year-round with the BSA, and Full-Time Employees hired on or after June 1, 2004 (*i.e.*, working thirty or more hours per week year-round with the BSA) are eligible to participate in the Health Insurance Plans. Survivors include the spouse and/or dependent children of a deceased BSA Employee who was enrolled in the BSA Retirement Plan.

contributions related to the Health Insurance Plans into the Welfare Benefits Trust, which is classified as a voluntary employees' beneficiary association (VEBA) trust, and paid self-insured claims out of this trust. More recently, the BSA has instead segregated these contributions in an investment account maintained exclusively for this purpose and elected not to make these deposits and plans to make claims payments directly once the Welfare Benefits Trust is exhausted, which is expected to occur by April 2020.

127. ***Medical and Dental Plans.*** I am informed that the Debtors offer three medical plans to the BSA Employees—a PPO plan and two high deductible health plans (collectively, the "Medical Plans")—administered by UnitedHealthcare ("United"). The Debtors also offer self-funded supplemental Medicare benefits to Retirees, survivors, participants in the Long-Term Disability Insurance (as defined and discussed below), and dependents of such parties who are under 65 years old, enrolled in Medicare Parts A and B, and not enrolled in a Medicare prescription drug plan or other Medicare supplement plan (together with the PPO plan and the high deductible health plans, the "Medical Plans"), also administered by United. I understand that United provides day-to-day administrative assistance in connection with the Health Insurance Plans. The Debtors pay United approximately $200,000 per month in administrative fees, and an additional $20,000 to $100,000 per month for access to shared savings network discounts, which is highly variable depending on claims paid for each month. Under United's services, the Debtors provide prescription drug coverage through a program administered by OptumRx.

128. The Debtors offer one self-funded dental assistance plan (the "Dental Plan") administered through MetLife Insurance Company ("MetLife"). The Debtors pay MetLife approximately $22,000 per month in administrative fees. The Dental Plan generally covers

dental services and basic restorative services, and offers a preferred dentist program, which is a network of in-network dental providers that offer services at reduced rates. The Dental Plan premiums, deductibles, co-pays, and out-of-pocket costs vary depending on whether a preferred dentist program provider is selected and whether dependents are covered by the Dental Plan. The costs of the Medical and Dental Plans are partially borne by the Debtors, but BSA Employees pay an estimated 35% of the total contributions to the Medical and Dental Plans through Payroll Deductions to pay for each month's coverage, with contributions varying by plan.[32]

129. As self-funded Medical and Dental Plans, the Debtors fund and insure all claims submitted to the relevant health benefits providers on account of services provided to the participants (the "Health Benefit Claims"). Health Benefit Claims are paid as they are processed by the health benefit providers, but there is typically a lag time in receiving claims and the Debtors are unable to determine the precise amount of Health Benefit Claims that have accrued and are owing as of the Petition Date. The average monthly amount of Health Benefit Claims has been approximately $3.9 million.

130. Also in connection with self-funding the Medical and Dental Plans, the Debtors maintain a stop-loss insurance policy with Sun Life Assurance Company of Canada to cover catastrophic medical claims (the "Stop-Loss Insurance"). The Debtors pay premiums on account of the Stop-Loss Insurance, which are approximately $554,000 per year. As of the Petition Date, the Debtors estimate that they have accrued approximately $88,000 on account of the Stop-Loss Insurance.

[32] Participating Retirees and survivors are billed a premium for the BSA Employee costs of the Medical Plans, or, if they receive a large enough benefit under the Pension Plan, premiums are deducted from their checks.

131. I am informed that the Debtors estimate that the total cost of the Medical and Dental Plans, including the Health Benefit Claims, Stop-Loss Insurance, and administrative fees, is approximately $460,000 per month on average, and as of the Petition Date, the Debtors estimate that the amount of accrued and outstanding prepetition obligations under the Medical and Dental Plans, excluding Health Benefit Claims, is approximately $790,000.

132. ***Vision Plan.*** The Debtors offer vision benefits through a plan insured and administered by Vision Service Plan ("VSP"). The Vision Plan generally provides benefits covering annual eye examinations, corrective lenses, frames, and contact lenses. Premiums vary based on whether the Employee, Retiree, or Survivor has dependents covered by the Vision Plan. The Vision Plan is a fully insured plan, so administrative fees paid to VSP in connection with the Vision Plan are included in the premiums. Participants in the Vision Plan are responsible for the payment of premiums.

b. *Health Savings Account Program*.

133. The BSA Employees who participate in certain of the Medical Plans with high deductibles may contribute a portion of their pre-tax compensation to health savings accounts through a program (the "Health Savings Account Program") administered by United and OptumHealth Bank ("Optum"), which funds may be used for incidental medical expenses. Annually, the BSA also contributes a lump-sum of $500 to each health savings account opened between January 1 and June 30, and $250 to each account opened on or after July 1. Participating BSA Employees can make pre-tax contributions to the Health Savings Account Program through Payroll Deductions to cover reimbursements annually of up to $7,100 for family coverage and up to $3,550 for individual coverage. I am informed that, as of the Petition Date, approximately 450 BSA Employees are enrolled in the Health Savings Account Program. On average, the Debtors deduct a total of approximately $77,500 per month from participating

parties' paychecks (the "Employee HSA Deductions") on account of contributions to their respective Health Savings Account Programs. The Employee HSA Deductions are included in the Payroll Deductions discussed above.

c. *COBRA.*

134. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), certain former BSA Employees covered by the Health Insurance Plans ("COBRA Participants") may continue insurance coverage under the Medical Plans, the Dental Plan, the Vision Plan, and the Health Savings Account Program (the "COBRA Benefits"). COBRA Participants are entitled by law to continue to receive COBRA Benefits for up to 18 months, and in certain instances up to 36 months, after termination of their employment. As of the Petition Date, there are approximately 10-20 former BSA Employees who are COBRA Participants. COBRA Participants are responsible for paying all premiums associated with the COBRA Benefits. The Debtors use WageWorks to administer the COBRA Benefits, including to provide all required notifications, bill and collect premiums, coordinate enrollment information with the Medical Plan administrators, and providing customer service and support for COBRA Participants, and pay approximately $6,500 per month to WageWorks in administrative fees (the "COBRA Administration Fee"). As of the Petition Date, the Debtors estimate that they owe approximately $20,000 to WageWorks on account of the COBRA Administration Fee, all of which will become due and owing during the Interim Period.

3. Life, Accidental Death and Dismemberment ("AD&D"), and Disability Insurance Programs.

a. *Life and AD&D Insurance.*

135. The Debtors provide basic life and accidental death and dismemberment insurance (the "Basic Life and AD&D Insurance") and optional supplemental life insurance for

Full-Time and Seasonal Employees of the BSA, Retirees, their spouses, and dependents (the "Supplemental Life Insurance" and, together with the Basic Life and AD&D Insurance, the "Life and AD&D Insurance"). The Life and AD&D Insurance is insured and administered by MetLife. I am informed that the Debtors' total monthly costs in connection with premiums and related administrative fees under the Basic Life and AD&D Insurance are approximately $101,000. The Debtors do not pay any amounts for the Supplemental Life Insurance, which is fully funded through Deductions or billing to participants. I am informed that, as of the Petition Date, the Debtors owe approximately $130,000 for accrued and unpaid premiums and administrative fees paid to MetLife, all of which will become due and owing within the Interim Period.

b. *Scout Executives' Alliance.*

136. Certain commissioned professional, executive, and professional-technical BSA Employees and Retirees with the BSA are eligible to enroll and become members of the Scout Executives' Alliance fellowship fund (the "Alliance"), which provides supplemental life insurance benefits to its members. The Alliance is insured and administered through Metlife. Members of the Alliance make contributions entirely through Payroll Deductions based on salary levels, and Retirees make contributions through their annual pensions or via check transfers. In turn, the BSA pays for group term life insurance for these individuals with employee contributions in excess of the premium cost held in a segregated account as a buffer against any future cost increases. I am informed that, as of the Petition Date, the Debtors owe approximately $15,000 for accrued and unpaid premiums and administrative fees paid to MetLife, all of which will become due and owing during the Interim Period.

c. *Disability Insurance.*

137. The Debtors provide Full-Time and Seasonal BSA Employees with short-term

disability insurance coverage (the "Short-Term Disability Insurance"), long-term disability insurance (the "Long-Term Disability Insurance"), and salary continuation for medical leaves of absence (the "Salary Continuation for Medical Leave" and, together with the Short-Term and Long-Term Disability Insurance, the "Disability Insurance"). The Short-Term Disability Insurance and Salary Continuation for Medical Leave is insured and administered by Unum Life Insurance Company ("Unum") and the Long-Term Disability Insurance is insured and administered by MetLife.

138. Salary Continuation for Medical Leave is available to Full-Time Employees with serious health conditions for up to 120 calendar days in a rolling twelve-month period. Salary continuation is available once a Full-Time Employee remains out of work for a period of personal illness or injury of at least seven calendar days, and pays such employees 60% of their regular rate of pay. The BSA funds the Salary Continuation for Medical Leave.

139. The Short-Term Disability Insurance complements the Salary Continuation for Medical Leave and replaces a portion of an eligible party's compensation for up to seventeen (17) weeks when such party is unable to work due to a non-work related injury or illness. The Short-Term Disability Insurance applies after seven days of disability, at which time eligible BSA Employees are paid 25% of their pre-disability earnings, with a minimum weekly benefit of $25.00 and a maximum of $2,500. The Short-Term Disability Insurance is fully funded by premium payments made by the BSA Employee on an after-tax basis, which are made through Deductions.

140. The Long-Term Disability Insurance replaces a portion of the eligible BSA Employee's compensation when such employee is unable to work due to a non-work related injury or illness. The Long-Term Disability Insurance applies after 120 days and pays BSA

Employees 60% of their monthly pre-disability pay, up to a maximum of $22,500 per month, until they recover or reach normal retirement age. The BSA funds the Long-Term Disability Insurance.

141. I am informed that the Debtors pay Unum and Metlife approximately $20,100 and $120,300 per month, respectively, in premiums and administrative fees in connection with the Disability Insurance. As of the Petition Date, the Debtors owe approximately $55,000 to Unum and $145,000 to Metlife on account of premiums and related administrative fees in connection with the Disability Insurance, of which up to $170,000 is estimated to come due in the Interim Period and up to $200,000 in the aggregate on a final basis.

4. ***Workers' Compensation Program*****.**

142. I am advised that, under applicable state laws, the Debtors are required to (i) provide the BSA Employees with workers' compensation insurance coverage for claims arising from or related to their employment (the "Workers' Compensation Program") and (ii) satisfy the Debtors' obligations to insurers, third party administrators, state funds, and/or the BSA Employees, including, without limitation, all premiums, charges, claims, deductibles, retentions, administrative fees and all other obligations relating to the Workers' Compensation Program (the "Workers' Compensation Obligations"). The Debtors maintain two insurance policies with Twin City Fire Insurance Company and Property/Casualty Insurance Co. of Hartford on account of the Workers' Compensation Program, which are maintained to cover claims in Wisconsin and all of the remaining states in which the Debtors operate, respectively (including those states in which there is state-mandated workers' compensation insurance fund coverage). The Debtors are required to pay monthly insurance premium installments in respect of the state programs in order to pay workers' compensation claims as they are adjudicated. I am informed that The Debtors estimate that they pay, on average, approximately $32,000 per month

in Workers' Compensation Obligations. As of the Petition Date, there are approximately 26 pending claims under the Workers' Compensation Program, which the Debtors estimate aggregate to a total liability of approximately $422,000.

143. I am also informed that the Debtors employ ESIS Inc. as a third-party administrator to investigate, administer, and pay claims arising under their general liability Insurance Policies and Workers' Compensation Program (the "Third-Party Administrator"). For those claims arising under the Debtors' Workers' Compensation Program that total $10,000 or less, the Third-Party Administrator will pay the appropriate party and request repayment from the BSA. For claims totaling more than $10,000, the Third-Party Administrator will submit a "large loss" invoice to the BSA, and once the BSA funds the invoice, the Third-Party Administrator will release the payment to the claimant. The Third-Party Administrator also provides loss prevention services and certain other administrative and advisory services with respect to the insurance policies.

5. Non-Insider Severance Program.

144. In the ordinary course of their operations, the Debtors maintain a severance program for the benefit of certain non-insider BSA Employees who have been terminated without cause (the "Non-Insider Severance Program"). The Non-Insider Severance Program compensates eligible BSA Employees for the financial disruption caused by the Debtors' termination of their employment. Upon termination, eligible BSA Employees are entitled to receive ongoing payments equal to one week of their base salary for each year of service, up to a maximum of 26 weeks' base salary. Additionally, as of the Petition Date, the Debtors owe approximately $15,000 in severance to one former non-insider BSA Employee. I understand that the Debtors are requesting authority to (a) pay up to $20,000 on account of prepetition Non-Insider Severance Program and other severance obligations in the ordinary course and

(b) continue the Non-Insider Severance Program in the ordinary course as such program was in effect prepetition and to pay any benefits under the Non-Insider Severance Program only to BSA Employees who are not "insiders" as such term is defined by section 101(31) of the Bankruptcy Code.

6. Retirement Plans.

145. The Debtors offer two retirement plans (the "Retirement Plans") to Full-Time and Seasonal BSA Employees, which are described in further detail below.

a. *Pension Plan*.

146. Certain of the Full-Time BSA Employees with at least one year of service[33] and Retirees participate in a defined benefit pension plan (the "Pension Plan"), originally established by the BSA in 1938. I have been advised that the Pension Plan is a qualified retirement plan subject to sections 401(a)(17) and 415 of the Internal Revenue Code. Entry into the Pension Plan was frozen on December 31, 2018, and no BSA Employees have been permitted to become active participants under the Pension Plan after such date.

147. On and after January 1, 2019, the Pension Plan was amended to become a two-tiered plan. Pursuant to the amendment, "grandfathered employees" with fifteen (15) years of service and age plus service equal to sixty (60) years were permitted continue to participate in the Pension Plan, while "non-grandfathered employees" were automatically enrolled into the Match Savings Plan described and defined below. I am informed that there are currently 289 "grandfathered" BSA Employees participating in the Pension Plan. These BSA Employees are required to contribute 4.25% of their salary to the Pension Plan, while the BSA may make discretionary contributions. The BSA spends 7.75% of each eligible BSA Employee's wages on

[33] Employees hired on or before May 31, 2004 working 21 or more hours per week are also eligible.

retirement-related costs, which is first used to satisfy obligations under the Match Savings Plan (described and defined below), followed by administrative costs with respect to the Pension Plan, with the remainder contributed to the Pension Plan. Approximately 1,200 Retirees and beneficiaries participate in the Pension Plan.

148. For the 2019 plan year, the BSA contributed approximately $3.0 million to the Pension Plan on behalf of the BSA Employees and Retirees and made an additional contribution of $60 million. Total BSA Employee contributions to the Pension Plan in the 2019 plan year were approximately $1.4 million. The BSA's total administrative and actuarial fees related to the Pension Plan in 2019 were approximately $775,000. As of the Petition Date, the Debtors have withheld but not yet remitted approximately $70,000 in BSA Employee contributions to the Pension Plan, and owe approximately $140,000 on account of employer contributions. The Pension Plan is managed by the BSA and is administered by Morneau Shepell. I am informed that, as of the Petition Date, the Debtors owe approximately $230,000 to Morneau Shepell on account of administrative fees, all of which is estimated to become due and owing during the Interim Period.

b. *Match Savings Plan*.

149. The BSA sponsors a 403(b) defined contribution retirement plan, which is available to employees of exempt organizations and is similar to a 401(k) retirement plan (the "Match Savings Plan"). All eligible BSA Employees may enroll in the Match Savings Plan, which enables the BSA Employees to make pre-tax Payroll Deductions up to limits set by the Internal Revenue Code (the "Employee Contributions").

150. I am informed that, as of the Petition Date, approximately 1,050 current BSA Employees participate in the Match Savings Plan. Each month the Debtors deduct and withhold approximately $440,000 in Employee Contributions for the Match Savings Plan. The Match

Savings Plan is managed by Fidelity Workplace Services. As I understand is customary, Fidelity Workplace Services makes deductions from participants' Match Savings Plan funds in respect of administrative fees (the "Fidelity Workplace Administrative Fees"). The Debtors disburse the Employee Contributions and Employer Matching Obligations (as defined below) from their operating account within one week after the applicable payroll date. I am informed that, as of the Petition Date, the Debtors have withheld but not yet remitted approximately $50,000 on account of Employee Contributions for the prepetition period.

c. *Employer Matching Obligation*.

151. The Debtors have a limited matching program under the Pension Plan and Match Savings Plan (the "Employer Matching Obligation"). For "grandfathered" BSA Employees receiving benefits under the Pension Plan, the BSA matches 50% of Employee Contributions up to 6% of pay. With respect to non-grandfathered BSA Employees under the Match Savings Plan, the BSA makes an automatic contribution of 1.75% of a BSA Employee's pay regardless of whether a BSA Employee makes an Employee Contribution, and matches 100% of Employee Contributions up to 6% of pay. I am informed that the Debtors paid approximately $6.5 million in 2019 on account of the Employer Matching Obligation, and as of the Petition Date, the Debtors estimate that they owe approximately $180,000 on account of the Employer Matching Obligation with respect to the Retirement Plans, all of which will become due and owing in the Interim Period.

152. I understand that many of the BSA Employees' sole or primary source of retirement savings consist of the amounts they have saved and received pursuant to the Retirement Plans. Further, many of the BSA Employees choose to participate in the Match Savings Plan because of the Employer Matching Obligation. The Debtors believe, and I agree, that continuing the Employer Matching Obligation is essential to maintaining BSA Employee

morale and protecting the expectations of the BSA Employees. In addition, I have been advised that the Debtors assert that the Employee Contributions are generally held in trust by the Debtors and are not property of their estates. Accordingly, the Debtors are requesting authority to pay all of the outstanding Employer Matching Obligation and any unpaid Fidelity Workplace Administrative Fees on an interim and final basis, and to continue honoring such obligations post-petition in the ordinary course and consistent with their prepetition practices.

7. Paid Time-Off and Other Leave Policies.

153. Pursuant to the Debtors' paid time-off ("PTO") policy as of the Petition Date, which combines vacation, sick days, and any other personal time off, Full-Time BSA Employees are paid their regularly scheduled wages for each day of PTO up to the maximum number of days accrued based on years of service, which ranges from 24 to 36 days per year. The PTO policy also provides that for BSA Employees terminating their employment with the Debtors, accrued and unused vacation days were monetized and paid to such BSA Employees in cash. In general, PTO in excess of ten days at the end of a calendar year is not eligible to be carried over to the next year, unless required by applicable state law. Part-time Employees of the BSA may be eligible for PTO benefits only as required by applicable state and local laws.

154. The Debtors estimate that, as of the Petition Date, the aggregate value of accrued but unpaid PTO is approximately $3.85 million were it to be fully monetized. Because PTO is typically not monetized until a BSA Employee's termination, however, the Debtors do not currently owe any cash amounts on account of accrued but unpaid PTO.

155. The Debtors also provide for the BSA Employees to take the following categories of leave under certain circumstances: (i) Family and Medical Leave Act, (ii) personal leave, (iii) military caregiver leave, (iv) uniformed services leave, (v) bereavement leave, and (vi) civic duty leave for jury duty or appearing in court as a witness (collectively, "Other Leave"). The

Debtors are also requesting authority to maintain their Other Leave programs for BSA Employees in the ordinary course of their operations.

8. Other Benefit Programs.

156. The Debtors also provide a number of additional Employee Compensation and Benefits to certain eligible BSA Employees (the "Other Benefits Programs"):

- **Vehicle Program**. The Debtors provide leased vehicles to certain executives, regional directors, and various other BSA Employees (the "Vehicle Program"). The Debtors pay Automotive Rentals Inc. ("Automotive Rentals") approximately $45,000 per month on account of the Vehicle Program. As of the Petition Date, the Debtors estimate that they owe approximately $90,000 to Automotive Rentals for leased vehicles on account of BSA Employees.

- **125 Plan**. The Debtors offer the 125 Premium Only Plan (the "125 Plan") to active eligible BSA Employees. Through the 125 Plan, eligible BSA Employees can reduce their taxable income by subtracting such employees' cost for coverage under certain Employee Benefits Programs from a BSA Employee's salary before taxes are calculated.

- **Employee Assistance Program**. BSA Employees can obtain confidential support for issues such as stress, abuse, alcohol and other drug problems, anxiety, depression, financial or legal concerns, gambling, child and elder care, and relationship issues and concerns (the "Employee Assistance Program"). The program is administered by United. The Debtors make the Employee Assistance Program available to all BSA Employees at no cost for eligible Employees up to a certain number of visits. The cost to the Debtors for this program is included in the administrative fees paid to United.

- **Wellness Program**. The Debtors are in the process of offering a comprehensive wellness program to BSA Employees (the "Wellness Program") through Vitality. The Wellness Program provides incentives for benefit-eligible BSA Employees to improve their health, in the form of points that may be converted to gift cards and other rewards. No amounts are outstanding as of the Petition Date on account of this program.

- **Naturally Slim Program**. The Debtors offer Naturally Slim to BSA Employees, which is a web-based education program focused on improving eating habits, losing weight, and decreasing risk factors that lead to metabolic syndrome (the "Naturally Slim Program"). The Debtors make the Naturally Slim Program available to all BSA Employees at no cost as long as the program requirements are completed. The Debtors pay Naturally Slim

approximately $15,000 per month based on the number of BSA Employees in connection with the Naturally Slim Program. As of the Petition Date, the Debtors estimate that they owe approximately $15,000 to Naturally Slim on account of the Naturally Slim Program.

- **Additional Insurance Program.** The Debtors offer additional personal insurance options to their employees, allowing them to purchase additional coverages at a discount through Liberty Mutual (auto, home, renter) and AFLAC (catastrophic injury) (together, the "Additional Insurance Program"). The BSA deducts amounts from participating employee's payroll checks and remits the amounts to the appropriate provider on a monthly basis in arrears. The Debtors pay approximately $25,000 per month to Liberty Mutual and AFLAC on account of the Additional Insurance Program. As of the Petition Date, the Debtors estimate that they owe approximately $25,000 to Liberty Mutual and AFLAC on account of the Additional Insurance Program.

- **Professional Services.** The Debtors offer financial planning and advisory and tax planning services to certain BSA Employees (the "Professional Services"). The BSA pays for the Professional Services on behalf of the participating BSA Employees, and such employees are then taxed for these services through payroll deductions. As of the Petition Date, no amounts are outstanding on account of this program.

157. I am informed that, as of the Petition Date, the Debtors estimate that they owe approximately $130,000 in connection with the Other Benefits Programs, and are requesting authority to pay up to this amount during the Interim Period and on a final basis. The Debtors are also requesting authority to continue the Other Benefits Programs in the ordinary course on a post-petition basis.

E. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and (II) Granting Related Relief* (the "Tax Motion").

158. I have been advised that, as a non-profit entity under 26 U.S.C. § 501(c)(3), the BSA is not obligated to pay federal or state income taxes in the United States related to its charitable or educational purposes. In the ordinary course of their operations, however, the Debtors collect, incur, and pay certain sales and use taxes, property taxes, certain state and other income taxes, excise taxes, and various other governmental taxes, fees, and assessments,

including, but not limited to, licensing fees (collectively, the "Taxes"). I understand that the Debtors remit the Taxes to various federal, state, and local governmental units, including taxing, licensing, and regulatory authorities (collectively, the "Governmental Authorities").

1. Income Taxes.

159. As noted above, the BSA is a non-profit entity under 26 U.S.C. § 501(c)(3) and therefore is not obligated to pay federal income taxes in the United States related to its charitable or educational purposes. The Debtors do pay unrelated business income taxes ("Unrelated Business Income Taxes"), income taxes in Canada and a franchise tax to the state of New Mexico in connection with operating in the state (together with the Unrelated Business Income Taxes, the "Income Taxes"). I am further informed that the Debtors accrue Unrelated Business Income Taxes for income generated from investments made through their partnerships,[34] for the sale of cattle, advertising in their magazines, real estate rent, and sponsorship revenue. When due, the Debtors pay Income Taxes on a monthly, quarterly, and annual basis. I am informed that the Debtors also have incurred approximately $10 million in net operating loss carryforwards ("NOLs"), which may be utilized in potentially reducing the Debtors' tax liability in future periods. I am informed that in 2019, the Debtors paid approximately $250,000 in Income Taxes, and as of the Petition Date, the Debtors estimate that they have accrued approximately $50,000 in Income Taxes, approximately $40,000 of which will become due and owing during the interim period.

[34] National Foundation also incurs Unrelated Business Income Taxes from investments made through partnerships. The BSA pays the Unrelated Business Income Taxes for National Foundation as they come due, and are reimbursed by the National Foundation.

2. Sales and Use Taxes

160. The Debtors incur, collect, and remit certain state and local sales taxes and similar obligations in connection with the sale of camping supplies, apparel, and accessories at the BSA Scout Shop locations and the Scout Shop online store (collectively, the "Sales Taxes"). I have been advised that Sales Taxes are essentially general consumption taxes charged at the point of purchase for certain goods and are typically established by the applicable Governmental Authority as a percentage of the retail price of the goods purchased.

161. Additionally, the Debtors purchase a variety of equipment, materials, supplies, and services necessary for their operations from vendors who may not operate or be registered to collect taxes in the state where the goods are to be delivered or the services are to be performed and, therefore, these vendors do not charge the Debtors sales taxes in connection with such purchases of goods or services. I have been advised that, in these instances, applicable law generally requires the Debtors to subsequently pay use taxes on such purchases to the applicable Governmental Authorities ("Use Taxes," and, together with Sales Taxes, the "Sales and Use Taxes"). The Debtors generally remit Sales and Use Taxes to Governmental Authorities on a monthly basis. I am informed that in 2019, the Debtors paid approximately $6.32 million in Sales and Use Taxes to Governmental Authorities, and as of the Petition Date, the Debtors estimate that they have accrued approximately $880,000 in Sales and Use Taxes to various Governmental Authorities, the majority of which will become due and owing during the interim period.

3. Property Taxes.

162. I have been advised that state and local laws in the jurisdictions where the Debtors operate generally grant Governmental Authorities the power to levy property taxes against the Debtors' real and personal property ("Property Taxes"). I am informed that, currently, the

Debtors pay taxes on real property located in California that was donated to their non-debtor affiliate National Foundation and are reimbursed pursuant to a shared service agreement. Additionally, in certain localities the Debtors pay personal property taxes on the equipment and inventory at their Scout Shops.

163. To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay Property Taxes in the ordinary course as such taxes are invoiced, and his includes Property Taxes collected from certain third parties and paid to the applicable Governmental Authorities. I am informed that in 2019, the Debtors paid approximately $30,000 in Property Taxes, and as of the Petition Date, the Debtors estimate that they have accrued approximately $30,000 in Property Taxes, none of which will become due and owing during the interim period.

4. Import Duties.

164. Due to its many international suppliers, the BSA may be required to pay applicable duties enforced by the United States Customs and Border Protection for all internationally supplied goods (the "Import Duties"). In addition, I understand that for all supplies, merchandise and apparel shipped to the Scout Shop in Puerto Rico, the BSA also specifically pays all charges related to the Puerto Rico Import Tax. I am informed that in 2019, the Debtors paid approximately $2,900,000 in Import Duties and Puerto Rico Import Tax, and as of the Petition Date, the Debtors estimate that they have accrued approximately $600,000 in Import Duties and Puerto Rico Import Tax, approximately $390,000 of which will become due and owing during the interim period.

5. Other Taxes and Fees.

165. The Debtors also remit other taxes and fees required in certain jurisdictions, including charitable registration and permit fees, licensing fees for Scouts Shops, environmental

fees, excise taxes, and other miscellaneous taxes such as storm water and bag taxes ("Other Taxes and Fees"). I understand that in 2019, the Debtors paid approximately $90,000 in Other Taxes and Fees, and as of the Petition Date, the Debtors estimate that they have accrued approximately $60,000 in Other Taxes and Fees, approximately $10,000 of which will become due and owing during the interim period.

6. Penalties.

166. I have been advised that the Debtors also pay tax penalties in certain instances (the "Penalties"). Specifically, I am informed that a number of jurisdictions rejected the BSA's 2018 filings for failing to include an audit report. I am informed that the estimated Penalties associated with rejected filings total $40,000, the majority of which will become due and owning during the interim period.

167. The Debtors assert, and I agree, that the Debtors' ability to pay prepetition Taxes is critical to their continued and uninterrupted operations and would ultimately preserve the resources of the Debtors' estates and going-concern values. It is my understanding from various members of the Debtors' tax department and legal advisors that the failure to pay prepetition Taxes could materially and adversely affect the Debtors' non-profit operations in a number of ways. Among other things, I understand that the failure to timely pay prepetition taxes would require the Debtors to spend time and money to resolve whether (i) the obligations are entitled to priority status under the Bankruptcy Code; (ii) the obligations are secured by liens on the Debtors' real and personal property, thus entitling the relevant governmental authorities to a secured claim against property of the relevant Debtor's estate; and (iii) the obligations are subject to so-called "trust fund" taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of the relevant taxing authorities.

168. In addition, I have been advised by the Debtors' legal advisors that some taxing jurisdictions may hold responsible officers personally liable in various circumstances for unpaid prepetition sales and use taxes. To the extent that any such "trust fund" taxes remain unpaid by any of the Debtors, I understand that their officers could be subject to civil liability or criminal prosecution during the pendency of these chapter 11 cases. The Debtors assert, and I agree, that the possibility of any such lawsuit or criminal prosecution would distract the Debtors and their officers in their efforts to implement a successful reorganization strategy, to the detriment of all parties in interest. Accordingly, I believe that the relief requested in the Tax Motion is necessary to prevent immediate and irreparable harm to the Debtors' estates.

F. *Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payments for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving Procedures for Resolving Additional Adequate Assurance Requests, and (IV) Granting Related Relief* (the "Utilities Motion").

169. I am informed that in the ordinary course of the Debtors' operations and management of their properties, the Debtors obtain electricity, natural gas, water and sewage, telecommunications, internet, cable, waste, and other similar services (collectively, the "Utility Services") from a number of utility companies (collectively, the "Utility Providers"). I am informed that the Debtors pay approximately $626,000 each month for Utility Services, calculated as a historical average payment for the twelve-month period ending December 31, 2019, or based on the highest month's bill during the same period when the full twelve-month period is unavailable.

170. I understand that, to provide additional assurance of payment to the Utility Providers, the Debtors propose to deposit $301,900 (the "Adequate Assurance Deposit") into a segregated bank account owned by the Debtors (the "Adequate Assurance Account") within

twenty days of the Petition Date. I am informed that the Adequate Assurance Deposit is equal to approximately one half of the cost of the Debtors' average monthly Utility Services, calculated as a historical average payment for the twelve-month period ending December 31, 2019, or based on the highest month's bill during the same period when the full twelve-month period is unavailable, less the existing deposits.

171. I understand that no liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account. The Debtors believe, and I agree, that the Adequate Assurance Deposit and existing deposits, in conjunction with cash on hand, cash flow from operations, and their proposed use of cash collateral, demonstrates the Debtors' ability to pay for future utility services in the ordinary course and constitutes sufficient adequate assurance to the Utility Providers. Additionally, I understand that the Debtors' proposed adequate assurance procedures allow Utility Providers to request adequate assurance for unpaid utility services and additional adequate assurance when they believe the proposed amount is not sufficient.

172. In my opinion, uninterrupted Utility Services are essential for the Debtors to maintain their headquarters and distribution and supply center, located in Texas and North Carolina, respectively, and to provide the necessary support for their approximately 175 Scout Shops throughout the United States. Any interruption in Utility Services, even for a brief period of time, would severely disrupt the Debtors' non-profit operations, including their Scouting programs, and jeopardize the Debtors' reorganization efforts. Accordingly, it is my belief that it is critical that the Utility Services continue without interruption during these chapter 11 cases, and the proposed Adequate Assurance Deposit into the Adequate Assurance Account is sufficient to provide the Utility Providers with adequate assurance, as required by the Bankruptcy Code.

G. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Maintain and Administer Prepetition Customer, Scout, and Donor Programs and Practices and (B) Pay and Honor Related Prepetition Obligations, and (II) Granting Related Relief* (the "Public Programs Motion").

173. As a nonprofit organization, the BSA does not generate income like a typical chapter 11 debtor in possession. Rather, the BSA primarily relies on revenue generated from charitable donations, memberships, merchandise, and licensing trademarks to third parties to fund its operations. I understand that it is therefore critical that the BSA maintains a positive relationship with customers, Scouts, and donors. To that end, the BSA has implemented various programs and policies for customers, Scouts, and donors (collectively, the "Public Programs"), including, without limitation, (i) gift cards, refunds and exchanges, and promotions for the Scout Shop and Trading Post, custom uniform orders, (ii) scholarships, (iii) counseling support, (iv) pass-through donations, and (v) gift annuities. I understand that without the ability to pay or otherwise honor its obligations under the Public Programs (collectively, the "Public Program Obligations") and maintain the Public Programs in the ordinary course, the BSA would risk losing the hard-earned trust, loyalty, and goodwill of its customers, members, and donors during a difficult time, which could jeopardize the future of the organization. The Debtors assert, and I agree, that the Debtors' ability to maintain and administer the Public Programs and pay and otherwise honor the Public Program Obligations is therefore necessary to protect the future of the BSA and preserve value for creditors.

1. Customer Programs and Policies.

174. As noted above, although the BSA is a non-profit organization, it also maintains retail operations for customers. The Scout Shops serve as the BSA's official retailer with approximately 175 locations nationwide and an e-commerce platform accessible at https://www.scoutshop.org, as well as various program-specific sites, such as the High

Adventure Facilities' websites and an alumni website. Local Councils and Scouts, as well as the general public, are able to purchase a wide array of items, including uniforms, apparel, tents, backpacks, and other gear, from the retail locations and websites. In addition, each High Adventure Facility has a Trading Post, where campers may purchase supplies, gifts, and apparel. To that end, the BSA has implemented several programs and policies relating to its retail operations (collectively, the "Customer Programs").

a. *Refund and Exchange Policies.*

175. The Debtors maintain certain return, refund, and exchange policies for customer purchases consistent with retail industry practice (collectively, the "Return and Exchange Policies"). Customers are permitted to return merchandise for any reason at any time. A customer must present a receipt to receive a full refund for the merchandise purchased. In absence of a receipt, a return may only be completed for an even exchange or a Scout Shop gift card.

176. I understand that without the Refund and Exchange Policies, current and potential customers may be unwilling to shop at the Debtors' Scout Shops, Trading Posts, or on their e-commerce platform, which may lead to a potentially significant decline in revenues to the ultimate detriment of the Debtors' estates. Based on historical returns, I am informed that the Debtors estimate that the cash outlay for the Refund and Exchange Program will be approximately $600,000 within the first 30 days of these chapter 11 cases.

b. *Sales Promotions.*

177. The Debtors regularly conduct sales promotions at the Scout Shop, Trading Post, and online (the "Sales Promotions"). The Sales Promotions consist of seasonal discounts, clearance discounts, and other promotions. As an example, the e-commerce site just ran a seven-

day Presidents Day sale offering 50% off all clearance items, which sale ended on February 17, 2020, at 11:59 prevailing Eastern Time.

c. *Gift Cards.*

178. I am informed that the Debtors maintain a program pursuant to which customers can purchase physical or electronic, pre-paid, non-expiring gift cards (collectively, the "Gift Cards"). Gift Cards are available in varying denominations and can be purchased online or at the Scout Shops. Once purchased, a Gift Card may be used like cash for purchases online or at the Scout Shop or Trading Post. I understand that the Debtors estimate that approximately $2.5 million in Gift Cards remain outstanding as of the Petition Date.

179. I am further informed that the Debtors utilize Valutec Card Solutions and Opticard (collectively, the "Gift Card Processors") to process the Gift Cards. In addition, the Gift Card Processors maintain electronic records of transactions and purchases utilizing Gift Cards accessible to the Debtors, which records are maintained for 60 days from the date of such transaction. The Debtors pay various fees to the Gift Card Processors in connection with the Debtors' sale and processing of Gift Cards and the maintenance of related data records (collectively, the "Gift Card Fees," and together with the Gift Cards, the "Gift Card Obligations"). During peak sale months, the Debtors pay approximately between $1,000 and $1,500 in Gift Card Fees per month to the Gift Card Processors. I understand that the Debtors estimate that, as of the Petition Date, approximately $8,000 in Gift Card Fees are accrued and unpaid, $7,000 of which will become due and owing in the first 30 days of these chapter 11 cases.

d. *Credit Card and Other Payment Processors.*

180. I am informed that, in addition to cash and checks, the Debtors accept the following customer payment methods at the Scout Shops, Trading Posts, and online: (i) credit

and debit cards issued by American Express, Discover, MasterCard and Visa (in store and online); (ii) PayPal (online only); and Apple Pay (in stores) (collectively, the "Non-Cash Payments"). To process the Non-Cash Payments, the Debtors are party to those certain instrument processing agreements (the "Payment Processing Agreement") with Chase Paymentech, Total Systems Services, Inc. (f/k/a Cayan), Card Connect, Shift4, Authorize.Net, Moneris, Wells Fargo, Dynamic Payments, and Stripe (collectively, the "Payment Processors").

181. I am informed that, under the Payment Processing Agreements, the Debtors generally receive gross proceeds of customer purchases, less any chargebacks, returns, and/or processing fees debited from the payment balance by the Payment Processor. The Payment Processors charge either a set processing fee per transaction or collect fees based on a percentage of the transaction amount. The Debtors pay processing fees that range from $0.00 to $1.75 or 0.0% to 2.0% per transaction (the "Processing Fees").

182. I am also informed that when a customer returns merchandise purchased from the Debtors with a Non-Cash Payment or disputes a charge with a Payment Processor, the Debtors may, in certain circumstances, be obligated to refund to the Payment Processor the value of the purchase, subject to certain adjustments (collectively, "Chargebacks" and, together with the Processing Fees, the "Processing Obligations"). I understand that the Debtors generally satisfy Chargebacks by netting (*i.e.*, setting off) the applicable amount charged against payments owed to the Debtors by the Payment Processor. It is possible that certain Processing Obligations that the Debtors incurred before the Petition Date may not have been netted, either in full or in part, against payments owed to the Debtors by the Payment Processors before the Petition Date. I am informed that, based on historical activity, the Debtors estimate that approximately $115,000 in

Processing Obligations remain outstanding, all of which will become due and owing in the first 30 days of these chapter 11 cases.

183. The Debtors assert, and I agree, that it is essential to the Debtors' continued operation that they be able to continue to accept Non-Cash Payments. I understand that Non-Cash Payments comprise the overwhelming majority of payments made by the Debtors' customers. Accordingly, I am informed that any interruption in the Debtors' ability to continue accepting Non-Cash Payments or paying or otherwise honoring the Processing Obligations would irreparably damage the Debtors' retail operations and could ultimately jeopardize their ability to reorganize successfully.

2. Scout Programs and Policies.

184. The Debtors also offer a number of Public Programs to Scouts and Scout alumni, and in certain instances, members of the general public who are interested in BSA programs, including, without limitation, maintaining Scout and volunteer deposits, providing scholarships, and offering counseling support (collectively, the "Scout Programs").

a. *Scout and Volunteer Deposits.*

185. I am informed that in certain instances, the Debtors receive partial payments from Scouts in advance of providing services (the "Deposits"). For example, the BSA National Jamboree, National Order of the Arrow Conference, and High Adventure Facilities all require a deposit from participants several months prior to the date of the reservation, each on a varying payment schedule. I understand that in rare situations, the Debtors may refund a Deposit to an individual if the individual leaves Scouting prior to the applicable event. I am informed that as of December 31, 2019, the Debtors held $27 million in Deposits and it is important that the Debtors be able to honor all Deposits for future events. I understand that the majority of the Deposits are held in connection with reservations at the High Adventure Facilities, and only

approximately 2% of the Deposits are being held for the next National Order of the Arrow Conference and National Jamboree.

186. The Debtors believe, and I agree, that it is essential that the Debtors be able to honor Deposits for future events and apply the funds as expected by Scouts. Otherwise, I understand that Scouts may be discouraged from paying for such events in the future and it may be untenable for the Debtors to continue hosting such events. I am informed that these special events are often cornerstones of the BSA Scouting programs and without them, children may be less interested in participating in Scouting programs and memberships could decline.

b. *Scholarships*.

187. I am informed that the Debtors also offer approximately 140 scholarships, grants, or monetary awards (collectively, the "Scholarships and Grants")[35] annually to BSA members meeting various criteria. The Scholarships and Grants are awarded to BSA members in recognition of merit achievements (such as earning the Eagle Scout Award), academic achievements (including membership in the BSA's honor society, the Order of the Arrow), community service, the pursuit of science, technology, engineering, or mathematical (or "STEM") fields, and/or financial need. Generally, these recognitions are provided to individual members—at both at the local, regional, and national levels of the BSA organization—who best exemplify the Scout Oath and Law in their daily lives. The Debtors believe, and I agree, that the Scholarships encourage positive youth leadership development and service to others.

188. I understand that, generally, scholarship and grant applications are due in October for the following academic year, and the BSA makes decisions on scholarship and grant awards in February, with some awards announced publicly in May at the BSA's annual national

[35] Specific details for each of the approximately 140 scholarships, grants, and other monetary award opportunities can be found on the BSA's website.

meeting. I am informed that as of the Petition Date, approximately $700,000 in Scholarships and Grants awarded for the 2019-2020 school year have not yet been remitted to the applicable schools, because, among other things, some recipients have deferred their scholarships so they can complete religious missions before attending college and some recipients have not yet submitted their requests for second semester payments. I am further informed that Scholarships and Grants for the 2020-2021 academic year have not yet been awarded, but the Debtors estimate that at least approximately $600,000 will be owed on account of multiple-year Scholarships awarded in previous years. In 2018, the Debtors paid approximately $1,500,000 in scholarships and $500,000 in grants, and the Debtors anticipate that their obligations for Scholarships and Grants for 2020 will be substantially similar to the total amounts paid in 2018.

189. The Debtors assert, and I agree, that Scholarships and Grants are important to maintaining the goodwill of Scouts. The Debtors have already committed to providing Scholarships and Grants and recipients of such awards are relying on such funds to assist with the costs of higher education. If the Debtors are not authorized to continue honoring their Scholarship and Grant obligations, it may ultimately be the recipients of such Scholarships and Grants who are harmed unnecessarily, as the awards may be the linchpin in a student's ability to afford higher education.

c. *Counseling Support Programs.*

190. As discussed in Part II above, there have been instances of child abuse in the BSA's history. I am informed that, consistent with the Debtors' responsibility to prioritize youth safety and provide the upmost protection to children at every level of the BSA's organization, the Debtors are committed to providing ongoing support to abuse victims and their families, including financial assistance for counseling. Specifically, the Debtors have established a program to reimburse abuse victims and their families for the cost of ongoing counseling

(the "Counseling Reimbursement Program"). The Debtors also partner with 1in6, a nationally recognized male abuse support group, to provide clinically facilitated online support groups and an online helpline (the "1in6 Partnership," and together with the Counseling Reimbursement Program, the "Counseling Support Programs").

191. Under the Counseling Reimbursement Program, the Debtors reimburse the participant's cost of weekly counseling visits to a therapist of their choice. Benefits under the Counseling Reimbursement Program are available to any victim of child abuse in Scouting, as well as family members in the Debtors' discretion. I am informed that the Debtors' obligations under the Counseling Reimbursement Program are also embodied in certain settlement agreements with abuse victims. During the twelve-month period preceding the Petition Date, the Debtors made payments under the Counseling Reimbursement Program, either directly to providers or indirectly through reimbursements to participants on account of their payments to providers, in the aggregate amount of approximately $50,000. I am informed that, as of the Petition Date, the Debtors estimate that they are current on all reimbursement obligations under the Counseling Reimbursement Program, and any outstanding liability associated with such reimbursement obligations would be negligible.

192. In addition, the 1in6 Partnership supports the needs of any Scouts, former Scouts, and family members of Scouts who suffered abuse during their time in Scouting. I am informed that, as of the Petition Date, no prepetition amounts related to the 1in6 Partnership and its corresponding services are outstanding. The Debtors believe, and I agree, that it would be inequitable to abuse victims if the Debtors were unable to continue the Counseling Support Programs and honoring all prepetition obligations with respect thereto.

3. Donor Programs.

193. The Debtors also offer a number of programs to donors, including offering individuals the ability to donate to international scouting funds and organizations and other programs that may provide tax benefits for charitable donations (collectively, the "Donor Programs").

a. *Pass-Through Donations*.

194. I am informed that, to further the BSA's mission worldwide, the BSA serves as an intermediary for donations to international scouting funds and organizations that donors are unable to donate to directly due to various legal restrictions. In particular, the BSA serves as an intermediary for donations (the "Pass-Through Donations") to the World Friendship Fund and International Scouting Foundations (as defined below).

195. I am informed that the World Scout Foundation, European Scout Foundation, Asia-Pacific Scout Foundation, Africa Scout Foundation, Gilwell Development Fund, and Kandersteg Foundation (collectively, the "International Scouting Foundations") are international non-profit institutions that invest in the development and strengthening of Scouting worldwide through the provision of financial and other support, including grants and capital investments. Specifically, the World Scout Foundation aims to empower the more than 50 million Scouts worldwide with strong values and leadership skills, and to create active citizens who in turn make a positive impact in their communities.

196. I understand that Americans who wish to invest in the International Scouting Foundations make donations with the BSA via check or credit card, and the BSA in turn transfers the donations to the specified International Scouting Foundation. This process is not precisely contemporaneous, however, and the BSA may be holding such donations for the benefit of the International Scouting Foundations for a period of time until the funds are fully

processed and wired to the specific International Scouting Foundation. As of the Petition Date, I am informed that the Debtors estimate that they hold approximately $30,000 in International Scouting Foundation donations that have not yet been remitted to the applicable International Scouting Foundation.

197. In addition, I am informed that the World Friendship Fund takes voluntary contributions from individual donors and uses that money toward projects that help National Scout Organizations in less-fortunate countries and BSA projects that impact World Scouting. The BSA is one of 170 different Scouting organizations in the World Organization of the Scout Movement, and the sole manager of the World Friendship Fund. The BSA collects donations from individual donors and remits the funds three times a year to the National Scout Organizations or BSA projects selected to receive the grants. I am informed that the Debtors estimate that, as of the Petition Date, they are holding approximately $100,000 in funds that are to be remitted to the National Scout Organizations or BSA projects from grants approved or pending review in February.

198. I understand that the Debtors merely serve as an intermediary for individuals who wish to donate to international funds and organizations that further the Scouting mission worldwide. I have been advised that the Debtors therefore do not believe that such Pass-Through Donations are assets of the Debtors' estate and are only seeking such relief out of an abundance of caution. I understand that if the Debtors are unable to honor donors' wishes with respect to Pass-Through Donations, the Debtors risk disenfranchising their donors more broadly. The Debtors unlikely could continue their non-profit operations without donations, or even a mere decline in donations.

b. *Gift Annuity Program*.

199. I am informed that, as a means of raising funds and furthering the BSA's charitable mission, the BSA from time to time enters into charitable gift annuity agreements (the "Gift Annuity Agreements") with donor annuitants (the "Annuitants"). Under these agreements, the Annuitant transfers property to the BSA in exchange for the BSA's promise to pay the Annuitant—or, in certain cases, multiple Annuitants—a fixed stream of income for life. After the death of the Annuitant (or if the donor has designated two beneficiaries, both Annuitants), the remaining value of the original gift, net of fees earned by State Street Global Advisors ("State Street"),[36] is then used by the BSA to further its charitable mission. The BSA has historically made fixed income payments with approximately 70% of the value of the gifts made by the Annuitants and retained the remaining 30% as a charitable gift. The BSA has operated the charitable gift annuity program (the "Gift Annuity Program") for approximately twenty-seven (27) years.

200. I understand that, just as the BSA benefits from the Gift Annuity Program, the Annuitants receive tangible benefits from the program, including the following: (a) a portion of the gift is tax deductible to the Annuitant; (b) the BSA's annuity obligation provides a regular stream of income to the Annuitant, a portion of which is considered a return of principal and is not generally taxable to the Annuitant; and (c) if appreciated property (*e.g.*, stocks, mutual funds, or bonds) is used to fund the Annuitant's initial gift to the BSA, the donation will result in a lesser capital gains tax liability than the Annuitant would otherwise incur if he or she were forced to liquidate the donated property.

[36] State Street administers the BSA's segregated gift annuity accounts and makes payments from those accounts to the Annuitants. In the year ended December 31, 2019, State Street earned approximately $26,619 in fees on account of its administration of the BSA's Gift Annuity Program.

201. I am informed that, in the great majority of cases, funds or property donated pursuant to the Gift Annuity Program are directly transferred by the donor Annuitants to, and are subsequently held in, one of two segregated, long-term investment accounts at State Street maintained by the BSA for the benefit of the Annuitants (the "Gift Annuity Accounts").[37] As of December 31, 2019, the total balance of the Gift Annuity Accounts was approximately $7.1 million.[38] State Street administers the BSA's Gift Annuity Program and invests the funds in the State Street Global Advisors Common/Collective Funds. I understand that the interest rates paid under the Gift Annuity Program are established by the American Council on Gift Annuities and are not affected by market performance. I am informed that, as of the Petition Date, the BSA was party to approximately 195 Gift Annuity Agreements, including 194 active agreements and one deferred agreement.

202. During 2018, the BSA made payments to Annuitants in the aggregate amount of approximately $580,000. I am informed that, in the twelve months following the Petition Date, the Debtors estimate that the BSA will make payments to existing Annuitants in the amount of approximately $560,000 if no Annuitants pass away and no new Gift Annuity Agreements are executed, or under $60,000 per month on average. During the 27-year history of the Gift Annuity Program, the BSA has never defaulted on its payment obligations.

203. I have been advised that the Gift Annuity Agreements may create an express or implied trust agreement, in which case, the amounts held in trust would not be included as

[37] I am informed that in a small minority of cases, funds or securities donated pursuant to the Gift Annuity Program are transferred by the Annuitants to a different account held by the BSA. In those cases, the BSA liquidates the property (if applicable) and promptly transfers the donated funds or proceeds of the donated property to the appropriate State Street account.

[38] I have been advised that California state law imposes a minimum reserve requirement for the benefit of California Annuitants, and requires that the reserves be held in trust for the benefit of such California Annuitants in a segregated account which is separate from reserves for the benefit of Annuitants of any other state.

property of the Debtors' estate. I have also been advised that even if certain of the reserves held by the BSA under the Gift Annuity Program are not held in trust for the Annuitants, the BSA would likely face costly and disruptive litigation if not authorized to continue to performing its prepetition obligations under the Gift Annuity Program. Moreover, the Debtors believe, and I agree, that it is essential that the Debtors be authorized to continue honoring the Gift Annuity Program, because any interruption to the Gift Annuity Program could erode the public's confidence in the Debtors' organization and cause potential donors to direct their charitable giving to other nonprofit organizations, which would hamper the Debtors' continued ability to carry out their charitable mission.

H. ***Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Claims of Essential Vendors, Foreign Vendors, Shippers and Warehousemen, Lien Claimants, and 503(b)(9) Vendors, and (II) Granting Related Relief*** **(the "Vendors Motion").**

1. Essential Vendors.

a. ***Scouting Suppliers.***

204. I am informed that, in the ordinary course of their operations, the BSA purchases supplies, merchandise and apparel, including components of its iconic uniforms, to sell to Scouts and their families, local councils, volunteers, and other members of the public at one of approximately 175 Scout Shops located across the United States and its territories, and through its online Scout Shop. At any given point in time, the BSA offers 8,000 to 10,000 unique products related to highly customized uniforms, patches, and other merchandise for each of the BSA programs, as well as program emblems, badges, equipment and camping accessories, and jewelry and general apparel. Further, approximately 135 local councils support these national sales efforts by designating a portion of their office space as a BSA Scout Shop. These local

council Scout Shops are locations where the BSA sells uniform, apparel, camping equipment, and other merchandise directly to BSA members.

205. As noted above, total retail sales represented approximately 30% of the BSA's total gross revenue for 2019 and are, therefore, critical to sustaining the BSA's operations and the BSA's ability to carry out its core program. More importantly, I understand that the BSA's retail operations make the BSA's Scouting programs possible by supplying Local Councils and BSA members with essential, unique items ranging from uniforms and camping supplies to merit badges and venturing handbooks. For example, every Scout has a uniform, which can be customized to each individual, replete with identifying patches, branded belts, shoulder loops, and more. I understand that many of these items are supplied by essential vendors (the "Essential Vendors"), without whom the BSA and Local Councils would be unable to carry out their mission.

206. Similarly, the Debtors also utilize certain essential printing suppliers that have the knowhow to produce the BSA's specialized printed materials—including handbooks and merit badge pamphlets—that are at the very core of Scouting. Each of these items is manufactured by one of the BSA's over 10,000 vendors and is sold exclusively by the BSA to Local Councils and individuals through its Scout Shops, online Scout Shop, and Trading Posts. Local Councils and individual Scouts expect and need the BSA to provide these unique items, and even a brief interruption in the flow of the Debtors' merchandise and supplies from the Essential Vendors could cause a severe negative impact on the Scouting experience for the BSA's members. Further, I understand that identifying and switching to alternative suppliers for each of the vendors the Debtors have deemed Essential Vendors—many of whom the organization has relied upon for years—would be time-consuming, cost prohibitive, and, in some cases, impossible.

207. In addition, the Debtors also operate four high adventure facilities that provide Scouts with opportunities to implement their knowledge and training at locations and in programs that are not available anywhere else in the country. Most of the high adventure facilities operate in remote locations where there are very limited suppliers of the types of goods and services that are essential for these facilities to operate. Certain of the Essential Vendors identified by the Debtors and their professionals provide these essential supplies to these remote locations. If these Essential Vendors refuse to continue providing goods or services to these high adventure facilities post-petition, the Debtors may be unable to find replacement vendors in time (or at all) for the critical months when thousands of Scouts arrive at these high adventure facilities. Such a situation could jeopardize the BSA's ability to safely and successfully operate the high adventure facilities.

b. *Identifying the Essential Vendors.*

208. In order to limit the scope and magnitude of the relief requested, the Debtors and their advisors spent significant time reviewing and analyzing books and records, reviewing prepetition vendor lists and consulting with certain of the Debtors' employees and professionals who are responsible for maintaining, and have intimate knowledge of, the Debtors' vendor and service provider relationships. With the assistance of their restructuring professionals, the Debtors considered the following criteria: (i) whether the vendor is a sole, limited-source or high-volume supplier of goods and services essential to the Debtors' retail operations; (ii) whether the Debtors would be able to obtain comparable goods or services from alternative sources for a similar cost within a reasonable time frame; (iii) the potential disruption to the Debtors' programs or lost revenues suffered while transitioning to alternative vendors; (iv) whether a vendor is otherwise contractually obligated to continue to provide goods or

services to the Debtors; and (v) whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship inventory or services on a post-petition basis.

209. As a result of this laborious, time-consuming process, the Debtors were able to pare down their approximately 10,000 vendors and identify a small fraction of those vendors and suppliers that are in fact Essential Vendors. Further, the proposed Final Essential Vendors cap of $3 million represents approximately 3% percent of the BSA's total annual supply expenses.

2. Foreign Vendors.

210. The Debtors rely upon certain foreign vendors outside of the United States, primarily in Asia, to supply critical, unique goods in connection with their retail operations and certain IT services (collectively, the "Foreign Vendors," and their claims, the "Foreign Vendor Claims"). The Debtors rely on Foreign Vendors to supply an important subset of the goods and merchandise sold in Scout Shops, online Scout Shop, and Trading Posts. In addition, the Debtors' foreign IT vendors provide critical services, including for business application management, maintenance and development of the BSA's electronic data processing, information, recordkeeping, communications, and other systems. I have been advised that if the Foreign Vendors stop providing these supplies and services, the Debtors operations would be irreparably harmed and their chances at successfully reorganizing severely undermined.

211. I understand that the Debtors are concerned that Foreign Vendors may discontinue providing goods and/or services absent timely payment of the Foreign Vendor Claims. Additionally, if left unpaid, I have been advised that the Foreign Vendors may take action against the Debtors based upon an erroneous belief that Foreign Vendors are not subject to the automatic stay provisions of section 362(a) of the Bankruptcy Code. Although the automatic stay applies to protect the Debtors assets wherever they are located in the world, I have been advised that attempting to enforce the provisions of section 362(a) in foreign countries is

difficult, disruptive, and costly. Further, the proposed payment of $500,000 to Foreign Vendors is a small fraction of the organizations overall annual supply expenses—less than 1%.

3. Lien Claimants.

212. I have been advised that certain vendors the Debtors conduct business with may be able to assert statutory liens—like mechanics' liens, materialmens' liens, shippers' liens and warehousemens' liens—against the Debtors' high adventure facility locations or the Debtors' goods or equipment, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code. As a result, certain Lien Claimants may refuse to perform their ongoing obligations to the Debtors, including performing servicing obligations in connection with the Debtors' facilities, unless their claims are paid in full. I have been advised that such Lien Claimants may also seek to file and perfect these statutory liens, creating an unnecessary administrative burden on the Debtors and their estates at this critical juncture.

a. *Shippers and Warehousemen.*

213. In operating their organization, the Debtors use and make payments to domestic and foreign commercial common carriers, movers, shippers, delivery services, and other third-party service providers (collectively, the "Shippers") to ship, transport, store, and otherwise facilitate the movement of goods through established national and international distribution networks, as well as a third-party warehouse (the "Warehousemen") to store goods in transit (such payments, the "Shipping and Warehousing Charges").

214. The BSA owns and operates a distribution center (the "BSA Distribution Center") and leases a warehouse facility that is used solely for storage of its excess inventory. The BSA Distribution Center is the Debtors' main hub for receiving and shipping all supplies, merchandise and apparel the BSA ships to Scout Shops, online customers of the Scout Shops, wholesale distributors and local councils. The BSA contracts with various shippers to ship orders from the

BSA Distribution Center to their final destination. Further, the BSA also drop-ships certain merchandise from manufacturers directly to the Scout Shops, Trading Posts, and individual customers. The BSA also utilizes international suppliers in meeting its demands for supplies, merchandise, and apparel.

215. I am informed that the services provided by the Shippers and Warehousemen are critical to the Debtors' operations. The Debtors rely on the Shippers and Warehouseman for the frequent, often daily, shipments of essential supplies, merchandise and apparel to Scout Shops, online customers of the Scout Shop and Local Councils. I have been advised that, following the commencement of these chapter 11 cases, certain Shippers and Warehousemen who hold goods for delivery to or from the Debtors may refuse to release the goods pending receipt of payment for their prepetition services. Indeed, I have been advised that under some state laws, a Shipper or Warehouseman may have a lien on the goods in its possession to secure the charges or expenses incurred for the transportation or storage of goods. I have also been advised that pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen, as bailees, may be entitled to adequate protection as holders of possessory liens.

216. Any disruption to the Debtors' acquisition of these goods from Shippers or Warehousemen could result in a slow-down or shut-down of the supply chain at the Debtors' various Scout Shops and Local Councils, adversely impacting Debtors' retail operations and Scouting to the detriment of all parties in interest. As mentioned above, Local Councils maintain little or no merchandise inventory on site, further threatening Scouting programs in the event that the Shippers or Warehousemen stopped providing services to the Debtors.

217. Accordingly, to meet their delivery deadlines and maintain uninterrupted operations, the Debtors have implemented an efficient system for the receipt of goods and the

delivery of merchandise to their members and non-member customers. This system relies heavily on third parties, including the Shippers and Warehousemen. At any given time, there are thousands of shipments of goods and BSA merchandise en route to and from various locations throughout the country in possession of Shippers and Warehousemen. I understand that it is therefore imperative that the Debtors be authorized to pay any Shipping and Warehousing Charges, whether they arose prior to or after the Petition Date, that the Debtors determine in their business judgment are necessary to ensure the uninterrupted shipment and delivery of the goods.

b. *Other Lien Claimants.*

218. The Debtors also routinely transact business with a number of other third parties including contractors, repairmen, and manufacturers who may assert tooling, mechanics', materialmen's, or other liens (the "Other Lien Claimants," and their claims, the "Other Lien Claims") against the Debtors and their property if the Debtors fail to pay for the goods or services rendered. The Other Lien Claimants perform a number of services for the Debtors, including construction, plumbing, and electric repair and maintenance for the high adventure facilities and the Debtors' various other real property facilities.

219. Specifically, much of the work that the Other Lien Claimants performed for the Debtors in 2019 and early 2020 was in relation to final phase construction of a dining hall, bunk house and leadership center on the Summit high adventure facility. The BSA will pay Other Lien Claimants for this construction work from its unrestricted cash, but will then be reimbursed in full from charitable donations that have been restricted for use only in connection with development of the high adventure facilities. Further development of the high adventure facilities is ongoing and their on-time completion is critical to the upcoming summer season.

220. As described above, if the Debtors are not permitted to pay the Other Lien Claims pursuant to the relief requested, certain of the Other Lien Claimants may be able to assert

mechanics liens and materialmen's liens against the Debtors' high adventure facility locations or the Debtors' goods or equipment, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code. Such filings would create significant administrative burden on the Debtors and their estates, and certain Other Lien Claimants may refuse to perform their ongoing obligations to the Debtors while such actions are pending. The Debtors assert, and I agree, that such a consequence could have dramatic, negative effects on the organization and its ability to advance its mission. As mentioned above, the construction work that the Other Lien Claimants is performing at high adventure facilities is crucial for the upcoming seasons. Any interruption of construction services by the Other Lien Claimants could prevent the completion of the facilities in time for the critical summer months. The Debtors estimate that approximately $4,750,000 in prepetition amounts are owed to Shipping and Warehousemen and Other Lien Claimants as of the Petition Date.

4. 503(b)(9) Vendors.

221. In their review of their books and records while seeking to narrowly tailor the relief requested in this Motion, the Debtors identified certain claims that may be entitled to priority status under section 503(b)(9) of the Bankruptcy Code. I have been advised that such claims may be entitled to priority status under section 503(b)(9) of the Bankruptcy Code ("503(b)9) Claims") because they are undisputed obligations for goods received by the Debtors in the ordinary course of business in the twenty (20) days prior to the Petition Date. The Debtors estimate that approximately $3,750,000 in prepetition amounts are owed to vendors on account of 503(b)(9) Claims as of the Petition Date.

222. The Debtors seek, in their discretion, to pay certain 503(b)(9) Claims as they come due in the ordinary course of business (typically on 30-day terms), instead of satisfying the 503(b)(9) Claims upon confirmation of a chapter 11 plan. By altering the timing of payments

that certain 503(b)(9) Vendors are entitled to receive as a matter of statute, such payments may induce the individual 503(b)(9) Vendors to adhere to more favorable trade terms and conduct business with the Debtors.

5. Customary Trade Terms.

223. The Debtors further request authority, but not direction, to condition payment of any prepetition amounts owed to any vendor, upon written verification at the Debtors' discretion, that such vendor will abide by certain trade terms, including that such vendor will (i) continue to provide services to the Debtors during the pendency of these chapter 11 cases on the most favorable terms that existed in the twelve (12) months before the Petition Date, (ii) agree that they shall not be permitted to cancel on less than 90 days' notice any contract or agreement pursuant to which they provide services to the Debtors, and (iii) take whatever action is necessary to remove any liens in respect of such claim, if any, at such Vendor's sole cost and expense; provided that no such payment shall be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of any such liens.

224. If any Vendor accepts payment pursuant to this Order for a prepetition obligation of the Debtors premised upon its compliance with conditions (i), (ii), and (iii) above, and thereafter fails to comply with those conditions, I have been advised that any payments made pursuant to this Interim Order shall be deemed an avoidable post-petition transfer under section 549 of the Bankruptcy Code, and, therefore, shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the claim shall be reinstated as a prepetition claim in the amount so recovered.

I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information and belief.

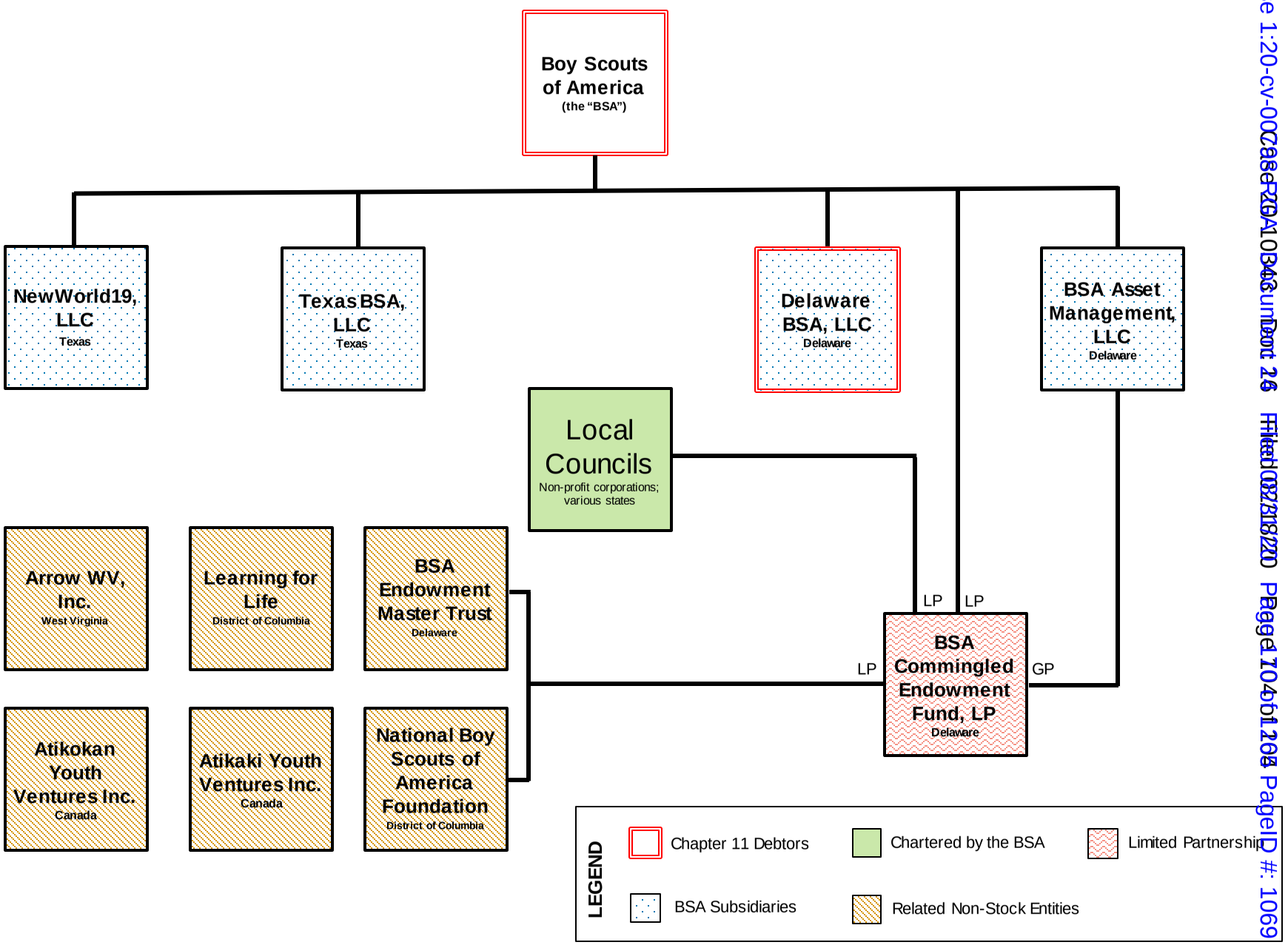
Executed this 18th day of February, 2020

/s/ Brian Whittman
Brian Whittman
Managing Director
Alvarez & Marsal North America, LLC

Exhibit A

Organizational Chart

Organizational Chart



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 (___) (Joint Administration Requested) **Hearing Date: TBD** **Objection Deadline: TBD**

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPOINTING A JUDICIAL MEDIATOR, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF

The Boy Scouts of America (the "BSA") and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the "Debtors"), submit this motion (this "Motion"), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), and rules 9019-3 and 9019-5 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), (i) appointing a sitting bankruptcy judge (if the relevant parties are unable to agree on a mediator before the hearing on this Motion) to mediate any and all issues related to the comprehensive resolution of claims relating to historical acts of abuse in the BSA's Scouting programs through a chapter 11 plan of reorganization, (ii) referring such matters to mandatory mediation, and (iii) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

[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 West Walnut Hill Lane, Irving, Texas 75038.

PRELIMINARY STATEMENT

1. The Debtors have commenced these chapter 11 cases to achieve the dual objectives of (a) equitably compensating victims of abuse in its Scouting programs and (b) ensuring that the BSA emerges from bankruptcy with the capability to continue carrying out its mission: "To prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law."

- **Scout Oath.** "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight."

- **Scout Law.** "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."

If these efforts are to succeed, it is imperative that the Debtors and their relevant stakeholders begin working toward a consensual resolution immediately.

2. As described in *Debtors' Informational Brief* filed concurrently herewith, the BSA is currently named as a defendant in approximately 275 lawsuits related to historical acts of sexual abuse in its Scouting programs. In addition, attorneys for abuse victims have provided information asserting an additional approximately 1,400 claims that have not yet been filed, for a total of approximately 1,700 known asserted abuse claims. Approximately 90% of these pending and asserted claims relate to abuse that occurred before 1988, when the BSA strengthened its existing youth protection programs. Recent changes in state statutes of limitations, however, have led to a sharp increase in the number of claims asserted against the BSA and placed tremendous financial pressure on the organization. In light of this increase in claims, the BSA cannot continue to address abuse litigation in the tort system on a case-by-case basis without jeopardizing its ability to carry out its mission.

3. A prolonged bankruptcy case, moreover, would be just as harmful to the BSA as continuing to engage in piecemeal litigation across the United States. It is imperative that the Debtors' reorganization proceedings not become mired in endless discovery, unyielding litigation, or other hallmarks of inefficiency. As a non-profit corporation that relies largely on member fees and donations to sustain its operations, considerations of economy and speed are of the utmost importance to the BSA. Unlike a for-profit corporation, the BSA cannot rely on revenues from the ordinary sales of products or services to sustain its operations during bankruptcy. Instead, there is a close correlation between the financial condition of the BSA and the public's confidence in the organization's ability to carry out its mission to serve youth, families, and local communities through its Scouting programs. A prolonged bankruptcy case would erode public confidence in the BSA, jeopardize its ability to operate, and ultimately deprive America's youth of the ability to participate in Scouting. Importantly, it would also deplete the assets available to compensate abuse victims.

4. This Motion does not represent the Debtors' first efforts to reach a consensual resolution of abuse claims through the mediation process. The BSA explored strategic options throughout 2019, including efforts to reach a settlement with a substantial number of abuse victims that could be implemented through a prearranged chapter 11 proceeding. Those efforts involved several meetings with attorneys representing many of the abuse victims, including a two-day mediation in early November 2019. The mediation was also attended by a prepetition future claims representative and certain of the BSA's insurers. The mediation, unfortunately, was unsuccessful. It became apparent that attorneys for abuse victims believed that certain local councils having abuse liabilities had significant unrestricted assets and that such assets should also be used to compensate victims. Further, it was clear that the attorneys for abuse victims

wanted, through a court-supervised process, detailed information about the nature and extent of the BSA's available assets. Accordingly, the BSA recognized in late 2019 that there were no meaningful prospects for a prearranged global resolution and that commencing a managed chapter 11 case was necessary to resolve its abuse liabilities.

5. The appointment of a judicial mediator at the outset of these cases is appropriate under these circumstances and will complement the other immediate steps the Debtors have taken to promote the expeditious and efficient execution of their reorganization proceedings. These steps include the following:

- **Data Room**. To avoid the delays and expense of protracted discovery, the BSA has established and is populating an electronic data room, which it will use to proactively make financial and non-financial information available to a committee representing abuse victims. This data room includes, among other things, balance sheets and asset-level information for the BSA and numerous local councils, including details regarding donor restrictions on such assets, as well as information on the BSA's liabilities and organizational structure.[2]

- **Ad Hoc Committee of Local Councils**. Prior to the commencement of these cases, the BSA assisted in the formation of an ad hoc committee of local councils comprised of eight local councils of various sizes from every region of the country. The primary purpose of the committee is to allow local councils to participate in negotiations regarding a global resolution of abuse claims through these cases and other issues that are important to local councils, including the treatment of their shared insurance with the BSA. The committee has also been instrumental in coordinating the BSA's prepetition efforts to collect and organize local council asset information.

- **Future Claims Representative**. In early 2019, when the BSA made the decision to pursue a prearranged global resolution of abuse claims through a potential chapter 11 proceeding, the BSA determined that it was necessary and appropriate to engage an independent third-party representative for future abuse claimants. After considering possible candidates for the role, the BSA selected James L. Patton, Jr. to serve as prepetition future claims representative. As noted above, Mr. Patton and his advisors attended the November 2019 mediation.

[2] The data room will be made available to any official committee and other court-appointed representative pursuant to the terms of a protective order. The BSA has prepared a form of protective order and intends to discuss such order with the advisors for the committee and Court-appointed representative upon such parties' appointment.

- **Scheduling Motion for Disputes Regarding Non-Estate Property**. The Debtors have filed a motion seeking to establish a schedule for this Court to hear and adjudicate any disputes regarding the characterization of the BSA's assets as not being property of the estate or subject to the claims of creditors because such assets are, among other things: (a) subject to legally enforceable restrictions or limitations under applicable law and/or (b) core to the BSA's charitable mission. In particular, this motion requests that the Court approve deadlines for (i) commencing an adversary proceeding to challenge the BSA's characterization of its assets; (ii) filing an answer to the adversary complaint; (iii) conducting related discovery; and (iv) filing dispositive motions. The relief requested in this motion strikes an appropriate balance between affording parties in interest a sufficient opportunity to review, examine and potentially challenge the BSA's characterizations of its assets, on the one hand, and the manifest need to avoid sprawling, disorganized litigation in these cases.

- **Bar Date Motion**. The Debtors have filed a motion to establish clear and comprehensive procedures for providing notice of the applicable bar dates to the Debtors' creditors and for creditors, including abuse victims, to file proofs of claim. This relief includes Court approval of (a) bar dates by which creditors shall be required to file proofs of claim, including a separate bar date for proofs of claim on account of abuse claims; (b) the forms of the Debtors' proposed proofs of claim, including a customized proof of claim for abuse victims; and (c) the forms of the Debtors' proposed bar date notices, including a separate bar date notice for abuse victims. The Debtors also intend to formulate a supplemental noticing program tailored to reach as many presently unknown abuse claimants as practicable in coordination with any official committee of abuse victims that may be appointed in these cases.

- **Plan of Reorganization**. The Debtors have filed a plan of reorganization that provides a framework for, among other things, the global resolution of abuse claims asserted against the BSA and a comprehensive restructuring of the organization.

- **Consolidation and Stay of Pending Abuse Lawsuits**. Concurrently with the commencement of these cases, the BSA has taken measures to consolidate and stay all pending abuse litigation against the BSA, local councils, and chartered organizations. In particular, the BSA is in the process of removing to federal district court all abuse claims pending in state courts throughout the United States against the BSA and/or its local councils and chartered organizations. The BSA will also be filing a motion with the United States District Court for the District of Delaware to transfer all of the removed abuse actions to that court under 28 U.S.C. § 157(b)(5). Finally, the Debtors have commenced an adversary proceeding in these chapter 11 cases seeking a preliminary injunction against the continued prosecution of abuse claims.

6. As these actions make clear, the Debtors are committed to designing and executing a value-maximizing global resolution of abuse claims in these chapter 11 cases. The Debtors recognize that these cases will present unique challenges and require the Court and parties to address complicated legal and financial issues. The appointment of a mediator at the outset of these cases will assist the parties in addressing these issues and, the Debtors hope, foster productive settlement discussions among the relevant stakeholders. For these reasons, the prompt appointment of a judicial mediator will promote the Debtors' restructuring objectives and should be approved.

STATUS OF THE CASES AND JURISDICTION

7. On the date hereof (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). Concurrently with the filing of this Motion, the Debtors have requested joint administration and procedural consolidation of these chapter 11 cases pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Debtors continue to operate and maintain their non-profit organization and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order or judgment by the Court in connection with this Motion if it is

determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory and other predicates for the relief requested herein are section 105(a), of the Bankruptcy Code and Local Rules 9019-3 and 9019-5.

BACKGROUND OF THE DEBTORS

11. The BSA is a federally chartered non-profit corporation under title 36 of the United States Code. The BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Founded in 1910 and chartered by an act of Congress in 1916, the BSA is one of the largest youth organizations in the United States and one of the largest Scouting organizations in the world, with approximately 2.2 million registered youth participants and approximately 800,000 adult volunteers. As a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. The BSA's mission is to prepare young people for life by instilling in them the values of the Scout Oath and Law, encouraging them to be trustworthy, kind, friendly and helpful, while also training youth in responsible citizenship, skills development and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older ages, career-oriented programs in partnership with community organizations. Delaware BSA, LLC ("Delaware BSA") is a non-profit limited liability company incorporated under the laws of Delaware and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. BSA is the sole member of Delaware BSA.

12. To carry out its mission of developing youth leaders of character and integrity, the BSA grants charters to thousands of local organizations across the country, including faith-based

institutions, clubs, civic associations, educational institutions, and businesses. These chartered organizations, in turn, form Scouting units—referred to as "packs" for Cub Scouts, "troops" for Scouts BSA (formerly known as Boy Scouts), "crews" for Venturing, "ships" for Sea Scouts, "labs" for STEM Scouts, and "posts" for Exploring. Scouting units are led by adult volunteers appointed by the chartered organization. Each of the BSA's approximately 81,000 Scouting units in the United States is organized, registered, and supported by one of 261 local councils that are chartered by the BSA and oversee the Scouting program in an assigned geographic area. Each local council is separately incorporated under the non-profit laws of its respective state, maintains an independent board of directors and senior management, and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The BSA does not hold any equity interest in any local council, chartered organization, or Scouting unit, and only the BSA and its wholly owned subsidiary, Delaware BSA, are debtors in these chapter 11 cases. Additional information regarding the BSA, its mission and operations, and the events and circumstances preceding the Petition Date is set forth in the *Declaration of Brian Whittman in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* and the *Debtors' Informational Brief*, filed concurrently herewith.

RELIEF REQUESTED

13. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, pursuant to section 105(a) of the Bankruptcy Code and Local Rules 9019-3 and 9019-5, (i) appointing a sitting bankruptcy judge (the "Mediator") (if the relevant parties are unable to agree on a mediator before the hearing on this Motion) to mediate any and all issues related to the comprehensive resolution of claims relating to historical acts of abuse in the BSA's Scouting programs through a chapter 11 plan of reorganization (the

"Mediation Issues"), (ii) referring the Mediation Issues to mandatory mediation, and (iii) granting related relief.

14. The Debtors request that the following parties be directed to participate in the mediation (collectively, the "Mediation Parties"): (a) the Debtors; (b) the Ad Hoc Committee of Local Councils; (c) the prepetition Future Claims Representative; (d) any official committee of creditors appointed by the Office of the United States Trustee; and (e) applicable insurers under one or more insurance policies that afford the Debtors rights, benefits, indemnity or insurance coverage with respect to abuse claims; and (f) any other parties the Court, the Mediator, and/or the Mediation Parties agree in the future should participate in the mediation process.

BASIS FOR RELIEF

15. Local Rule 9019-5 provides that this Court may refer "any dispute" to mediation. Del. Bankr. L.R. 9019-5(a) ("The Court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case."). Section 105 of the Bankruptcy Code, moreover, provides that this Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a); see also In re Atl. Pipe Corp., 304 F.3d 135, 140 (1st Cir. 2002) ("There are four potential sources of judicial authority for ordering mandatory non-binding mediation of pending cases, namely (a) the court's local rules, (b) an applicable statute, (c) the Federal Rules of Civil Procedures, and (d) the court's inherent powers."); In re A.T. Reynolds & Sons, Inc., 424 B.R. 76, 85 (Bankr. S.D.N.Y. 2010) ("While it goes without saying that a court may not order a party to settle, this Court has authority to order the parties to participate in the process of mediation, which entails discussion and risk analysis."), rev'd on other grounds, 452 B.R. 374 (S.D.N.Y. 2011).

16. Here, the Debtors are requesting the appointment of a sitting bankruptcy judge as Mediator if the Mediation Parties are unable to agree on a Mediator in advance of the hearing on this Motion. If the Mediation Parties agree on a Mediator and other related matters, including a scheduling order and confidentiality procedures, then the Debtors will submit an agreed form of order under certification of counsel.

17. For the reasons stated above, the appointment of a Mediator at the outset of these cases is a cornerstone of the Debtors' restructuring strategy. The complexity and sheer number of issues that must be resolved in connection with a global resolution of abuse claims under a plan of reorganization cannot be understated. These myriad issues include—and any Mediator will be focused on—the following issues, among others:

- the relative treatment of abuse claimants under the plan and trust distribution procedures;
- the funding of a victims compensation trust;
- the treatment of abuse claims related to Scouting that are asserted against entities that are not debtors in these cases;
- the enforceability of donor and other restrictions on the BSA's and local councils' assets; and
- issues pertaining to shared insurance between the BSA and local councils; and coverage disputes between the BSA and its insurers.

Each of these issues would unquestionably benefit from mediation. Litigating all (or even some) of these issues would entail extensive discovery costs and professional fees and expenses and extend the timeline of the Debtors' chapter 11 cases, thereby compounding such costs. These costs would predominantly be borne by the Debtors' estates to the detriment of their creditors, including abuse claimants. As described herein, resolving these issues both

expeditiously and efficiently is of paramount importance to achieving a resolution of these cases and providing the best recovery for creditors.

18. As a non-profit corporation, the BSA must balance the need to fully engage with its key stakeholders throughout the chapter 11 restructuring process against the stark reality that every day it spends in bankruptcy could further erode the public's confidence in its mission. The erosion of public confidence in the BSA would likely result in membership losses and cause the BSA's generous donors to divert their financial support to other worthy charitable organizations, thereby hindering the BSA's ability to successfully reorganize. Mediation provides the least costly means to resolve the abuse claims against the BSA and will complement the proactive steps the BSA has already taken to ensure that these cases proceed in an efficient manner.

19. If successful, mediation would result in a global resolution of the most challenging issues in these cases. If unsuccessful, mediation would still inform parties as to the key issues (and potentially narrow such issues) before the parties proceed with litigation. Mediation therefore has little downside and will likely prove beneficial even if unsuccessful. See, e.g., Garland v. Rockford Mfg. Co., Case No. 18-cv-00277, 2019 U.S. Dist. LEXIS 154292, at *5 (E.D. Tenn. Aug. 20, 2019) ("[E]ven if the parties' dispute is not settled during the mediation process, mediation often forces the parties to reevaluate their claims and positions and serves to narrow and classify issues.") (internal quotations omitted). Mediation will not prejudice any of the Mediation Parties' rights if it fails to produce a global (or partial) resolution, and the Mediation Parties can (and will) continue to prepare for litigation in parallel with the mediation. Moreover, mediation could be required at several different junctures during these cases. Given the complexity of the issues at hand, the appointment of a Mediator now will allow

the Mediator to become familiar with the parties, the key issues, and the central aspects of the disputes.

20. For the reasons described in this Motion, mediation will benefit the Debtors' estates. Accordingly, the Debtors respectfully submit that the Court should enter the Proposed Order appointing a Mediator and affording the Mediation Parties a valuable opportunity to reach consensus on the most important issues in these cases.

NOTICE

21. Notice of this Motion will be provided to (i) the Mediation Parties identified in this Motion; (ii) the U.S. Trustee; (iii) the twenty-five (25) law firms representing the largest numbers of abuse victims asserting claims against the Debtors; (iv) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, other than abuse-related claims; (v) counsel to JPMorgan Chase Bank, N.A.; (vi) the County Commission of Fayette County (West Virginia), as issuer of those certain Commercial Development Revenue Bonds (Arrow WV Project), Series 2010A, 2010B and 2012; (vii) representatives of the prepetition Ad Hoc Committee of Local Councils; (viii) counsel to the prepetition Future Claimants' Representative; (ix) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims; (x) the United States Attorney's Office for the District of Delaware; (xi) the Internal Revenue Service; (xii) the United States Department of Justice; and (xiii) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and any further relief the Court may deem just and proper.

Dated: February 18, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Eric W. Moats (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@mnat.com
jbarsalona@mnat.com
ptopper@mnat.com
emoats@mnat.com

– and –

SIDLEY AUSTIN LLP
James F. Conlan (*pro hac vice* pending)
Thomas A. Labuda (*pro hac vice* pending)
Michael C. Andolina (*pro hac vice* pending)
Matthew E. Linder (*pro hac vice* pending)
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Email: jconlan@sidley.com
tlabuda@sidley.com
mandolina@sidley.com
mlinder@sidley.com

– and –

SIDLEY AUSTIN LLP
Jessica C. K. Boelter (*pro hac vice* pending)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Email: jboelter@sidley.com

PROPOSED COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION

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 (___) (Joint Administration Requested) **Hearing Date: TBD** **Objection Deadline: TBD**

DEBTORS' MOTION, 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, FOR AUTHORITY TO (I) ESTABLISH DEADLINES FOR FILING PROOFS OF CLAIM, (II) ESTABLISH THE FORM AND MANNER OF NOTICE THEREOF, (III) APPROVE PROCEDURES FOR PROVIDING NOTICE OF BAR DATE AND OTHER IMPORTANT INFORMATION TO ABUSE VICTIMS, AND (IV) APPROVE CONFIDENTIALITY PROCEDURES FOR ABUSE VICTIMS

The Boy Scouts of America (the "BSA") and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") submit this motion (this "Motion"), pursuant to section 502(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2002 and 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1(e), 3001-1, and 3003-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order (the "Proposed Order") substantially in the form attached hereto as **Exhibit A**, (i) establishing deadlines within which General Proofs of Claim and Abuse Proofs of Claim (each as defined below, and together, the "Proofs of Claim") against the Debtors' estates are to be filed, (ii) approving the proposed procedures for filing General Proofs of Claim and Abuse

[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 West Walnut Hill Lane, Irving, Texas 75038.

Proofs of Claim (each as defined below), including special procedures allowing for holders of Abuse Claims to file confidential Abuse Proofs of Claim, (iii) approving the proposed procedures for notice of the bar dates, including the form of Bar Date Notices (as defined below), (iv) approving the General Proof of Claim Form and the Abuse Proof of Claim Form (each as defined below), (v) approving the forms of supplemental notice and procedures for providing notice to unknown holders of Abuse Claims and other unknown creditors and parties in interest, and (vi) granting related relief.[2] In support of this Motion, the Debtors respectfully state as follows:

STATUS OF THE CASES AND JURISDICTION

1. On the date hereof (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). Concurrently with the filing of this Motion, the Debtors have requested joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate and maintain their non-profit organization and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order or judgment by the Court in connection with this Motion if it is

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* (the "Plan"), filed concurrently herewith.

determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and other predicates for the relief requested herein are section 502(b)(9) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rules 2002-1(e), 3001-1, and 3003-1.

BACKGROUND OF THE DEBTORS

5. The BSA is a federally chartered non-profit corporation under title 36 of the United States Code. The BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Founded in 1910 and chartered by an act of Congress in 1916, the BSA is one of the largest youth organizations in the United States and one of the largest Scouting organizations in the world, with approximately 2.2 million registered youth participants and approximately 800,000 adult volunteers. As a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. The BSA's mission is to prepare young people for life by instilling in them the values of the Scout Oath and Law,[3] encouraging them to be trustworthy, kind, friendly and helpful, while also training youth in responsible citizenship, skills development and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older ages, career-oriented programs in partnership with community organizations. Delaware BSA, LLC ("Delaware BSA") is a non-profit limited liability company incorporated under the laws of

[3] **Scout Oath:** "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight." **Scout Law:** "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."

Delaware and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. BSA is the sole member of Delaware BSA.

6. To carry out its mission of developing youth leaders of character and integrity, the BSA grants charters to thousands of local organizations across the country, including faith-based institutions, clubs, civic associations, educational institutions, and businesses. These chartered organizations, in turn, form Scouting units—referred to as "packs" for Cub Scouts, "troops" for Scouts BSA (formerly known as Boy Scouts), "crews" for Venturing, "ships" for Sea Scouts, "labs" for STEM Scouts, and "posts" for Exploring. Scouting units are led by adult volunteers appointed by the chartered organization. Each of the BSA's approximately 81,000 Scouting units in the United States is organized, registered, and supported by one of 261 local councils that are chartered by the BSA and oversee the Scouting program in an assigned geographic area. Each local council is separately incorporated under the non-profit laws of its respective state, maintains an independent board of directors and senior management, and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The BSA does not hold any equity interest in any local council, chartered organization, or Scouting unit, and only the BSA and its wholly owned subsidiary, Delaware BSA, are debtors in these chapter 11 cases. Additional information regarding the BSA, its mission and operations, and the events and circumstances preceding the Petition Date is set forth in the *Declaration of Brian Whittman in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration") and the *Debtors' Informational Brief*, filed concurrently herewith.

RELIEF REQUESTED

7. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the following relief:

(a) establishing **5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from service of the General Bar Date Notice** as the deadline for each (i) person or entity (as defined in section 101(41) of the Bankruptcy Code), but not including any holder of an Abuse Claim (as defined below) and any Governmental Unit (as defined below) to file a proof of claim (each, a "General Proof of Claim") in respect of a prepetition claim (as defined in section 101(5) of the Bankruptcy Code), including, for the avoidance of doubt, secured claims, priority claims, and claims arising under section 503(b)(9) of the Bankruptcy Code against either of the Debtors (the "General Bar Date");

(b) establishing **5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from service of the Abuse Claims Bar Date Notice** as the deadline for any holder of an Abuse Claim to file a proof of claim against either of the Debtors (each, an "Abuse Proof of Claim") in respect of any claim arising from abuse (as defined in the Plan, an "Abuse Claim")[4] occurring prior to the Petition Date (the "Abuse Claims Bar Date");

(c) establishing **August 17, 2020 at 5:00 p.m. (prevailing Eastern Time)** as the deadline for governmental units (as defined in section 101(27) of the Bankruptcy Code, the "Governmental Units") to file a General Proof of Claim in respect of a prepetition claim against either of the Debtors (the "Governmental Bar Date" and, together with the General Bar Date and the Abuse Claims Bar Date, the "Bar Dates");

(d) approving the proposed procedures for filing General Proofs of Claim and Abuse Proofs of Claim (collectively, the "Proofs of Claim"), including special procedures for the confidential filing of Abuse Proofs of Claim;

(e) approving the proposed procedures for notice of the Bar Dates, including, among other things, (i) the form of notice of the Bar Dates to be sent to parties in interest other than holders of Abuse Claims (the "General Bar Date Notice"), substantially in the form annexed hereto as **Exhibit B-1**, and (ii) the form of notice to be sent to known holders of Abuse Claims (the "Abuse Claims Bar Date Notice" and, together with the General Bar

[4] For purposes of this Motion, an "Abuse Claim" means a liquidated or unliquidated Claim that is attributable to, arises from, is based upon, relates to, or results from, in whole or in part, directly, indirectly, or derivatively, sexual conduct or misconduct, sexual abuse or molestation, sexual exploitation, indecent assault and/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 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 that occurred prior to the Petition Date.

Date Notice, the "Bar Date Notices"), substantially in the form annexed hereto as **Exhibit B-2**;

(f) approving (i) the proposed model Proof of Claim form for creditors other than holders of Abuse Claims (the "General Proof of Claim Form"), substantially in the form annexed hereto as **Exhibit C-1**, and (ii) the proposed model Proof of Claim form for holders of Abuse Claims (the "Abuse Proof of Claim Form"), substantially in the form annexed hereto as **Exhibit C-2**;

(g) approving (i) the form of notice to be sent to and published with respect to unknown holders of Abuse Claims (the "Abuse Claims Publication Notice"), substantially in the form annexed hereto as **Exhibit B-3**, and (ii) approving the Debtors' plan and other specialized supplemental procedures (together with the Abuse Claims Publication Notice, the "Supplemental Notice Plan") for providing notice of the Abuse Claims Bar Dates to unknown holders of Abuse Claims;[5] and

(h) granting related relief.

THE BAR DATES

8. Bankruptcy Rule 3003(c)(3) provides that the Court shall fix the time within which Proofs of Claim may be filed. Moreover, Bankruptcy Rule 3003(c)(2) provides that any creditor whose claim (a) is not scheduled in a debtor's schedules or (b) is scheduled as disputed, contingent, or unliquidated must file a Proof of Claim by a bar date fixed by the Court. Bankruptcy Rule 3003(c)(2) further provides that "any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution."

9. Section 502(b)(9) of the Bankruptcy Code provides that the "claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide." 11 U.S.C.

[5] The Debtors intend to supplement this Motion in advance of the hearing with the Abuse Claims Bar Date Notice, the Abuse Proof of Claim Form, and the Supplemental Notice Plan after consulting with any committee or future claims representative appointed in these chapter 11 cases to represent holders of Abuse Claims. The forms of Abuse Claims Bar Date Notice, Abuse Proof of Claim Form, and Abuse Claims Publication Notice and the supplement to this Motion detailing the Supplemental Notice Plan will be filed with the Court prior to the deadline for filing responses or objections to the Motion.

§ 502(b)(9). Accordingly, the Debtors seek to establish a separate Governmental Bar Date for governmental claims.

10. In order to proceed expeditiously in these chapter 11 cases and solicit votes on the Plan, the Debtors must identify all potential voting creditors by fixing and sending out notice to potential parties in interest of the Bar Dates. Fixing the Bar Dates will enable the Debtors to receive, process, and analyze creditor claims in a timely and efficient manner, and will expedite the administration of these chapter 11 cases and distributions to claimants. The analysis of Abuse Claims in particular is of critical importance to move these chapter 11 cases forward. Based on the Notice Procedures set forth below, including the forthcoming Supplemental Notice Plan, the proposed Bar Dates will give creditors ample opportunity to prepare and timely file Proofs of Claim.

11. As set forth in the First Day Declaration, these chapter 11 cases were necessitated by a confluence of factors resulting from Abuse Claims filed against the Debtors alleging inappropriate conduct, including allegations of sexual abuse, dating back as far as the early 1940s, and the Debtors' liabilities and potential liabilities therefrom. The Debtors are committed to ensuring that these survivors are treated fairly and respectfully and preventing future abuse. The number of pending claims and lawsuits, and the unknown number of additional Abuse Claims that may be asserted, make it clear that the Debtors cannot continue to address each of those claims in courts across the country in a "one-off" nature while also fulfilling the BSA's mission of training youth through its character development and values-based leadership programs. As set forth in the First Day Declaration, as of the date hereof, approximately 1,700 known Abuse Claims have been asserted.

12. The Debtors have commenced these chapter 11 cases to achieve the dual objectives of (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 critical charitable mission. Prolonged bankruptcy proceedings would imperil both of these objectives. As a non-profit corporation that relies largely on member fees and donations, considerations of economy and speed are of the utmost importance to the BSA. The Debtors are filing this Motion to establish the Bar Dates at the outset of these chapter 11 cases in order to begin a productive dialogue with any official committees appointed in these chapter 11 cases.

The General Bar Date

13. The Debtors request that the Court establish 5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from service of the General Bar Date Notice as the General Bar Date.

14. As set forth below, the Debtors have proposed standard procedures for providing notice of the General Bar Date to all parties, other than holders of Abuse Claims, that are entitled to receive such notice in these chapter 11 cases. These parties include the Debtors' lenders and other financial creditors, suppliers, vendors, trade creditors, employees, non-sexual abuse-related litigation claimants, and other traditional creditors and parties in interest in these chapter 11 cases (collectively, the "Traditional Notice Parties").[6]

The Governmental Bar Date

15. The Debtors request that the Court establish August 17, 2020 at 5:00 p.m. (prevailing Eastern Time) as the Governmental Bar Date.

16. Pursuant to Section 502(b)(9) of the Bankruptcy Code, "a claim of a

[6] Concurrently herewith, the Debtors have filed the Notice and Confidentiality Procedures Motion, pursuant to which the Debtors are seeking the approval of certain procedures for the mailing and publication of the notice announcing the commencement of these chapter 11 cases.

governmental unit shall be timely filed if it is filed before on hundred eighty (180) days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide." As August 17, 2020 is the first business day at least 180 days after the Petition Date, the proposed Governmental Bar Date complies with section 502(b)(9) of the Bankruptcy Code.

The Abuse Claims Bar Date

17. The Debtors request that the Court establish 5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from service of the Abuse Claims Bar Date Notice as the Abuse Claims Bar Date.

18. With respect to potential holders of Abuse Claims, the Debtors are limited in their ability to identify with specificity the identities or location of these claimants. Approximately 90% of pending and asserted Abuse Claims relate to abuse that occurred before 1988. In 1988, the BSA strengthened its existing youth protection programs with a series of enhanced policies and procedures, including a more comprehensive volunteer screening database, additional supervision requirements and reporting obligations designed to keep would-be abusers away from Scouts, and improved training and other literature addressing ways to prevent, recognize, and respond to sexual abuse. Accordingly, the BSA anticipates that the vast majority of unknown abuse victims have not been involved with the BSA in well over thirty years.[7] Providing traditional notice to these unknown holders of Abuse Claims whose whereabouts are unknown would be extraordinarily expensive, likely costing tens of millions of dollars. Such notice is not just impractical — it is likely impossible. Even if the Debtors could locate a portion of these former participants in Scouting, traditional noticing would exhaust a large portion of funds otherwise available for creditor distributions.

[7] For example, a child that participated in one of the BSA's programs in the 1970s or early 1980s most assuredly no longer resides at the address such participant's parents would have provided during that time period. Utilizing decades-old address information or searching for all participants' current locations would likely be futile.

19. The Debtors intend to implement the Supplemental Notice Plan and publish the Abuse Claims Publication Notice in order to provide important deadlines and information to unknown holders of Abuse Claims who, as of the Petition Date, had not commenced actions against the Debtors or provided sufficient contact information to be "known" to the Debtors. The Debtors are formulating the Supplemental Notice Plan, and plan to engage in discussions with any official committee and Future Claimants' Representative appointed in these chapter 11 cases to represent abuse victims regarding the details of this Supplemental Notice Plan and Abuse Proof of Claim Form. After these discussions have occurred, the Debtors intend to supplement to this Motion with the Supplemental Notice Plan and related exhibits. The Supplemental Notice Plan described above will address notice to *unknown* holders of Abuse Claims.

20. By this Motion, the Debtors are also seeking the approval of noticing procedures for Traditional Notice Parties and special noticing procedures for *known* holders of Abuse Claims (the "Abuse Claims Notice Procedures" and together with the noticing procedures for Traditional Notice Parties, the "Notice Procedures"). "Known" holders of Abuse Claims include individuals who have provided sufficient contact information to the Debtors and for whom the Debtors have reasonably ascertainable records, and have (a) filed, or threatened to file, lawsuits against the Debtors alleging they were abused, (b) otherwise contacted the Debtors to report Abuse Claims, (c) entered into a settlement agreement with the Debtors stemming from allegations of abuse, or (d) received payment from the Debtors as a result of an allegation of abuse. These parties will each be served an Abuse Claims Bar Date Notice and Abuse Proof of

Claim Form. All known non-abuse creditors and parties in interest (*i.e.*, the Traditional Notice Parties) will receive the General Bar Date Notice and General Proof of Claim Form.[8]

21. The Abuse Claims Notice Procedures set forth herein have been formulated to provide notice of certain critical papers, deadlines, and events in these chapter 11 cases to known holders of Abuse Claims and will facilitate the submission, confidentiality, and evaluation of Abuse Claims. Among other things, as set forth below, these special procedures include a simpler Abuse Claims Bar Date Notice and customized Proof of Claim Form for holders of Abuse Claims. The Abuse Claims Bar Date Notice is an abbreviated notice, written in plain English, which provides clear instructions for obtaining and submitting an Abuse Proof of Claim by the Abuse Claims Bar Date. This customized notice will be more effective in providing the required notice of the Abuse Claims Bar Date, and may also result in substantial cost-savings to the Debtors' estates because of its shortened length.

22. Given that Abuse Claims differ substantively and materially from other claims to be filed against the Debtors, the Debtors request that the Court approve a customized and confidential Abuse Proof of Claim Form for holders of Abuse Claims. As part of the Abuse Claims Notice Procedures, the Debtors are also seeking approval of certain specialized confidentiality procedures for the submission and handling of Abuse Proofs of Claim and other sensitive proof of claim submissions (such as the claims of minors), which are described in greater detail herein.

---

[8] The Debtors will treat as a Traditional Notice Party any holder of an Abuse Claim that (a) has filed a notice of appearance in accordance with Local Rule 2002-1 or (b) is otherwise identified on the Debtors' schedules of assets and liabilities filed with the Court (the "Schedules") as having a claim against either of the Debtors, including contingent, unliquidated, or disputed claims (*i.e.*, litigation parties other than litigation related to Abuse Claims or parties otherwise known to be creditors of the Debtors), and such parties will receive actual notice of the Bar Dates and all other notices and pleadings served on Traditional Notice Parties in these chapter 11 cases. For the avoidance of doubt, any such holder of an Abuse Claim shall nonetheless have until the Abuse Claims Bar Date to file an Abuse Proof of Claim; provided, however, that a holder of an Abuse Claim who also holds or asserts a claim other than an Abuse Claim must file a General Proof of Claim with respect to such non-Abuse Claim by the General Bar Date.

23. The Notice Procedures were designed after lengthy and thorough consideration by the Debtors and their advisors,[9] and the Debtors submit that such procedures go above and beyond noticing requirements under the law and provide actual notice of the Bar Dates and other important deadlines and information to potential claimants.

PROPOSED PROCEDURES FOR FILING PROOFS OF CLAIM

I. Proposed Procedures for Filing General Proofs of Claim

24. The Debtors propose the following procedures for filing General Proofs of Claim (*i.e.*, proofs of claim to be filed against either of the Debtors by any person or entity **other than a holder of an Abuse Claim**):

(a) Unless otherwise provided herein, the General Bar Date shall be **5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from the service of the General Bar Date Notice**.

(b) Unless otherwise provided herein, the Governmental Bar Date shall be **August 17, 2020 at 5:00 p.m. (prevailing Eastern Time)**.

(c) **General Proofs of Claim** must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States as of the Petition Date (using the exchange rate, if applicable, as of the Petition Date); (iii) conform substantially to the General Proof of Claim Form annexed hereto as **Exhibit C-1** or Official Bankruptcy Form No. 410;[10] (iv) specify by name and case number the Debtor against which the General Proof of Claim is filed; (v) set forth with specificity the legal and factual basis for the alleged claim; (vi) include supporting documentation for the claim or an explanation as to why such documentation is not available; and (vii) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant.

[9] The Debtors, any official committee appointed in these chapter 11 cases to represent holders of Abuse Claims, and any proposed Future Claimants' Representative will continue to discuss the Proposed Order, Bar Date Notices, and Abuse Claims Notice Procedures, and may file revisions or modifications to such documents and procedures prior to the hearing date on this Motion.

[10] Official Bankruptcy Form No. 410 can be found at https://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0, the Official Website for the United States Bankruptcy Courts. A customized General Proof of Claim Form and the Abuse Proof of Claim Form can also be obtained on the website established in these chapter 11 cases, www.OfficialBSAClaims.com.

(d) If a claimant asserts a claim against more than one Debtor or has claims against both Debtors, the claimant must file a separate General Proof of Claim against each Debtor.

(e) General Proofs of Claim must be filed by delivering the original General Proof of Claim Form by hand, or mailing the original General Proof of Claim Form so that it is received by the claims and noticing agent, Omni Agent Solutions (the "Claims and Noticing Agent"),[11] on or before the General Bar Date as follows:

BSA Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

(f) A General Proof of Claim shall be deemed timely filed only if it is **actually received** by the Claims and Noticing Agent at the address listed above in subparagraph (e) on or before the General Bar Date or Governmental Bar Date.

(g) General Proofs of Claim sent by email, facsimile, or telecopy transmission **will not** be accepted.

(h) Any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units) that asserts a claim that arises from the rejection of an executory contract or unexpired lease must file a General Proof of Claim based on such rejection by the later of (i) the General Bar Date or Governmental Bar Date, as applicable, and (ii) the date that is thirty (30) days following the entry of the Court order approving such rejection (which order may be the order confirming a chapter 11 plan in the Debtors' chapter 11 cases), or be forever barred from doing so.

(i) Notwithstanding the foregoing, a party to an executory contract or unexpired lease that asserts a claim on account of unpaid amounts accrued and outstanding as of the Petition Date pursuant to such executory contract or unexpired lease (other than a rejection damages claim) must file a General Proof of Claim for such amounts on or before the General Bar Date or Governmental Bar Date, as applicable, unless an exception identified in paragraph (l) below applies.

(j) In the event that the Debtors amend or supplement their Schedules subsequent to the date of entry of the Proposed Order, the Debtors shall give notice of any amendment or supplement to the holders of claims

[11] Concurrently herewith, the Debtors have filed an application requesting authority to retain Omni Agent Solutions as the Debtors' claims and noticing agent in these chapter 11 cases.

affected thereby, and such holders shall have until the later of (i) the General Bar Date and (ii) thirty (30) days from the date of such notice to file a General Proof of Claim or be barred from doing so and shall be given notice of such deadline.

(k) Any person or entity that relies on the Schedules has the responsibility to determine that its claim is accurately listed in the Schedules.

(l) The following persons or entities are **not** required to file a General Proof of Claim on or before the General Bar Date, solely with respect to the claims described below:

(1) any person or entity whose claim is listed on the Schedules; provided that (i) the claim is **not** listed on the Schedules as "disputed," "contingent," or "unliquidated," (ii) the person or entity does not dispute the amount, nature, and priority of the claim as set forth in the Schedules, and (iii) the person or entity does not dispute that the claim is an obligation of the specific Debtor against which the claim is listed in the Schedules;

(2) any person or entity whose claim has been paid in full;

(3) any holder of a claim allowable under section 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense (**other than** a holder of a section 503(b)(9) claim);

(4) any person or entity who holds a claim that heretofore has been allowed by Order of this Court entered on or before the applicable Bar Date;

(5) any holder of a claim for which a separate deadline has been fixed by this Court;

(6) any person or entity (other than a holder of an Abuse Claim) who has already filed a Proof of Claim with the Claims and Noticing Agent against the Debtors with respect to the claim being asserted, utilizing a claim for that substantially conforms to the General Proof of Claim Form or Official Form No. 410; or

(7) each Debtor in these chapter 11 cases having a claim against the other Debtor in these chapter 11 cases.

II. Proposed Procedures for Filing Abuse Proofs of Claim

A. Proposed Filing Procedures

25. The Debtors propose the following procedures for filing Abuse Proofs of Claim **by any person or entity that is a holder of an Abuse Claim**:

(a) Unless otherwise provided herein, the Abuse Claims Bar Date shall be **5:00 p.m. (prevailing Eastern Time) on the date that is eighty (80) days from the service of the Abuse Claims Bar Date Notice**.

(b) **Abuse Proofs of Claim** must: (i) be written in the English language; (ii) be denominated in lawful currency of the United States as of the Petition Date (using the exchange rate, if applicable, as of the Petition Date); (iii) conform substantially to the Abuse Proof of Claim Form annexed hereto as **Exhibit C-2**; (iv) set forth with specificity the legal and factual basis for the alleged claim, including all of the information requested in the Abuse Proof of Claim Form; and (v) be signed by the holder of the Abuse Claim.

(c) Abuse Proofs of Claim must be filed by delivering the original Abuse Proof of Claim Form by hand, or mailing the original Abuse Proof of Claim Form on or before the Abuse Claims Bar Date as follows:

BSA Abuse Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

(d) An Abuse Proof of Claim shall be deemed timely received only if it is **actually received by** the Claims and Noticing Agent at the address listed above in subparagraph (c) on or before the Abuse Claims Bar Date.

(e) Abuse Proofs of Claim sent by email, facsimile, and telecopy transmission **will not** be accepted.

(f) **Any holder of an Abuse Claim who believes that she or he has an Abuse Claim, including but not limited to holders of Abuse Claims who have previously filed lawsuits or asserted claims against the Debtors, holders of Abuse Claims who have called the Scouts First Hotline or otherwise reported a claim of abuse, and holders of Abuse Claims who have never filed a lawsuit, asserted a claim against the Debtors, entered into a settlement, or reported their abuse, must submit the applicable Abuse Proof of Claim Form. For the avoidance of doubt, even if the Abuse Claim is time-barred under an applicable statute of limitations, each holder of an Abuse Claim is required to file**

an Abuse Proof of Claim in order to preserve the right to pursue an Abuse Claim in the event of a change in the applicable statute of limitations, or shall be forever barred from doing so. Any holder of an Abuse Claim must file the applicable Abuse Proof of Claim Form even if such claimant may be included in, or represented by, another action filed against the Debtors with respect to such claimant's Abuse Claim.

(g) The following persons or entities are **not** required to file an Abuse Proof of Claim on or before the Abuse Claims Bar Date, solely with respect to the claims described below:

(1) Any person or entity that is not a holder of an Abuse Claim;

(2) Any holder of an Abuse Claim whose claim has been paid in full; **provided, however, that this subsection does not include holders of Abuse Claims who were paid pursuant to settlement agreements but who believe they have additional claims against the Debtors beyond what was agreed to in the applicable settlement agreement.**

(3) any holder of an Abuse Claim who holds a claim that heretofore has been allowed by Order of this Court entered on or before the applicable Abuse Claims Bar Date;

26. For the avoidance of doubt, the foregoing procedures shall apply to all Abuse Claims only, and, unless otherwise subject to one of the exceptions set forth above, each holder of an Abuse Claim shall be required to file an Abuse Proof of Claim Form by the Abuse Claims Bar Date, including any holder of an Abuse Claim (i) that may otherwise be included in, or represented by, a lawsuit or action filed against the Debtors, and (ii) **even if an Abuse Claim is time-barred under an applicable statute of limitations, in order to preserve the right to pursue an Abuse Claim in the event of a change in the applicable statute of limitations, or such holder shall be forever barred from doing so**.

B. Proposed Confidentiality Procedures

27. Given that Abuse Claims differ substantively and materially from other claims filed against the Debtors, the Debtors are requesting that this Court approve a modified Abuse Proof of Claim Form for holders of Abuse Claims. Due to the nature of the information being

requested in the Abuse Proof of Claim Form, the Debtors are seeking approval of the following confidentiality protocol (the "Confidentiality Protocol"). The Confidentiality Protocol will also apply to General Proofs of Claim submitted by minors through their parents or legal guardians, as applicable. For the avoidance of doubt, nothing in the proposed Confidentiality Protocol set forth below shall preclude the Debtors from discharging any obligations to report child abuse under state or federal law.

(a) Holders of Abuse Claims are directed **not** to file an Abuse Proof of Claim with the Court. Instead and as described above, the Abuse Proof of Claim must be mailed and delivered to the Claims and Noticing Agent at the address described in paragraph 25(c) above.

(b) Minors and their parents and legal guardians holding non-Abuse Claims are directed **not** to file a General Proof of Claim with the Court. Instead and as described above, the General Proof of Claim must be mailed and delivered to the Claims and Noticing Agent at the address described in paragraph 24(e) above.

(c) Submitted Abuse Proofs of Claim will not be available to the general public unless a holder designates otherwise on the Abuse Proof of Claim Form. Submitted General Proofs of Claim of minors will not be available to the general public. The Confidentiality Protocol is for the benefit of such holders. Holders of Abuse Claims may, solely in their discretion, elect to make public the information contained in their submitted Abuse Proofs of Claim.

(d) Abuse Proofs of Claim submitted by holders of Abuse Claims and General Proofs of Claim submitted on behalf of minors shall be held and treated as confidential by the Claims and Noticing Agent, the Debtors, the Debtors' counsel and retained advisors, and any of parties listed below (the "Permitted Parties") to the extent such Permitted Party requests access to the Abuse Proof of Claim Form. Furthermore, each Permitted Party shall execute and return to the Debtors' counsel (with a copy to any official committee that may be appointed in these chapter 11 cases to represent holders of Abuse Claims) a confidentiality agreement substantially in the form attached hereto as **Exhibit D** (the "Confidentiality Agreement") by which such Permitted Party agrees to keep the information provided in the Abuse Proofs of Claim confidential.

(e) The Permitted Parties include:[12]

(1) counsel and advisors to the Debtors retained pursuant to an Order of this Court;

(2) officers, directors, and employees of the Debtors necessary to assist the Debtors and their counsel in reviewing and analyzing the Abuse Claims;

(3) the Claims and Noticing Agent;

(4) counsel for any official committee appointed by this Court to represent holders of Abuse Claims;

(5) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee");

(6) insurance companies (including their successors) that provided insurance related to the claims described in the Abuse Proofs of Claim, including authorized claims administrators of such insurance companies and their reinsurers and counsel;

(7) any Future Claimants' Representative;

(8) any special arbitrator, mediator, or claims reviewer appointed to review and resolve Abuse Claims;

(9) any trustee, or functional equivalent thereof, appointed to administer payments to holders of Abuse Claims;

(10) any person with the express written consent of the Debtors and any official committee appointed by this Court to represent holders of Abuse Claims upon seven (7) business days' notice to holders of Abuse Claims; and

(11) such other persons as the Court determines should have the information in order to evaluate Abuse Claims or the claims of minors upon seven (7) business days' notice to such holders.

[12] With the exception of any counsel and/or advisor the Debtors retain pursuant to Orders of this Court, counsel to any official committee appointed to represent holders of Abuse Claims, the U.S. Trustee's attorneys, counsel to any appointed Future Claimants' Representative, and the Claims and Noticing Agent, each Permitted Party receiving access to the Abuse Proofs of Claim or the General Proofs of Claim of minors (or any information aggregated or derived therefrom) must execute the Confidentiality Agreement.

CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM

28. As stated above, Bankruptcy Rule 3003(c)(2) provides that any creditor whose claim is not scheduled or is scheduled as disputed, contingent, or unliquidated that fails to file a Proof of Claim by the applicable Bar Date "shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." Accordingly, the Debtors request that any holder of a claim against either of the Debtors that is required to file a Proof of Claim in accordance with the Proposed Order, but fails to do so on or before the applicable Bar Date shall not be treated as a creditor with respect to such claim for the purposes of distribution in these chapter 11 cases on account of such claim. Such claim will, for the avoidance of doubt, remain subject to discharge under the Debtors' Plan, and the holder thereof shall be subject to all applicable releases, injunctions, and other terms of the Plan.

NOTICE OF THE BAR DATES

I. General Bar Date Notice

29. Pursuant to Bankruptcy Rule 2002(a)(7) and to provide sufficient notice to all parties in interest of the Bar Dates (**other than holders of Abuse Claims as to which procedures are described below**), the Debtors propose to serve via first-class mail (i) a General Proof of Claim Form and (ii) the General Bar Date Notice, substantially in the form annexed hereto as **Exhibit B-1**, at least **eighty (80) days** prior to the General Bar Date to the following parties:

(a) the U.S. Trustee;

(b) all parties listed on the creditor matrix;

(c) all creditors and other known holders of claims against the Debtors as of the date of entry of the Proposed Order, including all entities listed on the Schedules as holding claims against the Debtors, but excluding holders of Abuse Claims;

(d) all persons or entities that have filed General Proofs of Claim as of the date of entry of the Proposed Order;

(e) all counterparties to the Debtors' executory contracts and unexpired leases as of the date of entry of the Proposed Order;

(f) all parties to pending litigation against the Debtors that is unrelated to Abuse Claims;

(g) all current and former employees, directors, and officers (to the extent that contact information for former employees, director, and officers is available in the Debtors' records);

(h) all regulatory authorities that regulate the Debtors' organization as of the date of entry of this Proposed Order;

(i) the Offices of the United States Attorney for the District of Delaware and the Northern District of Texas;

(j) the office of the attorney general for each state in which the Debtors maintain or conduct operations;

(k) the District Director of the Internal Revenue Service for the District of Delaware;

(l) all other taxing authorities for the jurisdictions in which the Debtors maintain or conduct organizational operations;

(m) all parties who have requested notice pursuant to Bankruptcy Rule 2002 as of the date of entry of the Proposed Order; and

(n) such additional persons and entities deemed appropriate by the Debtors.

30. Further, the Debtors shall post the General Proof of Claim Form and the General Bar Date Notice on the website established by the Claims and Noticing Agent for the Debtors' chapter 11 cases: www.OfficialBSAClaims.com.

31. The General Bar Date Notice (i) sets forth the Bar Dates; (ii) advises creditors under what circumstances they must file a General Proof of Claim; (iii) alerts creditors to the consequences of failing to file a timely General Proof of Claim; (iv) sets forth the address to which General Proofs of Claim must be sent for filing; and (v) notifies creditors that (a) General Proofs of Claim must be filed with original signatures, and (b) facsimile, telecopy, or electronic

mail submission of General Proofs of Claim are not acceptable and are not valid for any purpose. Service of the General Bar Date Notice shall be substantially completed within seven (7) business days after entry of the Proposed Order. The Debtors submit that the General Bar Date Notice and the noticing procedures described above will provide creditors with sufficient information to file properly prepared and executed General Proofs of Claim in a timely manner.

II. Abuse Claims Bar Date Notice

32. As set forth above, the Debtors will supplement this Motion with the Supplemental Notice Plan, which will provide special procedures with respect to unknown holders of Abuse Claims. The procedures described below are only intended to address *known* holders of Abuse Claims: individuals who have provided sufficient contact information to the Debtors and for whom the Debtors have reasonably ascertainable records, and have (a) filed, or threatened to file, lawsuits against the Debtors alleging they were abused, (b) otherwise contacted the Debtors to report Abuse Claims, (c) entered into a settlement agreement with the Debtors stemming from allegations of abuse, or (d) received payment from the Debtors as a result of an allegation of abuse.

33. Pursuant to Bankruptcy Rule 2002(a)(7) and to provide sufficient notice of the Abuse Claims Bar Date to all known Holders of Abuse Claims, the Debtors propose to serve via first-class mail (i) the Abuse Claims Bar Date Notice, substantially in the form annexed hereto as **Exhibit B-2**, and (ii) an Abuse Proof of Claim Form, at least **eighty (80) days** prior to the Abuse Claims Bar Date. Further, the Debtors shall post the Abuse Proof of Claim Form and the Abuse Claims Bar Date Notice on the Claims and Noticing Agent's website. The Abuse Claims Bar Date Notice and the Abuse Proof of Claim Form will be mailed to each known holder of an Abuse Claim and to any counsel appointed to represent an official committee of holders of Abuse Claims. Similar notice will be sent by first class mail to any holder of an Abuse Claim

that has filed a Proof of Claim on or prior to the entry of a Proposed Order at the address listed in such Proof of Claim.[13]

34. The Abuse Claims Bar Date Notice is a more streamlined form of Bar Date Notice that has been specifically designed and tailored for holders of Abuse Claims. The Abuse Claims Bar Date Notice (i) sets forth the nature of the claims against the Debtors; (ii) advises holders of Abuse Claims of their obligation to file an Abuse Proof of Claim with the Debtors in accordance with the Confidentiality Protocol; (iii) alerts holders of Abuse Claims to the consequences of failing to file a timely Abuse Proof of Claim; and (iv) sets forth the address to which Abuse Proofs of Claim must be sent for filing. Service of the Abuse Claims Bar Date Notice on all known holders of Abuse Claims shall be substantially completed within seven (7) business days after entry of the Proposed Order. The Debtors submit that the Abuse Claims Bar Date Notice and the noticing procedures described therein will provide such holders with sufficient notice and information to file properly prepared and executed Abuse Proofs of Claim in a timely manner.

PROOF OF CLAIM FORMS

35. With the assistance of the Claims and Noticing Agent, the Debtors have prepared the General Proof of Claim Form and the Abuse Proof of Claim Form, substantially in the forms annexed hereto as **Exhibits C-1** and **C-2**, respectively, which substantially conform to Official Form 410, but have been tailored to these chapter 11 cases. The substantive modifications to Official Form 410 proposed by the Debtors for the General Proof of Claim include: (a) indicating how the Debtors have identified each creditor's respective claim, including, if available, the amount of the claim and whether the claim has been listed as contingent, unliquidated, or

[13] Notice and any materials certifying service of notice will be made in accordance with the Notice and Confidentiality Procedures Motion, filed concurrently herewith.

disputed; and (b) adding certain instructions, including that the General Proof of Claim Form should not be used to assert an Abuse Claim. The General Proof of Claim may be further customized by the Debtors (to the extent possible) to contain certain information about the creditor and the Debtor against which the creditor may have a claim.

36. Additionally, given that the Abuse Claims substantively differ from other types of claims that may be filed against the Debtors, the Debtors are requesting that the Court approve a modified Abuse Proof of Claim Form for such claims. The Abuse Proof of Claim Form requests important information relating to the Abuse Claims in accordance with the Confidentiality Protocol discussed above, which will assist the Debtors and parties in interest in evaluating and resolving the Abuse Claims. A gating issue in these chapter 11 cases is the magnitude of the Debtors' liability with respect to Abuse Claims to be addressed in a plan of reorganization. As such, the information being requested in the Abuse Proof of Claim Forms is critical to assessing the Debtors' aggregate liability, both overall and for different categories of claims. The Debtors believe that obtaining this information will be essential to moving forward on a path of resolution in these chapter 11 cases, whether the aggregate amount of liability relating to the Abuse Claims is established consensually, as the Debtors continue to work toward, or otherwise. The information being requested has been tailored and organized in a streamlined manner so that providing the same will not impose an undue burden on any holder of an Abuse Claim.

37. In accordance with the Confidentiality Protocol, in light of the sensitive nature of certain of the injuries and damages likely to be asserted in connection with the Abuse Claims, the Debtors are requesting that the submitted Abuse Proofs of Claim and any supporting documentation not be made available to the general public unless a holder of an Abuse Claim designates otherwise on the Abuse Proof of Claim. As discussed above, copies of the Abuse

Proofs of Claim may be made available to certain Permitted Parties in accordance with the Confidentiality Protocol. Accordingly, the Debtors submit that the Proof of Claim Forms substantially conform to Official Form 410 and should be approved.

BASIS FOR RELIEF

I. The Proposed Bar Dates and Procedures Are Reasonably Calculated to Provide Due and Proper Notice.

38. Bankruptcy Rule 2002(a)(7) requires a debtor to provide at least twenty-one (21) days' notice of the time fixed for filing Proofs of Claim. To satisfy the requirements of due process, notice of the Bar Dates must be reasonably calculated to apprise interested persons of the deadlines for filing Proofs of Claim. See Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950). Whether notice is reasonable or adequate depends on whether a creditor is known or unknown to the debtor. See Fogel v. Zell, 221 F.3d 955, 963 (7th Cir. 2000) (citing In re Chicago, Milwaukee, St. Paul & Pacific R. Co., 974 F.2d 775, 788 (7th Cir. 1992)).

39. When a creditor is known to the debtor, due process requires that the debtor take reasonable steps, such as direct mailing, to provide actual notice of the deadline for submitting proofs of claim. See, e.g., Zell, 221 F.3d at 963 (noting that, if a creditor's "name and address are reasonably ascertainable, he is entitled to have [bar date] information sent directly to him"); In re Grand Pier Center LLC v. ATC Group Servs., Inc., Case Nos. 03-C-7767, 05-C-1156, 2007 WL 2973829, at *5 (N.D. Ill. Oct. 9, 2007) ("for a known or 'reasonably ascertainable' creditor, means reasonably calculated to provide actual notice (such as notice by mail) are typically required" (quoting Tulsa Prof'l Collections Servs., Inc. v. Pope, 485 U.S. 478, 490 (1988))).

40. Pursuant to the Proposed Order, the Debtors will be providing at least **eighty (80) days' notice** of the Bar Dates. With respect to both the General Bar Date Notice and Abuse Claims Bar Date Notice, the Claims and Noticing Agent will have seven (7) business days from

the date of entry of the Proposed Order to complete the mailing of the Bar Date Notices to known claimants. Accordingly, the Debtors submit that the proposed Bar Dates and all Notice Procedures related thereto provide sufficient notice and time for all parties in interest, including holders of Abuse Claims, to assert their claims.

41. Further, because the proposed Notice Procedures will provide notice to all known claimants by mail and will provide notice to unknown claimants via the forthcoming Supplemental Notice Plan, the Debtors submit that the proposed Notice Procedures are reasonably calculated to provide notice to all parties that may wish to assert a claim in these chapter 11 cases and are consistent with due process. The Debtors' proposed eighty (80) day notice period is consistent with the notice periods provided to claimants in other mass tort cases. See, e.g., In re Purdue Pharma L.P., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Feb. 3, 2020) (approving approximately 134 day notice period for personal injury claimants asserting opioid-related claims); In re PG&E Corp., Case No. 19-30088 (DM) (Bankr. N.D. Cal. July 1, 2019) [Docket No. 2806] (approving initial bar date notice period of 95 days for personal injury and other claims resulting from wildfires); In re USA Gymnastics, Case No. 18-09108-RLM-11 (Bankr. S.D. Ind. Feb. 25, 2019) [Docket No. 301] (approving 60 day bar date notice period for survivors asserting sexual abuse claims); In re TK Holdings, Inc., Case No. 17-11375 (BLS) (Bankr. D. Del. Oct. 4, 2017) [Docket No. 959] (approving 79 day bar date notice period for individuals asserting personal injury and other claims resulting from defective airbag inflators).

42. The Claims and Noticing Agent will also post the Proof of Claims Forms, along with instructions for filing Proofs of Claim, on the case website, www.OfficialBSAClaims.com. The Bar Date Notices will also provide that the Debtors' Schedules may be accessed through the

same website or by contacting the Claims and Noticing Agent at the applicable toll-free phone number or email address, as set forth in the Bar Date Notices.

43. After the initial mailings of the Bar Date Notices and Proof of Claim Forms, the Debtors may, in their discretion, make supplemental mailings of notices, including in the event that: (a) notices are returned by the post office with forwarding addresses; (b) certain parties acting on behalf of parties in interest decline to pass along notices to these parties and instead provide their names and addresses to the Debtors for direct mailing; and (c) additional potential claimants become known to the Debtors. Under these and any analogous circumstances, the Debtors request that the Court permit these supplemental mailings of the Bar Date Notices and Proof of Claim Forms at any time up to 21 days in advance of the applicable Bar Date, with any such mailings deemed timely and the applicable Bar Date being enforced against the relevant creditors.

II. The Proposed Procedures for Submitting Proofs of Claim Should Be Approved.

44. The Debtors have worked to design claims procedures that provide full notice and clear instructions to claimants and also allow these chapter 11 cases to move forward quickly with minimal administrative expense and delay.

45. The proposed procedures provide easily understandable instructions for submitting Proofs of Claim. These procedures will help claimants file clear and correct Proofs of Claim, which will avoid unnecessary expense and delay in the claims reconciliation process, to the benefit of all parties in interest. For example, the proposed Proof of Claim Forms provide useful information to scheduled creditors regarding how their claims are reflected in the Schedules, streamlining the claims analysis process. Indeed, the Debtors believe that using personalized Proof of Claim Forms will result in a claims reconciliation process that is less burdensome, costly, and time-consuming, which enhances recoveries for all creditors.

46. In addition, the Debtors submit that the proposed Abuse Proof of Claim Form is appropriate under the circumstances of these cases. It is well established that the Court has the authority to authorize the modification of Official Bankruptcy Forms. See In re A.H. Robins Co., 862 F.2d 1092 (4th Cir. 1988); In re Eagle-Picher Indus., Inc., 158 B.R. 713, 716 (Bankr. S.D. Ohio 1993). While Bankruptcy Rule 3001(a) provides that "[a] proof of claim shall conform substantially to the appropriate Official Form," Bankruptcy Rule 9009 authorizes appropriate and necessary alterations to the Official Forms:

> the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms under the Code. The forms shall be construed to be consistent with these rules and the Code.

Fed. R. Bankr. P. 9009.

47. Similar forms have been approved in cases involving the assertion of claims arising from sexual abuse. See, e.g., In re USA Gymnastics, Case No. 18-09108-RLM-11 (Bankr. S.D. Ind. Feb. 25, 2019) [Docket No. 301]; In re Roman Catholic Bishop of Great Falls Montana, Case No. 17-60271-JDP (Bankr. Mont. Apr. 27, 2017) [Docket No. 121]; In re Roman Catholic Church of the Diocese of Gallup, New Mexico, Case No. 13-13676-T11 (Bankr. N.M. Apr. 11, 2014) [Docket No. 218]; In re Christian Bros.' Institute, Case No. 11-22820 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2012) [Docket No. 244]; In re Catholic Diocese of Wilmington, Inc., Case No. 09-13560 (Bankr. D. Del. Feb. 1, 2010) [Docket No. 308].

48. Given that the Debtors and certain other parties in interest require additional and differing information to assess the Abuse Claims that is not set forth in Official Form 410, the Debtors seek the Court's approval of the proposed Abuse Proof of Claim Form.

49. The Confidentiality Protocol is also necessary and appropriate under the circumstances of these chapter 11 cases. The Debtors are sensitive to the issues that may arise for an abuse victim or a representative of a minor asserting a claim against the Debtors' estates. No abuse victim should have to choose between filing a claim and keeping the circumstances of his or her experiences confidential. The Debtors are focused on allocating and distributing proceeds to abuse victims holding allowed claims as fully and equitably as possible, and so encourage all abuse victims to come forward with their Abuse Claims. Similarly, the Debtors seek to respect the privacy of minors who may be involved in litigation with the Debtors. To that end, the Debtors request the approval of the Confidentiality Protocol set forth herein.

RESERVATION OF RIGHTS

50. Nothing contained herein is intended or should be construed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or the Proposed Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

NOTICE

51. Notice of this Motion will be provided to (i) the U.S. Trustee; (ii) the twenty-five (25) law firms representing the largest numbers of abuse victims asserting claims against the Debtors; (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, other than abuse-related claims; (iv) counsel to JPMorgan Chase Bank, N.A.; (v) the County Commission of Fayette County (West Virginia), as issuer of those certain

Commercial Development Revenue Bonds (Arrow WV Project), Series 2010A, 2010B and 2012; (vi) representatives of the prepetition ad hoc committee of local councils; (vii) counsel to the prepetition Future Claimants' Representative; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims; (ix) the United States Attorney's Office for the District of Delaware; (x) the Internal Revenue Service; (xi) the United States Department of Justice; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and any further relief the Court may deem just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: February 18, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Eric W. Moats (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@mnat.com
jbarsalona@mnat.com
emoats@mnat.com
ptopper@mnat.com

– and –

SIDLEY AUSTIN LLP
James F. Conlan (*pro hac vice* pending)
Thomas A. Labuda (*pro hac vice* pending)
Michael C. Andolina (*pro hac vice* pending)
Matthew E. Linder (*pro hac vice* pending)
Blair M. Warner (*pro hac vice* pending)
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Email: jconlan@sidley.com
tlabuda@sidley.com
mandolina@sidley.com
mlinder@sidley.com
blair.warner@sidley.com

– and –

SIDLEY AUSTIN LLP
Jessica C. K. Boelter (*pro hac vice* pending)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Email: jboelter@sidley.com

PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

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(___) (Joint Administration Requested)

CHAPTER 11 PLAN OF REORGANIZATION FOR BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC

SIDLEY AUSTIN LLP
James F. Conlan
Thomas A. Labuda
Michael C. Andolina
Matthew E. Linder
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Email: jconlan@sidley.com
tlabuda@sidley.com
mandolina@sidley.com
mlinder@sidley.com

– and –

SIDLEY AUSTIN LLP
Jessica C. K. Boelter
Alex R. Rovira
Andrew P. Propps
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Email: jboelter@sidley.com
arovira@sidley.com
apropps@sidley.com

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Paige N. Topper (No. 6470)
Eric Moats (No. 6441)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Email: dabbott@mnat.com
aremming@ mnat.com
jbarsalona@mnat.com
ptopper@mnat.com
emoats@mnat.com

Proposed Counsel for the Debtors and Debtors in Possession

Dated: February 18, 2020
Wilmington, Delaware

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtors' 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.

TABLE OF CONTENTS

INTRODUCTION 1
ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION 1
A. Definitions. The following terms shall have the meanings set forth below: 1
B. Interpretation; Application of Definitions and Rules of Construction.....18
C. Reference to Monetary Figures.....19
D. Controlling Document. 19
ARTICLE II ADMINISTRATIVE EXPENSE AND PRIORITY CLAIMS 19
A. Administrative Expense Claims.....19
B. Priority Tax Claims.....20
ARTICLE III CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS 21
A. Classification of Claims and Interests.....21
B. Treatment of Claims and Interests. 21
C. Elimination of Vacant Classes. 26
ARTICLE IV VICTIMS COMPENSATION TRUST 26
A. Establishment and Purpose of the Victims Compensation Trust.....26
B. Receipt of Trust Assets. 27
C. The Trust Distribution Procedures.....27
D. Discharge of Liabilities to Holders of Abuse Claims. 27
E. Imposition of Channeling Injunction. 28
F. Insurance Rights Transfer. 28
G. Indemnification Obligations. 29
H. Investment Guidelines. 30
I. Excess Assets in Victims Compensation Trust.....30
J. Trust Expenses. 30
K. Victims Compensation Trustee.....30
L. Compensation of Victims Compensation Trustee and Retention of Professionals. 31
M. Future Claimants' Representative.....31
N. Trust Advisory Committee. 31
O. Consent Rights of the Debtors and the Reorganized Debtors.....32
P. Cooperation; Transfer of Books and Records.....32
Q. U.S. Federal Income Tax Treatment of the Victims Compensation Trust. 33
R. Institution and Maintenance of Legal and Other Proceedings.....33
S. Insurance Neutrality.....33

ARTICLE V MEANS FOR IMPLEMENTATION OF THE PLAN 34
A. No Substantive Consolidation. 34
B. General Settlement of Claims and Interests. 34
C. Sources of Consideration for Distributions. 35
D. Exit Facilities. 35
E. Organizational Documents. 35
F. Reorganized Debtors' Directors and Senior Management. 35
G. Due Authorization. 35
H. Continued Legal Existence. 36
I. Vesting of Assets in the Reorganized Debtors. 36
J. Cancellation of Indebtedness. 36
K. Effectuating Documents and Further Transactions. 36
L. Cancellation of Liens. 37
M. Closing of Chapter 11 Cases. 37
N. Preservation of Causes of Action. 37
O. Setoffs and Recoupment. 37
P. Exemption from Certain Transfer Taxes and Recording Fees. 38
Q. Directors and Officers Insurance Policies. 38
R. Other Insurance Policies. 38
ARTICLE VI EXECUTORY CONTRACTS AND UNEXPIRED LEASES 38
A. Assumption of Executory Contracts and Unexpired Leases. 38
B. Rejection Damages Claims. 39
C. Cure of Defaults under Executory Contracts and Unexpired Leases. 39
D. Contracts and Leases Entered into After the Petition Date. 40
E. Compensation and Benefits Programs. 41
F. Workers' Compensation Program. 41
G. Indemnification Obligations. 41
H. Local Council Charters. 42
I. Modifications, Amendments, Supplements, Restatements, or Other Agreements. 42
J. Reservation of Rights. 42
ARTICLE VII DISTRIBUTIONS 42
A. Distributions Generally. 42
B. Distribution Record Date. 42
C. Date of Plan Distributions. 43

D. No Postpetition Interest on Claims. 43
E. Undeliverable and Non-Negotiated Plan Distributions. 43
F. Manner of Payment under the Plan. 44
G. Satisfaction of Claims. 44
H. Minimum Cash Distributions. 44
I. Setoffs and Recoupments. 44
J. Allocation of Plan Distributions Between Principal and Interest. 44
K. No Plan Distribution in Excess of Amount of Allowed Claim. 45
L. Withholding and Reporting Requirements. 45
M. Allowed Claims Paid by Third Parties. 45
N. Claims for Indemnification Obligations. 45
ARTICLE VIII DISPUTED CLAIMS 46
A. Objections to Claims. 46
B. Resolution of Disputed Administrative Expenses and Disputed Non-Abuse Claims. 46
C. Resolution of Abuse Claims. 46
D. Payments and Distributions with Respect to Disputed Claims. 46
E. Distributions After Allowance. 47
F. Estimation of Claims. 47
G. No Distributions Pending Allowance. 47
H. Claims Resolution Procedures Cumulative. 47
I. Interest. 47
J. Insured Non-Abuse Claims. 48
ARTICLE IX CONFIRMATION AND CONSUMMATION OF PLAN 48
A. Conditions Precedent to Confirmation. 48
B. Conditions Precedent to the Effective Date. 48
C. Waiver of Conditions Precedent to the Effective Date. 49
D. *Vacatur* of Confirmation Order; Non-Occurrence of Effective Date. 49
ARTICLE X EFFECT OF PLAN CONFIRMATION 49
A. Binding Effect. 49
B. Pre-Confirmation Injunctions and Stays. 49
C. Discharge. 50
D. **Channeling Injunction**. 50
E. Provisions Relating to Channeling Injunctions. 52
F. **Injunction Against Interference with Plan**. 53

G. **Releases**. 53
H. **Exculpation**. 54
I. **Injunctions Related to Releases and Exculpation**. 54
J. Reservation of Rights. 55
K. Disallowed Claims. 55
ARTICLE XI RETENTION OF JURISDICTION 56
A. General Retention. 56
B. Specific Purposes. 56
ARTICLE XII MISCELLANEOUS PROVISIONS 58
A. Substantial Consummation of the Plan. 58
B. Amendment or Modification of the Plan. 58
C. Effectuating Documents and Further Transactions. 59
D. Successors and Assigns. 59
E. Revocation or Withdrawal of Plan. 59
F. The Official Committees and the Future Claimants' Representative. 59
G. Request for Expedited Determination of Taxes. 60
H. Non-Severability of Plan Provisions. 60
I. Governing Law. 60
J. Immediate Binding Effect. 61
K. Computation of Time. 61
L. Deemed Acts. 61
M. Entire Agreement. 61
N. Exhibits to Plan. 61
O. Notices. 61

EXHIBITS

Exhibit A	Trust Agreement
Exhibit B	Trust Distribution Procedures
Exhibit C	Victims Compensation Trustee
Exhibit D	Trust Advisory Committee
Exhibit E	Identified Property
Exhibit F	Local Councils
Exhibit G	Related Non-Debtor Entities
Exhibit H	Local Council Trust Contributions
Exhibit I	Chartered Organization Trust Contributions
Exhibit J	Rejected Contracts Schedule
Exhibit K	Restated 2010 Bond Documents
Exhibit L	Restated 2012 Bond Documents
Exhibit M	Restated 2010 Credit Facility Documents
Exhibit N	Restated 2019 RCF Documents
Exhibit O	Summary of Exit Facility Terms
Exhibit P	Reorganized Debtors' Officers and Directors

INTRODUCTION

Boy Scouts of America and Delaware BSA, LLC, the debtors and debtors in possession in the above-captioned chapter 11 cases, hereby propose this plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein shall have the meanings ascribed to such terms in Section I.A. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, charitable mission, operations, projections for those operations, risk factors, a summary and analysis of the Plan, and certain related matters.

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

A. Definitions. The following terms shall have the meanings set forth below:

1. "2010 Bond" means The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond (Arrow WV Project) Series 2010B in an aggregate principal amount of $50,000,000, issued by the Issuer pursuant to the 2010 Bond Agreement, the proceeds of which were loaned to the BSA pursuant to the 2010 Note.

2. "2010 Bond Claim" means any Claim against the Debtors arising under, derived from, or based upon the 2010 Bond Documents, including any Claim for obligations, indebtedness, and liabilities of the BSA arising pursuant to any of the 2010 Bond Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, including the obligation of the BSA to repay the 2010 Note, interest on the 2010 Note, and all fees, costs, expenses and obligations of any kind or character due or recoverable under the 2010 Bond Documents.

3. "2010 Bond Documents" means collectively, the 2010 Bond, the 2010 Bond Agreement, the 2010 Note, the Prepetition Security Agreement (2019), the Prepetition Security Agreement (2020), and all documentation executed and delivered in connection therewith, as amended, restated, supplemented or otherwise modified from time to time.

4. "2010 Bond Agreement" means that certain Bond Purchase and Loan Agreement dated as of November 5, 2010 between the Issuer, JPMorgan, the BSA and Arrow WV, Inc., as amended, restated, supplemented or otherwise modified from time to time.

5. "2010 Credit Agreement" means that certain Credit Agreement dated as of August 11, 2010, pursuant to which JPMorgan, as lender, made term loans to the BSA in an aggregate amount of $25,000,000 and agreed to make revolving loans to the BSA and issue letters of credit on behalf of the BSA in an aggregate amount of up to $75,000,000, as such agreement has been amended by that certain First Amendment to Credit Agreement dated as of November 5, 2010, that certain Second Amendment to Credit Agreement dated as of November 11, 2011, that certain Third Amendment to Credit Agreement dated as of March 9, 2012, that certain Fourth Amendment to Credit Agreement dated as of April 25, 2016, that certain Fifth Amendment to Credit Agreement dated as of March 2, 2017, that certain Sixth Amendment to

Credit Agreement dated as of February 15, 2018, and that certain Seventh Amendment to Credit Agreement dated as of March 21, 2019.

6. "2010 Credit Facility Claim" means any Claim against the Debtors arising under, derived from, or based upon the 2010 Credit Facility Documents, including any Claim for obligations, indebtedness, and liabilities of the BSA arising pursuant to any of the 2010 Credit Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, including the obligation of the BSA to pay principal and interest, and all fees, costs, expenses and other obligations of any kind or character due or recoverable under the 2010 Credit Documents.

7. "2010 Credit Facility Documents" means, collectively, the 2010 Credit Agreement, the Prepetition Security Agreement (2019), the Prepetition Security Agreement (2020) and all documentation executed and delivered in connection therewith, as amended, restated, supplemented or otherwise modified from time to time.

8. "2010 Note" means that certain Promissory Note – 2010B executed by the BSA, as borrower, and payable to the order of the Issuer in the original principal amount of $50,000,000, which note was pledged by the Issuer to secure the repayment of the 2010 Bond, as amended, restated, supplemented or otherwise modified from time to time.

9. "2012 Bond" means The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond (Arrow WV Project), Series 2012 in an aggregate principal amount of $175,000,000, issued by the Issuer pursuant to the 2012 Bond Agreement, the proceeds of which were loaned to the BSA pursuant to the 2012 Note.

10. "2012 Bond Claim" means any Claim against the Debtors arising under, derived from, or based upon the 2012 Bond Documents, including any Claim for obligations, indebtedness, and liabilities of the BSA arising pursuant to any of the 2012 Bond Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, including the obligation of the BSA to repay the 2012 Note, interest on the 2012 Note, and all fees, costs, expenses and obligations of any kind or character due or recoverable under the 2012 Bond Documents.

11. "2012 Bond Documents" means collectively, the 2012 Bond, the 2012 Bond Agreement, the 2012 Note, the Prepetition Security Agreement (2019), the Prepetition Security Agreement (2020) and all documentation executed and delivered in connection therewith, as amended, restated, supplemented or otherwise modified from time to time.

12. "2012 Bond Agreement" means that certain Bond Purchase and Loan Agreement dated as of March 9, 2012 between the Issuer, JPMorgan, the BSA and Arrow WV, Inc., as amended, restated, supplemented or otherwise modified from time to time.

13. "2012 Note" means that certain Promissory Note – 2012 executed by the BSA, as borrower, and payable to the order of the Issuer in the original principal amount of $175,000,000, which note was pledged by the Issuer to secure the repayment of the 2012 Bond, as amended, restated, supplemented or otherwise modified from time to time.

14. "2019 RCF Agreement" means that certain Credit Agreement dated as of March 21, 2019, pursuant to which JPMorgan, as lender, agreed to make revolving loans to the BSA and issue letters of credit on behalf of the BSA in an aggregate amount of up to $71,500,000, the maturity date of which was extended pursuant to that certain Consent to Extension of Maturity Date dated as of January 16, 2020.

15. "2019 RCF Claim" means any Claim against the Debtors arising under, derived from, or based upon the 2019 RCF Documents, including any Claim for obligations, indebtedness, and liabilities of the BSA arising pursuant to any of the 2019 RCF Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, including the obligation of the BSA to pay principal and interest, and all fees, costs, expenses and other obligations of any kind or character due or recoverable under the 2019 RCF Documents.

16. "2019 RCF Documents" means, collectively, the 2019 RCF Agreement, the Prepetition Security Agreement (2019), the Prepetition Security Agreement (2020) and all documentation executed and delivered in connection therewith, as amended, restated, supplemented or otherwise modified from time to time.

17. "Abuse" means sexual conduct or misconduct, sexual abuse or molestation, sexual exploitation, indecent assault and/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 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.

18. "Abuse Claim" means a liquidated or unliquidated Claim against any Protected Party that is attributable to, arises from, is based upon, relates to, or results from, in whole or in part, directly, indirectly, or derivatively, 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, 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 any Protected Party or any other Person for whom any Protected Party is alleged to be responsible. Notwithstanding the foregoing, with respect to Contributing Chartered Organizations, the term "Abuse Claim" shall be limited to any Claim that is attributable to, arises from, is based upon, relates to, or results from, Abuse that occurred prior to the Petition Date and exists solely by virtue of the Contributing Chartered Organizations' affiliation with the Debtors. "Abuse Claim" includes any Future Abuse Claim and any Indirect Abuse Claim, and any Claim that is attributable to, arises from, is based upon, relates to, or results from Abuse that, as of the Petition

Date, is barred by any applicable statute of limitations. Neither this definition nor the use of this definition in the Plan Documents or any filing in the Chapter 11 Cases shall constitute a waiver of any defense that would otherwise be available under applicable law to the Debtors, the Reorganized Debtors, any Protected Party, any Local Council, the Victims Compensation Trust, or any other Person.

19. "Abuse Claimants Committee" means any official committee of holders of Abuse Claims appointed by the United States Trustee in the Chapter 11 Cases under section 1102(a) of the Bankruptcy Code.

20. "Abuse Claims Bar Date" means, as to an Abuse Claim, the deadline for filing a Proof of Claim as to such Claim, as established by the Bar Date Order.

21. "Administrative Expense Claim" means any right to payment from the Debtors that constitutes a cost or expense of administration incurred during the Chapter 11 Cases of the kind specified under 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred during the period from the Petition Date to and including the Effective Date of preserving the Estates and continuing operations of the Debtors; (b) Professional Fee Claims; and (c) Quarterly Fees.

22. "Administrative Expense Claims Bar Date" means the deadline for filing requests for payment of Administrative Expense Claims, which: (a) with respect to General Administrative Expense Claims shall be thirty (30) days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five (45) days after the Effective Date.

23. "Affiliate" has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code. "Affiliated" shall have a correlative meaning.

24. "Allowed" means:

a. with respect to any Claim that is asserted to constitute an Administrative Expense Claim: (i) a Claim that represents an actual and necessary expense of preserving the Estates or operating the organization of the Debtors, to the extent such Claim is determined by the Debtors to constitute an Administrative Expense; (ii) other than with respect to a Professional Fee Claim, a Claim that is Disputed by the Debtors, which Claim is allowed in whole or in part by a Final Order of the Bankruptcy Court to the extent that such allowed portion is determined by a Final Order to constitute a cost or expense of administration under sections 503(b) and 507(a)(1) of the Bankruptcy Code; or (iii) a Professional Fee Claim, to the extent allowed by a Final Order of the Bankruptcy Court.

b. with respect to any 2010 Credit Facility Claim, 2019 RCF Claim, 2010 Bond Claim, or 2012 Bond Claim, any such Claim that is expressly allowed as provided under Article III.

c. with respect to any Priority Tax Claim, Other Priority Claim, Other Secured Claim, or General Unsecured Claim, or any portion of any of the foregoing, a Claim that is: (i) not listed in the Schedules as disputed, contingent or unliquidated and with respect to which no contrary or superseding Proof of Claim has been filed, and that has not been paid pursuant to an order of this Court prior to the Effective Date; (ii) evidenced by a Proof of Claim filed on or before the applicable Bar Date and is not listed in the Schedules as disputed, contingent or unliquidated, and as to which no objection has been filed on or before the Claims Objection Deadline; (iii) not the subject of an objection to allowance that (A) was filed on or before the Claims Objection Deadline and (B) has not been settled, waived, withdrawn or denied pursuant to a Final Order; or (iv) is expressly allowed (x) pursuant to a Final Order, (y) pursuant to an agreement between the holder of such Claim and the Debtors or the Reorganized Debtors, as applicable, or (z) pursuant to the terms of the Plan. For the avoidance of doubt, a Claim evidenced by a Proof of Claim filed after the applicable Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order expressly allowing such late-filed Claim.

d. with respect to any Abuse Claim or any Interest, the term "Allowed" shall not apply.

25. "Avoidance Actions" means any and all actual or potential avoidance, recovery, subordination or other Claims or Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including Claims, Causes of Action or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code, or under similar or related local, state, federal, or foreign statutes or common law, including preference and fraudulent transfer and conveyance laws, in each case whether or not litigation to prosecute such claim(s) or cause(s) of action was commenced prior to the Effective Date.

26. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as in effect on the Petition Date, together with all amendments, modifications, and replacements of the foregoing that are made retroactive to the Petition Date, as the same may exist on any relevant date to the extent applicable to the Chapter 11 Cases.

27. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

28. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

29. "Bar Date" means, as to a particular Claim, the deadline for filing a Proof of Claim as to such Claim, as established by the Bar Date Order.

30. "Bar Date Order" means one or more Final Orders of the Bankruptcy Court establishing deadlines for the filing of Proofs of Claim and other claims filing procedures and requirements.

31. "BSA" means the Boy Scouts of America, a congressionally chartered non-profit corporation under title 36 of the United States Code.

32. "BSA Trust Contributions" means: (a) the Debtors' assets that do not constitute Identified Property (or the value of such assets) as of the Effective Date, including assets identified by the Debtors as Identified Property that are later determined by a Final Order to be available to satisfy creditor claims; plus (b) (i) the Insurance Rights and (ii) any other amounts, as determined by the Debtors in their sole and absolute discretion; less (c) (i) the aggregate amount of all Allowed Administrative Expenses, Allowed Priority Tax Claims, and Allowed Other Priority Claims, (ii) the GUC Plan Distribution, and (iii) the Working Capital, and (iv) the value of any valid, perfected and enforceable security interest and lien of any holder of an Allowed Secured Claim in any collateral that does not constitute Identified Property, including any collateral that is identified by the Debtors as Identified Property that is later determined by a Final Order to be available to satisfy creditor claims.

33. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday" as such term is defined in Bankruptcy Rule 9006(a).

34. "Cause of Action" means any action, class action, Claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license, and franchise of any kind or character whatsoever, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or pursuant to any other theory of law. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (d) any claim under any local, state, federal or foreign law, including any fraudulent transfer or similar claim.

35. "Channeling Injunction" means the permanent injunction provided for in Section X.D with respect to Abuse Claims to be issued pursuant to the Confirmation Order.

36. "Chapter 11 Cases" means the cases filed by the Debtors under chapter 11 of the Bankruptcy Code.

37. "Chartered Organization Trust Contributions" means, for each Contributing Chartered Organization, the Cash and other assets being contributed to the Victims Compensation Trust, as specified on Exhibit J hereto.

38. "Chartered Organizations" means those certain civic, faith-based, or educational organizations or groups of individual citizens authorized by the Debtors to operate scouting units.

39. "Claim" means any "claim," as defined in section 101(5) of the Bankruptcy Code.

40. "Claims Objection Deadline" means the deadline for filing an objection to any Claim, including any Claim for damages arising from or relating to the Debtors' rejection of any Executory Contract or Unexpired Lease, which deadline shall be 180 days after the Effective Date, subject to any extensions approved by an order of the Bankruptcy Court; provided, however, that the Claims Objection Deadline shall not apply to any Claim filed after the applicable Bar Date; provided further, however, that the Claims Objection Deadline shall not apply to Abuse Claims, which shall be administered on a timeline determined by the Victims Compensation Trustee, in consultation with the Future Claimants' Representative and the Trust Advisory Committee, subject to Bankruptcy Court approval.

41. "Class" means each category of holders of Claims or Interests as set forth in Article III pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

42. "Compensation and Benefits Programs" means all employment agreements and policies, and all employment, compensation, and benefit plans, policies, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit agreements, plans or policies, incentive plans, life and accidental death and dismemberment insurance plans, and programs of the Debtors, and all amendments and modifications thereto, applicable to the Debtors' employees, former employees, retirees, and non-employee directors, and the employees, retirees and non-employee directors of the Local Councils and the Related Non-Debtor Entities.

43. "Confirmation" means the entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

44. "Confirmation Date" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

45. "Confirmation Hearing" means the hearing(s) held by the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

46. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

47. "Contributing Chartered Organizations" means the Chartered Organizations listed on Exhibit J hereto.

48. "Coverage Actions" means any and all pending coverage litigation between the BSA and any Insurer as of the Petition Date, including: (a) *Boy Scouts of America, et al. v. Insurance Company of North America et al.*, Case No. DC-18-11896 pending in the 192nd Judicial District Court of Dallas County, Texas; (b) *Boy Scouts of America, et al. v. Hartford Accident and Indemnity Co.*, et al., Case No. 3:19-CV-1318 pending in the United States District Court for the Northern District of Texas, Dallas Division; and (c) *National Surety Corp. v. Boy Scouts of America, et al.*, Case No. 2017-CH-14975 pending in the Circuit Court of Cook County, Illinois, Chancery Division.

49. "Cure Amount" means all amounts, including an amount of $0.00, required to cure any monetary default under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the non-Debtor party to an Executory Contract or Unexpired Lease) that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

50. "D&O Liability Insurance Policies" means all insurance policies issued at any time to any of the Debtors for directors', managers', and officers' liability in effect as of the Effective Date (including any "tail policy" or run-off coverage and including any such policy that provides protection to any Local Council's directors, managers or officers) and all agreements, documents, or instruments relating thereto.

51. "Disallowed" means, as to any Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, or General Unsecured Claim, any such Claim (or portion thereof) that has been disallowed, denied, dismissed, or overruled pursuant to the Plan or a Final Order of the Bankruptcy Court or any other court of competent jurisdiction. "Disallowance" and "Disallowing" shall have correlative meanings. With respect to any 2010 Credit Facility Claim, 2019 RCF Claim, 2010 Bond Claim, 2012 Bond Claim, Abuse Claim or Interest, the term "Disallowed" shall not apply.

52. "Disclosure Statement" means the disclosure statement for the Plan, including all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

53. "Disclosure Statement Order" means one or more orders entered by the Bankruptcy Court (a) finding that the Disclosure Statement (including any amendment, supplement, or modification thereto) contains adequate information pursuant to section 1125 of the Bankruptcy Code; and (b) authorizing solicitation of the Plan.

54. "Disputed" means, as to any Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, or General Unsecured Claim, any such Claim (or portion thereof) (a) that is neither an Allowed Claim nor a Disallowed Claim, (b) that is listed on the Schedules as "disputed," or (c) for which a Proof of Claim has been timely filed or a written request for payment has been made to the extent that any party in interest has interposed

a timely objection to such Claim, which objection has not been withdrawn or determined pursuant to a Final Order.

55. "Distribution Date" means, except as set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, with the first such date occurring on or as soon as reasonably practicable after the Effective Date, upon which the Reorganized Debtors shall make Plan Distributions to holders of Allowed Claims. The Distribution Date shall not pertain to Trust Distributions made to holders of Abuse Claims, which shall be governed by the Trust Documents in all respects.

56. "Distribution Record Date" means the record date for purposes of making Plan Distributions on account of Allowed Claims, which date shall be the Effective Date. The Distribution Record Date shall not pertain to Abuse Claims, which shall be governed by the Trust Documents in all respects.

57. "District Court" means the United States District Court for the District of Delaware.

58. "Effective Date" means, and shall occur on, the Business Day on which each of the conditions precedent to the effectiveness of the Plan set forth in Section IX.B has been satisfied or waived in accordance with the terms thereof.

59. "Encumbrance" means, with respect to any property (whether real or personal, tangible or intangible), any mortgage, Lien, pledge, charge, security interest, assignment, or encumbrance of any kind or nature in respect of such property, including any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction, to secure payment of a debt or performance of an obligation.

60. "Entity" means an entity as defined in section 101(15) of the Bankruptcy Code.

61. "Estate" means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor's Chapter 11 Case.

62. "Exit Facility" means that certain credit facility or facilities, the relevant terms of which shall be included in a summary filed with the Plan Supplement and thereafter attached to the Plan as Exhibit Q.

63. "Exculpated Parties" means, collectively, the following Persons, in each case in its or their capacity as such: (a) the Debtors and the Reorganized Debtors; (b) such Released Parties that are fiduciaries of the Estates; and (c) with respect to the foregoing Persons in clauses (a) and (b), such Persons' and its and their current and former Affiliates, and such Persons' and its and their current and former Affiliates' current and former subsidiaries, officers, directors, managers, principals, trustees, members, partners, employees, agents, advisors, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives and other professionals.

64. "Executory Contract" means any executory contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

65. "Final Order" means an order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) that has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari* or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a new trial, reargument or rehearing shall then be pending, or (b) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order to not be a Final Order.

66. "Future Abuse Claim" means any Abuse Claim against any Protected Party that is attributable to, arises from, is based upon, relates to, or results from, in whole or in part, directly, indirectly, or derivatively, Abuse that occurred prior to the Petition Date but which, as of the date immediately preceding the Petition Date, was held by a Person who, as of such date, (a) had not attained eighteen (18) years of age, (b) suffered from "repressed memory" such that the holder of the Abuse Claim was not aware that he or she held an Abuse Claim as of such date, or (c) had not discovered the injury or the connection between the injury and the Abuse and who could not in the exercise of reasonable care have discovered the injury or connection between the injury and the Abuse. Notwithstanding the foregoing, with respect to Contributing Chartered Organizations, the term "Future Abuse Claim" shall be limited to any Abuse Claim that exists solely by virtue of the Contributing Chartered Organizations' affiliation with the Debtors.

67. "Future Claimants' Representative" means James L. Patton, Jr., the legal representative to be appointed by the Bankruptcy Court for holders of Future Abuse Claims, any successor legal representative appointed by the Bankruptcy Court, or, on and after the Effective Date, any successor legal representative appointed in accordance with the Trust Agreement.

68. "General Administrative Expense Claim" means an Administrative Expense Claim other than a Professional Fee Claim or a Claim for Quarterly Fees.

69. "General Unsecured Claim" means any Claim against the Debtors that is not an Administrative Expense Claim, a Priority Tax Claim, an Other Priority Claim, an Other Secured Claim, a 2010 Credit Facility Claim, a 2019 RCF Claim, a 2010 Bond Claim, a 2012 Bond Claim, or an Abuse Claim.

70. "Governmental Unit" means a governmental unit as defined in section 101(27) of the Bankruptcy Code.

71. "GUC Plan Distribution" means [●].

72. "Identified Property" means the assets of the Estates identified on Exhibit E, as such exhibit may be modified or supplemented from time to time, which assets are unavailable to satisfy creditor claims, including, among other reasons, because such assets are subject to legally enforceable restrictions requiring the use or disposition of such assets for a particular purpose and precluding the use of such assets for the Debtors' general corporate purposes; because the Debtors hold legal title to such assets in a fiduciary capacity for the sole benefit of donors, their intended beneficiaries, and/or members of the public who have entrusted the Debtors with property to carry out the Debtors' mission, as authorized and approved by Congress; because such assets are essential to the BSA's capability to carry out its mission in a manner consistent with its charter and bylaws; or otherwise.

73. "Impaired" means "impaired" within the meaning of section 1124 of the Bankruptcy Code. "Impair" and "impairment" shall have correlative meanings.

74. "Indemnification Obligations" means each of the Debtors' indemnification obligations in place as of the Effective Date, whether in the bylaws, limited liability company agreements, or other organizational or formation documents, board resolutions, management or indemnification agreements, employment or other contracts, or otherwise, for the past and present directors, officers, employees, attorneys, accountants, investment bankers, and other professionals and agents who provided services to the Debtors before, on, or after the Petition Date.

75. "Indirect Abuse Claim" means any Claim for contribution, indemnity, reimbursement, or subrogation, whether contractual or implied by law (as those terms are defined by the applicable non-bankruptcy law of the relevant jurisdiction) that is attributable to, arises from, is based upon, relates to, or results from, an Abuse Claim, and any other derivative or indirect Abuse Claim of any kind whatsoever, whether in the nature of or sounding in contract, tort, warranty or any other theory of law or equity whatsoever.

76. "Insurance Action" means any claim, cause of action, or right of the Debtors or any of them, under the laws of any jurisdiction, against any Insurer, arising from or related to: (a) the refusal of any Insurer to compromise and settle any Abuse Claim under or pursuant to any Insurance Policy; (b) the interpretation or enforcement of the terms of any Insurance Policy with respect to any Abuse Claim; (c) any conduct of any Insurer constituting "bad faith" or other wrongful conduct under applicable law; or (d) any Coverage Actions.

77. "Insurance Policy" means any insurance policy or other agreement related to the provision of insurance in effect at any time before the Effective Date naming any of the Debtors as an insured or otherwise affording the Debtors rights, benefits, indemnity or insurance coverage upon which any claim has been or may be made with respect to any Abuse Claim. Notwithstanding the foregoing, "Insurance Policy" shall not include any D&O Liability Insurance Policies.

78. "Insurance Proceeds" means any proceeds available or capable of being recovered under any Insurance Policy with respect to Abuse Claims by Protected Parties that have Insurance Rights to any Insurance Policy.

79. "Insurance Rights" means any and all rights, titles, privileges, interests, claims, demands, or entitlements of Protected Parties that are the subject of the Insurance Rights Transfer to any Insurance Proceeds, payments, benefits, Causes of Action, choses in action, defenses or indemnities arising under or attributable to any and all Insurance Policies, now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent, with respect to Abuse Claims. Insurance Rights shall include Insurance Actions.

80. "Insurance Rights Transfer" means the transfer, assignment, and vesting of Insurance Rights described in Section IV.F.

81. "Insured Non-Abuse Claim" means any Claim or portion of a Claim that is not an Abuse Claim and is or is asserted to be insured under any insurance policy (including any Insurance Policy) that benefits the Debtors.

82. "Insurer" means any insurance company, other Entity, or any such company's or Entity's successor or assign, that has issued, or that has any actual, potential, demonstrated, or alleged liabilities, duties, or obligations under or with respect to, any Insurance Policy.

83. "Insurer Coverage Defense" means all rights and defenses at law or in equity that any Insurer may have under any Insurance Policy or applicable law to a claim seeking insurance coverage.

84. "Interest" means any "equity security" as defined in section 101(16) of the Bankruptcy Code.

85. "Issuer" means The County Commission of Fayette County (West Virginia) in its capacity as the issuer under the 2010 Bond Agreement and the 2012 Bond Agreement.

86. "JPMorgan" means JPMorgan Chase Bank, National Association.

87. "Lien" means any "lien" as defined in section 101(37) of the Bankruptcy Code.

88. "Local Council Committee" means the Ad Hoc Committee of Local Councils of the Boy Scouts of America.

89. "Local Councils" means, collectively, the local councils of the BSA listed on Exhibit G hereto.

90. "Local Council Trust Contributions" means the contributions specified on Exhibit I hereto.

91. "Official Committees" means, collectively, the Abuse Claimants Committee and the UCC.

92. "Other Priority Claim" means any Claim against the Debtors that is entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Expense Claim or a Priority Tax Claim.

93. "Other Secured Claim" means any Secured Claim against the Debtors other than any 2010 Credit Facility Claim, 2019 RCF Claim, 2010 Bond Claim, or 2012 Bond Claim.

94. "Person" has the meaning set forth in section 101(41) of the Bankruptcy Code.

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

96. "Plan" means this plan of reorganization under chapter 11 of the Bankruptcy Code, including the Plan Supplement and any other supplements and any schedules, exhibits or annexes hereto, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code and the Bankruptcy Rules.

97. "Plan Distribution" means a payment or distribution to holders of Allowed Claims, holders of Interests, or other eligible Persons under the Plan. Plan Distributions shall not include distributions to holders of Abuse Claims, which the Victims Compensation Trustee shall make in accordance with the Trust Documents.

98. "Plan Documents" means, collectively, (a) the Plan; (b) the Disclosure Statement; (c) the Disclosure Statement Order; (d) each of the documents comprising the Plan Supplement; (e) the Confirmation Order; (f) the Trust Agreement; (g) the Trust Distribution Procedures; and (h) any other document necessary to implement the Plan.

99. "Plan Supplement" means the compilation of documents and forms of documents, agreements, schedules, exhibits, and annexes to the Plan, which the Debtors shall file no later than seven (7) days before the deadline established by the Bankruptcy Court for filing objections to Confirmation or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, including the following: (a) the Trust Agreement, (b) the identity of the initial Victims Compensation Trustee, (c) the initial members of the Trust Advisory Committee, (d) the Rejected Contracts Schedule, (e) the forms of the Restated 2010 Bond Documents, (f) the forms of the Restated 2012 Bond Documents, (g) the forms of the Restated 2010 Credit Facility Documents, (h) the forms of the Restated 2019 RCF Documents, (i) a summary of the relevant terms of the Exit Facility and (j) changes to the Reorganized Debtors' directors and officers, if any.

100. "Prepetition Security Agreement (2019)" means that certain Third Amended and Restated Security Agreement dated as of March 21, 2019, by and among the BSA and Arrow WV, Inc., as debtors, JPMorgan, in its capacity as collateral agent, JPMorgan, in its

capacity as the lender under the 2010 Credit Agreement and the 2019 RCF Agreement, and as holder under the 2010 Bond Agreement and the 2012 Bond Agreement.

101. "Prepetition Security Agreement (2020)" means that certain Consent and Security Agreement dated as of February 3, 2020, by and among Delaware BSA, LLC, the BSA, JPMorgan, as collateral agent, and JPMorgan, in its capacity as the lender under the 2010 Credit Agreement and the 2019 RCF Agreement, and as holder under the 2010 Bond Agreement and the 2012 Bond Agreement.

102. "Priority Tax Claim" means any Claim of a Governmental Unit against the Debtors that is entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

103. "Privileged Information" means any privileged information that relates, in whole or in part, to any Abuse Claim, including (a) the Debtors' books and records transferred to the Victims Compensation Trust in accordance with Section IV.P, (b) any privileged information containing a factual or legal analysis or review of any Abuse Claim, (c) any privileged information evaluating the reasonableness, effectiveness, or confirmability of the Plan or any other plan of reorganization or plan of liquidation filed or that could be filed in the Chapter 11 Cases, (d) any privileged information exchanged by the Debtors or their professionals, on the one hand, and the Non-Debtor Related Entities, Local Councils, the Local Council Committee, any Official Committee, or their respective professionals, on the other hand, related to the Plan, the Plan Documents, or the Abuse Claims, and (e) information shared pursuant to that certain Joint Defense, Common Interest, and Confidentiality Agreement among the BSA, the Local Council Committee, and each Local Council that executed a joinder to said agreement that was acknowledged in writing by the BSA and the Local Council Committee, and (f) any privileged information containing a factual or legal analysis of the Debtors' potential exposure in connection with any Abuse Claim or any litigation related thereto.

104. "Pro Rata" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

105. "Professional" means any Person retained by the Debtors or a statutory committee, if any, pursuant to a Final Order of the Bankruptcy Court entered under sections 327, 328, 363 and/or 1103 of the Bankruptcy Code.

106. "Professional Fee Claim" means any Claim of a Professional for allowance and award by the Bankruptcy Court of compensation for services rendered and/or reimbursement of costs or expenses incurred in the Chapter 11 Cases for the period from the Petition Date to and including the Effective Date under sections 328, 330, 331 and/or 503(b) of the Bankruptcy Code.

107. "Protected Parties" means, collectively, the following Persons, in each case in its and their capacity as such: (a) the Debtors and the Reorganized Debtors, as applicable; (b) the Local Councils; (c) the Non-Debtor Related Entities; (d) the Contributing Chartered Organizations; and (e) with respect to each of the foregoing Persons in clauses (a) through (d), such Persons' predecessors, successors, assigns, subsidiaries, Affiliates, current and former officers, directors, principals, equity holders, trustees, members, partners, managers, officials,

advisory board members, employees, agents, volunteers, attorneys, financial advisors, accountants, investment bankers, consultants, representatives, and other professionals, and such Persons' respective heirs, executors, estates, and nominees, as applicable; provided, however, that any perpetrator of Abuse that forms the basis for an Abuse Claim that is an individual is not and shall not be a Protected Party. Notwithstanding the foregoing, the Contributing Chartered Organizations shall be "Protected Parties" only with respect to Abuse Claims that exist solely by virtue of the Contributing Chartered Organizations' affiliation with the Debtors.

108. "Quarterly Fees" means all fees due and payable pursuant to section 1930(a)(6) of title 28 of the United States Code.

109. "Reinstatement" means (a) leaving unaltered the legal, equitable and contractual rights to which a Claim or Interest entitles the holder of such Claim or Interest or (b) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim or Interest as such maturity existed before such default; (iii) compensating the holder of such Claim or Interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (iv) if such Claim or Interest arises from any failure to perform a nonmonetary obligation, compensating the holder of such Claim or Interest (other than the Debtors or an "insider" of the Debtors within the meaning of section 101(31) of the Bankruptcy Code) for any actual pecuniary loss incurred by such holder as the result of such failure; and (v) not otherwise altering the legal, equitable or contractual rights to which such Claim or Interest entitles the holder thereof. "Reinstate" and "Reinstated" shall have correlative meanings.

110. "Rejected Contracts Schedule" means the schedule of Executory Contracts and Unexpired Leases to be rejected by the Debtors under the Plan, which schedule shall be included in the Plan Supplement and thereafter attached to the Plan as Exhibit K, as the same may be amended, modified, or supplemented from time to time.

111. "Rejection Damages Claim" means a Claim for damages alleged to arise from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code.

112. "Related Non-Debtor Entities" means the Entities listed on Exhibit H hereto, including non-Debtor Affiliates of the Debtors that are directly or indirectly wholly owned by, or subject to the control of, the BSA. Related Non-Debtor Entities do not include Local Councils.

113. "Released Parties" means, collectively, the following Persons, in each case in its or their capacity as such: (a) the Debtors and the Reorganized Debtors; (b) the Future Claimants' Representative; (c) the Local Councils; (d) the Local Council Committee; (e) the Related Non-Debtor Entities; (f) the Contributing Chartered Organizations; and (g) with respect to the Persons in clauses (a) through (f), such Persons' predecessors, successors, assigns, subsidiaries, Affiliates, current and former officers and directors, principals, equity holders,

trustees, members, partners, managers, officials, employees, agents, advisory board members, volunteers, attorneys, accountants, financial advisors, investment bankers, consultants, representatives, and other professionals, and such Persons' respective heirs, executors, estates, and nominees; provided, however, that any perpetrator of Abuse that forms the basis for an Abuse Claim that is an individual is not and shall not be a Released Party. Notwithstanding the foregoing, the Contributing Chartered Organizations shall be "Released Parties" only with respect to Abuse Claims that exist solely by virtue of the Contributing Chartered Organizations' affiliation with the Debtors.

114. "Reorganized Debtors" means the Debtors, as reorganized pursuant to and under the Plan, or any successor thereto by merger, consolidation, conversion or otherwise, on or after the Effective Date, after giving effect to the transactions implementing the Plan.

115. "Restated 2010 Bond Documents" means those certain restated bond documents, including a restated revenue bond, bond purchase agreement, promissory note, security agreement, and all documentation executed and delivered in connection therewith, the then-current forms of which shall be filed with the Plan Supplement and thereafter attached to the Plan as Exhibit L.

116. "Restated 2012 Bond Documents" means those certain restated bond documents, including a restated revenue bond, bond purchase agreement, promissory note, security agreement, and all documentation executed and delivered in connection therewith, the then-current forms of which shall be filed with the Plan Supplement and thereafter attached to the Plan as Exhibit M.

117. "Restated 2010 Credit Facility Documents" means those certain restated credit facility documents, the then-current forms of which shall be filed with the Plan Supplement and thereafter attached to the Plan as Exhibit N.

118. "Restated 2019 RCF Documents" means those certain restated revolving credit facility documents, the then-current forms of which shall be filed with the Plan Supplement and thereafter attached to the Plan as Exhibit O.

119. "Schedules" means, with respect to each Debtor, the schedules of assets and liabilities and the statement of financial affairs filed by such Debtor with the Bankruptcy Court pursuant to sections 521 and 1106(a)(2) of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements may be amended or supplemented from time to time prior to the Effective Date.

120. "Secured" means, with respect to any Claim, a Claim to the extent (a) secured by a Lien on property of a Debtor's Estate (i) as set forth in the Plan, (ii) as agreed to by the holder of such Claim and the Debtors, or (iii) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code or (b) subject to any setoff right of the holder of such Claim under section 553 of the Bankruptcy Code, but, with respect to both of the foregoing clauses (a) and (b), only to the extent of the value of the interest of such holder in the Estate's interest in the property securing such Claim or the amount subject to setoff, as applicable.

121. "Trust Advisory Committee" means the Victims Compensation Trust advisory committee established pursuant to the terms of the Plan and the Trust Agreement and identified in the Trust Agreement. The initial members of the Trust Advisory Committee shall be identified in the Plan Supplement and thereafter attached to the Plan as Exhibit D.

122. "Trust Agreement" means the agreement between the Debtors and the Victims Compensation Trustee governing the Victims Compensation Trust, dated as of the Effective Date, to be filed with the Plan Supplement and thereafter attached to the Plan as Exhibit A, as the same may be amended or modified from time to time.

123. "Trust Assets" means, collectively, the BSA Trust Contributions, the Local Council Trust Contributions, the Chartered Organization Trust Contributions, and any applicable Insurance Proceeds recovered or received by the Victims Compensation Trust.

124. "Trust Distribution" means any initial or periodic payment or transfer of consideration to holders of Abuse Claims made in accordance with the Trust Documents.

125. "Trust Distribution Procedures" means the Trust Distribution Procedures as defined and used in the Trust Agreement and attached to the Plan as Exhibit B, as the same may be amended or modified from time to time.

126. "Trust Documents" means, collectively, (a) the Trust Agreement, (b) the Trust Distribution Procedures, and (c) any other agreements, instruments and documents governing the establishment and administration of the Victims Compensation Trust, which shall be materially consistent with the terms of the Plan, as the same may be amended or modified from time to time in accordance with the terms thereof.

127. "Trust Expenses" means any and all costs, expenses, fees, taxes, disbursements, debts, or obligations incurred for the administration of the Victims Compensation Trust pursuant to the Trust Agreement, to be paid by the Victims Compensation Trust as provided in the Trust Agreement.

128. "Trust Termination Date" means the date on which the Victims Compensation Trust is terminated as determined pursuant to the terms of the Trust Agreement.

129. "UCC" means any official committee of holders of General Unsecured Claims appointed by the United States Trustee in the Chapter 11 Cases under section 1102(a) of the Bankruptcy Code.

130. "Unexpired Lease" means a lease to which one or more of the Debtors is a party, including any and all pre- and post-petition amendments thereto, that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

131. "Unimpaired" means any Claim or Interest that is not Impaired, including any Claim or Interest that is Reinstated.

132. "United States Trustee" means the Office of the United States Trustee for the District of Delaware.

133. "Victims Compensation Trust" means the trust organized under the laws of the state of Delaware and established under Article IV and the Trust Agreement for the purposes set forth therein, including assuming liability for all Abuse Claims, holding and administering the Trust Assets, liquidating the Abuse Claims, and making Trust Distributions to holders of Abuse Claims from the Trust Assets.

134. "Victims Compensation Trustee" means the individual to be identified in the Plan Supplement and thereafter attached to the Plan as Exhibit C, who shall act as the initial trustee of the Victims Compensation Trust pursuant to the terms of the Trust Documents, and any successor trustee appointed in accordance with the Trust Agreement.

135. "Workers' Compensation Program" means the written contracts, agreements, agreements of indemnity, self-insured bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance issued to or entered into at any time by any of the Debtors.

136. "Working Capital" means [●].

B. Interpretation; Application of Definitions and Rules of Construction.

1. For purposes of the Plan, unless otherwise provided herein: (1) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (2) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (3) any reference in the Plan to an existing document, schedule or exhibit filed or to be filed means such document, schedule or exhibit, as it may have been or may be amended, modified, or supplemented pursuant to the Plan; (4) any reference to a Person as a holder of a Claim or Interest includes that Person's successors and assigns; (5) unless otherwise stated, all references in the Plan to Articles or Sections are references to Articles or Sections of the Plan, as the same may be amended, waived or modified from time to time in accordance with the terms hereof; (6) the words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to the Plan as a whole and not to any particular Article, Section, or clause contained in the Plan; (7) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation and shall be deemed to be followed by the words "without limitation;" (8) subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (10) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Person; (11) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation

of the Plan; (12) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (13) any reference to a Person's "subsidiaries" means its direct and indirect subsidiaries.

C. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to the legal tender of the United States of America unless otherwise expressly provided.

D. Controlling Document.

In the event of any conflict between the terms and provisions in the Plan (without reference to the Plan Supplement), on the one hand, and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), on the other hand, the Plan (without reference to the Plan Supplement) shall govern and control; provided, however, that in the event of a conflict between Confirmation Order, on the one hand, and any of the other Plan Documents, on the other hand, the Confirmation Order shall govern and control in all respects.

ARTICLE II

ADMINISTRATIVE EXPENSE AND PRIORITY CLAIMS

A. Administrative Expense Claims.

1. *Administrative Expense Claims Bar Date*.

Except as provided for herein or in any order of the Bankruptcy Court, and subject to section 503(b)(1)(D) of the Bankruptcy Code, holders of General Administrative Expense Claims must file and serve on the Debtors requests for the payment of such Claims not previously Allowed by a Final Order in accordance with the procedures specified in the Confirmation Order, on or before the Administrative Expense Claims Bar Date, or such Claims shall be automatically Disallowed, forever barred from assertion, and unenforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court, and any such Claims shall be deemed fully satisfied, released, and discharged.

2. *Administrative Expense Claims Generally*.

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to less favorable treatment with respect to such Allowed Administrative Expense Claim, each holder of an Allowed Administrative Expense Claim shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Claim, payment of Cash in an amount equal to such Allowed Administrative Expense Claim on or as soon as reasonably practicable after the later of: (a) the Effective Date; (b) the first Business Day after the date that

is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; (c) such other date(s) as such holder and the Debtors or the Reorganized Debtors shall have agreed; or (d) such other date ordered by the Bankruptcy Court; provided, however, that Allowed Administrative Expense Claims that arise in the ordinary course of the Debtors' operations during the Chapter 11 Cases may be paid by the Debtors or the Reorganized Debtors in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations, course of dealing, course of operations, or customary practice.

3. *Professional Fee Claims*.

All Professionals or other Persons requesting the final allowance and payment of compensation and/or reimbursement of expenses pursuant to sections 328, 330, 331 and/or 503(b) for services rendered during the period from the Petition Date to and including the Effective Date shall file and serve final applications for allowance and payment of Professional Fee Claims on counsel to the Debtors and the United States Trustee no later than the first Business Day that is forty-five (45) days after the Effective Date. Objections to any Professional Fee Claim must be filed and served on the Reorganized Debtors and the applicable Professional within twenty-one (21) calendar days after the filing of the final fee application that relates to the Professional Fee Claim (unless otherwise agreed by the Debtors or the Reorganized Debtors, as applicable, and the Professional requesting allowance and payment of a Professional Fee Claim).

Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court on or as soon as reasonably practicable after the later of: (a) the date upon which an order relating to any such Allowed Professional Fee Claim is entered; and (b) such other date(s) as the holders of the Allowed Professional Fee Claim and the Debtors or the Reorganized Debtors, as applicable, shall have agreed.

The Reorganized Debtors are authorized to pay compensation for services rendered or reimbursement of expenses incurred by their Professionals after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

B. Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, at the sole option of the Debtors or the Reorganized Debtors, as applicable: (1) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date; (b) the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim; and (c) the date such Allowed Priority Tax Claim is due and payable in the ordinary course as such obligation becomes due; provided, however, that the Debtors reserve the right to prepay all or a portion of any such amounts at any time under this option without penalty or premium; or (2) regular installment payments in Cash of a total value, as of the Effective Date of

the Plan, equal to the Allowed amount of such Claim over a period ending not later than five years after the Petition Date.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

1. *Classification in General.*

The Plan constitutes a separate chapter 11 plan of reorganization for each Debtor. A Claim or Interest is placed into a particular Class for all purposes, including voting, confirmation, and distribution under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest is Allowed in that Class (if applicable) and has not been satisfied, released, or otherwise settled prior to the Effective Date.

2. *Summary of Classification.*

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which of those Classes are (a) Impaired or Unimpaired by the Plan; (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code; or (c) presumed to accept or deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified.

Class	Claim	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
2	Other Secured Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
3A	2010 Credit Facility Claims	Impaired	Entitled to Vote
3B	2019 RCF Claims	Impaired	Entitled to Vote
4A	2010 Bond Claims	Impaired	Entitled to Vote
4B	2012 Bond Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Abuse Claims	Impaired	Entitled to Vote
7	Interests in Delaware BSA, LLC	Unimpaired	Presumed to Accept; Not Entitled to Vote

B. Treatment of Claims and Interests.

1. *Class 1 – Other Priority Claims.*

a. Classification: Class 1 consists of all Other Priority Claims.

b. Treatment: Except to the extent that a holder of an Allowed Other Priority Claim agrees to less favorable treatment of such Claim, in exchange for full and final satisfaction of such Allowed Other Priority Claim, at the sole option of the Reorganized Debtors: (i)

each such holder shall receive payment in Cash in an amount equal to such Allowed Other Priority Claim, payable on or as soon as reasonably practicable after the last to occur of (x) the Effective Date, (y) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, and (z) the date on which the holder of such Allowed Other Priority Claim and the Debtors or Reorganized Debtors, as applicable, shall otherwise agree in writing; or (ii) satisfaction of such Allowed Other Priority Claim in any other manner that renders the Allowed Other Priority Claim Unimpaired, including Reinstatement.

c. Voting: Class 1 is Unimpaired, and each holder of an Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Priority Claims.

2. *Class 2 – Other Secured Claims*.

a. Classification: Class 2 consists of all Other Secured Claims. To the extent that Other Secured Claims are Secured by different collateral or different interests in the same collateral, such Claims shall be treated as separate subclasses of Class 2 for purposes of voting to accept or reject the Plan and receiving Plan Distributions under the Plan.

b. Treatment: Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment of such Claim, in exchange for full and final satisfaction of such Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim will receive, at the sole option of the Reorganized Debtors: (i) Cash in an amount equal to the Allowed amount of such Claim, including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code, payable on or as soon as reasonably practicable after the last to occur of (x) the Effective Date, (y) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, and (z) the date on which the holder of such Allowed Other Secured Claim and the Debtors or Reorganized Debtor, as applicable, shall otherwise agree in writing; (ii) satisfaction of such Other Secured Claim in any other manner that renders the Allowed Other Secured Claim Unimpaired, including Reinstatement; or (iii) return of the applicable collateral on the Effective Date or as soon as reasonably practicable thereafter in satisfaction of the Allowed amount of such Other Secured Claim.

c. Voting: Class 2 is Unimpaired, and each holder of an Other Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Secured Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Secured Claims.

3. *Class 3A – 2010 Credit Facility Claims*.

a. Classification: Class 3A consists of all 2010 Credit Facility Claims.

b. Allowance: On the Effective Date, all 2010 Credit Facility Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[●] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2010 Credit Facility Claims are deemed fully Secured, there are no unsecured 2010 Credit Facility Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2010 Credit Facility Claims.

c. Treatment: Except to the extent that a holder of an Allowed 2010 Credit Facility Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2010 Credit Facility Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2010 Credit Facility Documents.

d. Voting: Class 3A is Impaired, and each holder of a Allowed 2010 Credit Facility Claim is entitled to vote to accept or reject the Plan.

4. *Class 3B – 2019 RCF Claims*.

a. Classification: Class 3B consists of all 2019 RCF Claims.

b. Allowance: On the Effective Date, all 2019 RCF Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[●] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2019 RCF Claims are deemed fully Secured, there are no unsecured 2019 RCF Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2019 RCF Claims.

c. Treatment: Except to the extent that a holder of an Allowed 2019 RCF Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in

exchange for an Allowed 2019 RCF Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2019 RCF Documents.

d. Voting: Class 3B is Impaired, and each holder of a 2019 RCF Claim is entitled to vote to accept or reject the Plan.

5. *Class 4A – 2010 Bond Claims*.

a. Classification: Class 4A consists of all 2010 Bond Claims.

b. Allowance: On the Effective Date, all 2010 Bond Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[●] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2010 Bond Claims are deemed fully Secured, there are no unsecured 2010 Bond Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2010 Bond Claims.

c. Treatment: Except to the extent that a holder of an Allowed 2010 Bond Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2010 Bond Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2010 Bond Documents.

d. Voting: Class 4A is Impaired, and each holder of a 2010 Bond Claim is entitled to vote to accept or reject the Plan.

6. *Class 4B – 2012 Bond Claims*.

a. Classification: Class 4B consists of all 2012 Bond Claims.

b. Allowance: On the Effective Date, all 2012 Bond Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[●] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2012 Bond Claims are deemed fully Secured, there are no unsecured 2012 Bond Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2012 Bond Claims.

c. Treatment: Except to the extent that a holder of an Allowed 2012 Bond Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2012 Bond Claim, the Reorganized

Debtors shall enter into, execute and deliver the Restated 2012 Bond Documents.

d. Voting: Class 4B is Impaired, and each holder of a 2012 Bond Claim is entitled to vote to accept or reject the Plan.

7. *Class 5 – General Unsecured Claims*.

a. Classification: Class 5 consists of all General Unsecured Claims.

b. Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment of such Claim, in exchange for full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed General Unsecured Claim, each holder thereof shall receive such holder's Pro Rata share of the GUC Plan Distribution.

c. Voting: Class 5 is Impaired, and each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

8. *Class 6 – Abuse Claims*.

a. Classification: Class 6 consists of all Abuse Claims.

b. Treatment: As of the Effective Date, liability for all Abuse Claims shall be assumed in full by the Victims Compensation Trust without further act, deed, or court order and shall be satisfied solely from the Victims Compensation Trust as set forth in the Trust Documents. Pursuant to the Channeling Injunction set forth in Article X, each holder of an Abuse Claim shall have his or her Abuse Claim permanently channeled to the Victims Compensation Trust, and such Abuse Claim shall thereafter be asserted exclusively against the Victims Compensation Trust and resolved in accordance with the terms, provisions, and procedures of the Trust Documents. Holders of Abuse Claims are enjoined from prosecuting any outstanding, or filing any future, litigation, Claims, or Causes of Action arising out of or related to such Abuse Claims against any of the Protected Parties and may not proceed in any manner against any such Persons in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum, and are required to pursue their Abuse Claims solely against the Victims Compensation Trust as provided in the Trust Documents.

HOLDERS OF ABUSE CLAIMS (OTHER THAN FUTURE ABUSE CLAIMS) SHALL BE REQUIRED TO SUBMIT A PROOF OF CLAIM ON OR BEFORE THE ABUSE CLAIMS

BAR DATE IN ACCORDANCE WITH THE BAR DATE ORDER.

HOLDERS OF ABUSE CLAIMS MAY BE REQUIRED TO SUBMIT ADDITIONAL DOCUMENTATION REGARDING SUCH CLAIMS IN ACCORDANCE WITH THE TRUST DOCUMENTS.

c. Voting: Class 6 is Impaired, and each holder of an Abuse Claim is entitled to vote to accept or reject the Plan.

9. *Class 7 – Interests in Delaware BSA, LLC.*

a. Classification: Class 7 consists of all Interests in Delaware BSA, LLC.

b. Treatment: On the Effective Date, Interests in Delaware BSA, LLC shall be Reinstated, and the legal, equitable, and contractual rights to which holders of Interests in Delaware BSA, LLC are entitled shall remain unaltered to the extent necessary to implement the Plan.

c. Voting: Class 7 is Unimpaired, and each holder of an Interest in Delaware BSA, LLC shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Interests in Delaware BSA, LLC are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Interests in Delaware BSA, LLC.

C. Elimination of Vacant Classes.

Any Class of Claims against or Interests in the Debtors that, as of the commencement of the Confirmation Hearing, does not have at least one holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to that Class. For the avoidance of doubt, this Section III.C shall not apply to Class 6 or Class 7.

ARTICLE IV

VICTIMS COMPENSATION TRUST

A. Establishment and Purpose of the Victims Compensation Trust.

The Victims Compensation Trust shall be established on the Effective Date. The Victims Compensation Trust shall be administered and implemented by the Victims Compensation

Trustee as provided in the Trust Documents. Specifically, the Victims Compensation Trust shall, without limitation: (1) assume liability for all Abuse Claims; and (2) hold and administer the Trust Assets, liquidate the Abuse Claims, and make Trust Distributions to holders of Abuse Claims from the Trust Assets.

The Victims Compensation Trust shall, as applicable, administer, process, settle, resolve, liquidate, satisfy, and make Trust Distributions from the Trust Assets on account of Abuse Claims in such a way that the holders of Abuse Claims are treated equitably and in a substantially similar manner, subject to the applicable terms of the Plan Documents and the Trust Documents. From and after the Effective Date, the Abuse Claims shall be channeled to the Victims Compensation Trust pursuant to the Channeling Injunction set forth in Article X and may be asserted only and exclusively against the Victims Compensation Trust.

B. Receipt of Trust Assets.

On the Effective Date, all Trust Assets shall be automatically and without further act or deed, transferred to, vested in and assumed by the Victims Compensation Trust; provided, however, that to the extent that certain Trust Assets, because of their nature or because such assets will accrue or become transferable to the Victims Compensation Trust subsequent to the Effective Date, cannot be transferred to, vested in and assumed by the Victims Compensation Trust on the Effective Date, such Trust Assets shall be automatically, and without further act or deed, transferred to, vested in and assumed by the Victims Compensation Trust as soon as practicable after the Effective Date. Notwithstanding anything in the Plan to the contrary, no monies, choses in action, and/or assets comprising the Trust Assets that have been transferred, granted, assigned, or otherwise delivered to the Victims Compensation Trust shall be used for any purpose other than in accordance with the Plan and the Trust Documents, including the payment or administration of Abuse Claims as set forth in the Trust Documents. Any applicable Insurance Proceeds recovered or received by the Victims Compensation Trust will be allocated as set forth in the Trust Documents.

C. The Trust Distribution Procedures.

On the Effective Date, the Victims Compensation Trust shall implement the Trust Distribution Procedures in accordance with the terms of the Trust Agreement. From and after the Effective Date, the Victims Compensation Trustee shall have the authority to administer, amend, supplement, or modify the Trust Distribution Procedures in accordance with the terms thereof and the Trust Agreement. From and after the Effective Date, the Victims Compensation Trust shall liquidate and make Trust Distributions to holders of Abuse Claims in accordance with the Trust Documents.

D. Discharge of Liabilities to Holders of Abuse Claims.

Except as provided in the Plan, the transfer to, vesting in and assumption by the Victims Compensation Trust of the Trust Assets as contemplated by the Plan shall, as of the Effective Date, discharge all obligations and liabilities of and bar any recovery or action against the Protected Parties for or in respect of all Abuse Claims (and the Confirmation Order shall provide for such discharge). The Victims Compensation Trust shall, as of the Effective Date, assume

sole and exclusive responsibility and liability for all Abuse Claims against the Protected Parties, and such Claims shall be paid by the Victims Compensation Trust from the Trust Assets or as otherwise directed in the Trust Documents.

E. Imposition of Channeling Injunction.

From and after the Effective Date, all Abuse Claims shall be subject to the Channeling Injunction pursuant to section 105(a) of the Bankruptcy Code and the provisions of the Plan and the Confirmation Order. From and after the Effective Date, the Protected Parties shall not have any obligation with respect to any liability of any nature or description arising out of, relating to, or in connection with any Abuse Claims.

F. Insurance Rights Transfer.

In furtherance of the purpose of the Victims Compensation Trust:

1. as of the Effective Date, the Protected Parties shall irrevocably transfer, grant, and assign to the Victims Compensation Trust, and the Victims Compensation Trust shall receive and accept, any and all of the Insurance Rights. To the extent any Insurer consented to a prepetition settlement agreement with respect to an Abuse Claim or otherwise has consented to pay an Abuse Claim on behalf of one or more of the Protected Parties, then the applicable Protected Parties transfer and assign to the Victims Compensation Trust the right to enforce such Insurer's obligation. This Insurance Rights Transfer is made to the Victims Compensation Trust for the benefit of Persons that have a Claim for compensation for damages against the Protected Parties on account of Abuse Claims;

2. the Insurance Rights Transfer is made free and clear of all Claims, Liens, Encumbrances, or Causes of Action of any nature whatsoever, except available limits of liability for coverage of certain types of claims under one or more of the Insurance Policies that may have been reduced by certain prepetition payments made by an Insurer under any of the Insurance Policies;

3. the Victims Compensation Trust shall be solely responsible for satisfying, to the extent required under applicable law, any premiums, deductibles, self-insured retentions, and fronting obligations arising in any way out of any and all Abuse Claims;

4. the Victims Compensation Trust shall comply with any notice obligations required under the Insurance Policies and applicable law;

5. the Insurance Rights Transfer is made to the maximum extent possible under applicable law;

6. the Insurance Rights Transfer is absolute and does not require any further action by the Protected Parties, the Victims Compensation Trust, the Bankruptcy Court, or any other Person;

7. the Insurance Rights Transfer is not an assignment of any insurance policy itself and shall be valid and enforceable in accordance with the terms of any Insurance Policy, in

each case notwithstanding any anti-assignment provision in or incorporated into any Insurance Policy; and

8. the Insurance Rights Transfer shall be governed by, and construed in accordance with, the Bankruptcy Code and the laws of the state of Delaware, without regard to its conflict of law principles.

For the avoidance of doubt, the Insurance Rights Transfer that is the subject of this Section IV.F shall not, and shall not be deemed to, transfer, grant, or assign to the Victims Compensation Trust any insurance rights of the Debtors or the Local Councils that pertain to any Insured Non-Abuse Claims. Nor shall the Insurance Rights Transfer violate or be deemed to violate any cooperation clause of any Insurance Policy. The insurance rights of the Debtors or the Local Councils that pertain to Insured Non-Abuse Claims are expressly reserved for the Debtors, the Reorganized Debtors, or the Local Councils, as applicable, and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust. Moreover, for the avoidance of doubt, the insurance rights of any Person that is not a Protected Party are expressly reserved for such Person (including any rights of any director, manager, officer or employee of the Debtors or any Local Council under the D&O Liability Insurance Policies), and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust.

In that regard and notwithstanding the transfer of Insurance Rights pursuant to this Section IV.F, with respect to any Insurance Policy with an inception date of January 1, 2000 to the present, the Debtors and the Reorganized Debtors expressly reserve the right to (1) tender any Insured Non-Abuse Claims to those Insurance Policies and (2) access the limits of liability of those Insurance Policies to settle or otherwise resolve Insured Non-Abuse Claims. Further, the Victims Compensation Trust cannot settle, compromise, or otherwise resolve any rights, duties, or obligations under those Insurance Policies issued after January 1, 2000 without the express written consent and approval of the Debtors or the Reorganized Debtors, as applicable. Nonetheless, the Victims Compensation Trust shall have the same rights as the Debtors and the Reorganized Debtors with respect to any Insurance Policy with an inception date of January 1, 2000 to the present insofar as the Victims Compensation Trust may: (a) tender Abuse Claims to those Insurance Policies; and (b) access the limits of liability of those Insurance Policies to pay Abuse Claims pursuant to the Trust Distribution Procedures.

Moreover, for the avoidance of doubt, the insurance rights of any Person that is not a Protected Party are expressly reserved for such Person, and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust.

G. Indemnification Obligations.

If for any reason an Abuse Claim is asserted against a Protected Party on or after the Effective Date in violation of the Channeling Injunction, the Victims Compensation Trust shall indemnify and hold each of the Protected Parties harmless from and against any and all Abuse Claims, as well as indemnify and reimburse such parties for all associated fees, costs and expenses, to the extent set forth in the Trust Documents.

In connection with the indemnification that must be provided by the Victims Compensation Trust, each Protected Party has the express right to:

1. appoint defense counsel of its choosing, subject to consent by the Victims Compensation Trust regarding the hourly rates to be charged, such consent not to be unreasonably withheld;

2. manage the defense of any such Claim subject to appropriate updates being provided to the Victims Compensation Trust, but the Victims Compensation Trust shall not control the defense of the Protected Party to any such Claim;

3. settle or otherwise resolve any Claim that is subject to indemnification by the Victims Compensation Trust, provided that notice of any such settlement or resolution is provided to the Victims Compensation Trust, but the Victims Compensation Trust is not required to consent to any such settlement or resolution; and

4. proceed to trial and verdict with respect to any Claim that is subject to indemnification by the Victims Compensation Trust, subject to the consent and approval by the Victims Compensation Trust to proceed to trial and verdict.

H. Investment Guidelines.

All monies held in the Victims Compensation Trust shall be invested, subject to the investment limitations and provisions enumerated in the Trust Agreement and shall not be limited to the types of investments described in section 345 of the Bankruptcy Code.

I. Excess Assets in Victims Compensation Trust.

On the Trust Termination Date, after the payment of all Abuse Claims that are entitled to a Trust Distribution from the Victims Compensation Trust and all Trust Expenses that have been provided for, and the liquidation of all assets then held by the Victims Compensation Trust, any remaining value in the Victims Compensation Trust shall be distributed to a charity to be selected jointly by the Victims Compensation Trustee and the Reorganized Debtors.

J. Trust Expenses.

The Victims Compensation Trust shall pay all Trust Expenses from the Victims Compensation Trust, as provided for in the Trust Agreement. The Protected Parties shall have no obligation to pay any Trust Expenses.

K. Victims Compensation Trustee.

There shall be one Victims Compensation Trustee. On the Confirmation Date, the Bankruptcy Court shall appoint the Victims Compensation Trustee to serve in accordance with, and who shall have the functions and rights provided in, the Trust Agreement. Any successor Victims Compensation Trustee shall be appointed in accordance with the terms of the Trust Agreement. For purposes of any Victims Compensation Trustee performing his or her duties and fulfilling his or her obligations under the Victims Compensation Trust and the Plan, the Victims

Compensation Trust and the Victims Compensation Trustee shall be deemed to be "parties in interest" within the meaning of section 1109(b) of the Bankruptcy Code. The Victims Compensation Trustee shall be the "administrator" of the Victims Compensation Trust as such term is used in Treas. Reg. Section 1.468B-2(k)(3).

L. Compensation of Victims Compensation Trustee and Retention of Professionals.

The Victims Compensation Trustee shall be entitled to compensation as provided for in the Trust Agreement. The Victims Compensation Trustee may retain and reasonably compensate, without Bankruptcy Court approval, counsel and other professionals as reasonably necessary to assist in his or her duties as Victims Compensation Trustee, subject to the terms of the Trust Agreement. All fees and expenses incurred in connection with the foregoing shall be payable from the Victims Compensation Trust as provided for in the Trust Agreement.

M. Future Claimants' Representative.

The Trust Agreement shall provide for the continuation of the Future Claimants' Representative to serve as an advisor to the Victims Compensation Trust representing the interests of holders of Future Abuse Claims. The Future Claimants' Representative shall have the functions and rights set forth in the Trust Agreement. The Victims Compensation Trustee shall consult with the Future Claimants' Representative on matters pertaining to the administration of the Victims Compensation Trust and must obtain the consent of the Future Claimants' Representative as set forth in the Trust Agreement and the Trust Distribution Procedures. The Victims Compensation Trustee shall meet with the Future Claimants' Representative no less frequently than quarterly. The Future Claimants' Representative shall receive reasonable compensation for his services from the Victims Compensation Trust and may utilize counsel and other professionals as reasonably necessary to assist in the performance of his or her duties, and the Future Claimants' Representative and his professionals shall be entitled to reasonable reimbursement of expenses by the Victims Compensation Trust, subject to compliance with an agreed-upon budget that shall be set forth in the Trust Agreement.

N. Trust Advisory Committee.

The Trust Agreement shall provide for the establishment of the Trust Advisory Committee to serve as an advisory committee to the Victims Compensation Trust representing the interests of holders of Abuse Claims. The Trust Advisory Committee shall have the functions and rights provided for in the Trust Agreement. The initial Trust Advisory Committee shall consist of three members. The Trust Agreement shall provide that the Victims Compensation Trustee shall consult with the Trust Advisory Committee on matters pertaining to the administration of the Victims Compensation Trust and must obtain the consent of the Advisory Committee as set forth in the Trust Agreement and the Trust Distribution Procedures. The Victims Compensation Trustee shall meet with the Victims Compensation Trust Advisory Committee no less frequently than quarterly. The Trust Advisory Committee shall receive reasonable compensation for their services from the Victims Compensation Trust and may utilize counsel and other professionals as reasonably necessary to assist in the performance of its duties, and the Trust Advisory Committee and their professionals shall be entitled to reasonable

reimbursement of expenses by the Victims Compensation Trust, subject to compliance with an agreed-upon budget that shall be set forth in the Trust Agreement.

O. Consent Rights of the Debtors and the Reorganized Debtors.

The Trust Documents may not be amended or modified without the consent of the Debtors or the Reorganized Debtors, as applicable, which shall not be unreasonably withheld. The Debtors shall also have consent rights with respect to any successor Victims Compensation Trustee and Trust Advisory Committee members, which consent shall not be unreasonably withheld. Notwithstanding any of the foregoing, the Indemnification Obligations of the Victims Compensation Trust described in this Article IV may not be amended or modified without the consent of the Protected Party that is otherwise entitled to indemnification pursuant to those provisions.

P. Cooperation; Transfer of Books and Records.

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors and the other Protected Parties shall transfer and assign, or cause to be transferred and assigned, to the Victims Compensation Trustee (1) copies of all of their books and records that pertain to Abuse Claims, including all ineligible volunteer files to the extent authorized and directed by the Court pursuant to the Confirmation Order, (2) copies of all Insurance Policies, (3) information relating to Abuse Claims previously noticed, tendered, or submitted under the Insurance Policies or paid by any Insurer so long as such information is presently stored and readily accessible on the Protected Parties' then-current electronic record-management systems, and (4) any other information reasonably necessary to operate the Victims Compensation Trust and preserve, secure, or obtain the benefit of the Insurance Rights. If at any time after the Effective Date, any of the Reorganized Debtors or the other Protected Parties discover the existence of an Insurance Policy that provides or may provide coverage for Abuse Claims, the Person discovering such policy or evidence of the existence of such policy shall promptly inform the Victims Compensation Trustee. The Victims Compensation Trust shall reimburse the Debtors or the Reorganized Debtors, as applicable, for all reasonable costs and expenses incurred by Protected Parties in connection with the transfers and assignments that are the subject of this Section IV.P.

The transfer or assignment of information, which may include Privileged Information, to the Victims Compensation Trustee in accordance with this Section IV.P shall not result in the destruction or waiver of any applicable privileges pertaining to Privileged Information. Further, with respect to any privileges: (a) they are transferred to or contributed for the sole purpose of enabling the Victims Compensation Trustee to perform his or her duties to administer the Victims Compensation Trust and for no other reason, (b) they are vested solely in the Victims Compensation Trustee and not in the Victims Compensation Trust, the Future Claimants' Representative, the Trust Advisory Committee or any other Person, committee or subcomponent of the Victims Compensation Trust, or any other Person (including counsel and other professionals) who has been engaged by, represents or has represented any holder of an Abuse Claim, (c) they shall be preserved and not waived, and (d) no privileged information shall be publicly disclosed by the Victims Compensation Trustee or the Victims Compensation Trust or communicated to any Person not entitled to receive such information or in a manner that would diminish the protected status of any such information. Notwithstanding the foregoing, nothing

herein shall preclude the Victims Compensation Trustee from providing information received pursuant to this section to any Insurer as necessary to preserve, secure, or obtain the benefit of the Insurance Rights.

Q. No Liability.

Neither the Protected Parties nor the Local Council Committee shall have or incur any liability to, or be subject to any right of action by, any Person for any act, omission, transaction, event, or other circumstance in connection with or related to the Future Claimants' Representative, the Victims Compensation Trust, the Victims Compensation Trustee, or the Trust Documents, including the administration of Abuse Claims and the distribution of property by the Victims Compensation Trust, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to the foregoing.

R. U.S. Federal Income Tax Treatment of the Victims Compensation Trust.

The Victims Compensation Trust shall be a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. The Victims Compensation Trust shall file (or cause to be filed) statements, returns, or disclosures relating to the Victims Compensation Trust that are required by any governmental unit. The Victims Compensation Trustee shall be responsible for the payment of any taxes imposed on the Victims Compensation Trust or the Trust Assets, including estimated and annual U.S. federal income taxes in accordance with the terms of the Trust Agreement. The Victims Compensation Trustee may request an expedited determination of taxes on the Victims Compensation Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Victims Compensation Trust for all taxable periods through the dissolution of the Victims Compensation Trust.

S. Institution and Maintenance of Legal and Other Proceedings.

As of the Effective Date, the Victims Compensation Trust shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any asset, liability, or responsibility of the Victims Compensation Trust. The Victims Compensation Trust shall be empowered to initiate, prosecute, defend, and resolve all such actions in the name of the Debtors if deemed necessary or appropriate by the Victims Compensation Trustee. The Victims Compensation Trust shall be responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees, and other charges incurred subsequent to the Effective Date arising from, relating to, or associated with any legal action or other proceeding brought pursuant to this Section IV.R and shall pay or reimburse all deductibles, retrospective premium adjustments, fronting obligations or other charges which may arise from the receipt of the Insurance Proceeds by the Victims Compensation Trust. For the avoidance of doubt, the Victims Compensation Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable State corporate law, is appointed as the successor-in-interest to, and representative, of the Debtors and their Estates for the retention, enforcement, settlement, or adjustment of all Abuse Claims.

T. Insurance Neutrality.

Unless otherwise expressly agreed to by an Insurer in writing, notwithstanding any provision in the Plan Documents including any provision that purports to be preemptory or supervening, nothing contained in any such documents or in this Section IV.S shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying (1) the rights or obligations of any of any Insurer arising out of or under any Insurance Policy or (2) any rights or obligations of the Debtors arising out of or under any Insurance Policy. For all issues relating to insurance coverage, including all rights and obligations under the Insurance Policies, the provisions, terms, conditions, and limitations of the Insurance Policies shall control; provided, however, that, for the avoidance of doubt, (a) none of the Debtors' or any Insurer's defenses, rights, and obligations with respect to the Insurance Actions shall be impaired or otherwise affected in any way, and (b) nothing herein shall constitute a determination, consent to, or waiver of jurisdiction as to the Insurance Actions.

For the avoidance of doubt, and without limiting the rights and obligations referenced in the first paragraph of this Section IV.S, nothing contained in the Plan Documents shall operate to require any Insurer to indemnify or pay the liability of any Protected Party that it would not have been required to pay in the absence of the Plan.

Unless otherwise expressly agreed to by an Insurer in writing, notwithstanding any provision in the Plan Documents, including any provision that purports to be preemptory or supervening, nothing contained in any such documents or in this Section IV.S shall constitute, or be deemed to constitute, a trial, adjudication, judgment, hearing on the merits, finding, conclusion, other determination, evidence, or suggestion of any determination establishing the liability of any Insurer (in the aggregate or otherwise) or establishing a coverage obligation in subsequent litigation relating to any Claim or under any of the Insurance Policies.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

A. No Substantive Consolidation.

The Plan is being proposed as a joint plan of reorganization of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan of reorganization for each Debtor. The Plan is not premised upon the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan; provided, however, that the Reorganized Debtors may consolidate Claims on a per Class basis for voting purposes.

B. General Settlement of Claims and Interests.

As discussed further in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that holders of Claims or Interests might have with respect to any Claim or

Interest under the Plan. Distributions made to holders of Claims in any Class are intended to be final.

C. Sources of Consideration for Distributions.

The Debtors or the Reorganized Debtors, as applicable, shall fund Plan Distributions using Cash on hand and the proceeds of the Exit Facilities. For purposes of this Section V.C, Cash on hand refers to the Debtors' or the Reorganized Debtors' Cash that does not constitute Identified Property.

D. Exit Facilities.

On the Effective Date, the Reorganized Debtors shall enter into the Exit Facilities and provide any related guarantees, and the Exit Facilities shall be made available to the Reorganized Debtors pursuant and subject to the terms and conditions set forth in the Exit Facilities Documents. The Confirmation Order shall constitute approval of the Exit Facilities (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Reorganized Debtors in connection therewith), and authorization for the Reorganized Debtors to enter into and perform under the Exit Facilities Documents and such other documents as may be required or appropriate.

E. Organizational Documents.

The Reorganized Debtors shall enter into such agreements and amend their formation, organizational and/or governance documents, including their bylaws and rules and regulations, as applicable, to the extent necessary to implement the terms and provisions of the Plan. After the Effective Date, the Reorganized Debtors may amend and restate their respective organizational documents, and the Reorganized Debtors may file their respective charters, certificates of formation, bylaws, rules and regulations, limited liability company agreements, or such other applicable organizational and/or governance documents, as applicable, and other constituent documents as permitted by applicable laws.

F. Reorganized Debtors' Directors and Senior Management.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, to the extent that there are anticipated changes in the Reorganized Debtors' directors and officers, the Debtors will identify those changes in the Plan Supplement and thereafter such changes will be attached to the Plan as Exhibit Q. After the Effective Date, the Reorganized Debtors' organizational documents, as each may be amended thereafter from time to time, shall govern the designation and election of directors of the Reorganized Debtors.

G. Due Authorization.

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by members, creditors, directors, or managers of the Debtors, the Reorganized Debtors, or any other Person.

H. Continued Legal Existence.

Except as otherwise provided in the Plan, each of the Debtors shall continue to exist on and after the Effective Date as a separate Person, with all of the powers of such Person under applicable law in the jurisdiction in which each Debtor is organized, incorporated, or otherwise formed and pursuant to such Debtor's formation, organizational and governance documents in effect immediately prior to the Effective Date, without prejudice to any right of the Reorganized Debtors to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date.

I. Vesting of Assets in the Reorganized Debtors.

Except as otherwise explicitly provided in the Plan, on the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, all property comprising the Estates, other than the BSA Trust Contributions, shall vest in each respective Reorganized Debtor free and clear of all Liens, Claims, interests, charges, other Encumbrances and liabilities of any kind unless expressly provided by the Plan or the Confirmation Order. On and after the Effective Date, each Reorganized Debtor may continue its operations and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

J. Cancellation of Indebtedness.

1. Except as otherwise provided in the Plan, or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date, all agreements, instruments, and other documents evidencing or issued pursuant to the 2010 Credit Facility Documents, the 2019 RCF Documents, the 2010 Bond Documents, the 2012 Bond Documents, or any indebtedness or other obligations thereunder, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged, and of no force or effect, and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged.

2. Notwithstanding the foregoing, any provision in any document, instrument, lease, or other agreement that causes or effectuates, or purports to cause or effectuate, a default, termination, waiver, or other forfeiture of, or by, the Debtors as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in the Plan shall be deemed null and void and shall be of no force or effect. Nothing contained herein shall be deemed to cancel, terminate, release, or discharge the obligation of the Debtors or any of their counterparties under any executory contract or lease to the extent such executory contract or lease has been assumed by the Debtors pursuant to a Final Order of the Bankruptcy Court or hereunder.

K. Effectuating Documents and Further Transactions.

The President and Chief Executive Officer, the Chief Financial Officer, and the General Counsel shall be authorized to execute, deliver, file or record such contracts, instruments,

releases and other agreements or documents and take or direct such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

L. Cancellation of Liens.

Except as otherwise specifically provided herein, upon the payment in full in Cash of a Secured Claim, any Lien securing a Secured Claim that is paid in full in Cash shall be deemed released, and the holder of such Secured Claim shall be authorized and directed to release any collateral or other property of the Debtors (including any Cash collateral) held by such holder and to take such actions as may be requested by the Reorganized Debtors, to evidence the release of such Lien, including the execution, delivery and filing or recording of such releases as may be requested by the Reorganized Debtors.

M. Closing of Chapter 11 Cases.

After an Estate has been fully administered, the Reorganized Debtors shall seek authority from the Bankruptcy Court to close the applicable Chapter 11 Case(s) in accordance with the Bankruptcy Code and Bankruptcy Rules.

N. Preservation of Causes of Action.

In accordance with section 1123(b)(3) of the Bankruptcy Code, subject to Section X.G.1, all Causes of Action that a Debtor may hold against any Person shall vest in the applicable Reorganized Debtor on the Effective Date. Thereafter, subject to Section X.G.1, the Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, whether arising before or after the Petition Date, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any specific Cause of Action as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action. The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to any Cause of Action upon, after, or as a consequence of the Confirmation or the occurrence of the Effective Date.

O. Setoffs and Recoupment.

The Debtors or the Reorganized Debtors, as applicable, may, but shall not be required to, set off or recoup against any Claim, and any distribution to be made on account of such Claim, any and all claims, rights, and Causes of Action of any nature whatsoever that the Debtors or the Reorganized Debtors, as applicable, may have against the holder of such Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided, however, that the failure to do so shall not constitute a waiver or release by a Debtor or a Reorganized Debtor, as applicable, or the successor or assign of any of the foregoing of any claims, rights, or Causes of Action that a

Debtor or a Reorganized Debtor or its successor or assign of any of the foregoing may possess against the holder of such Claim.

P. Exemption from Certain Transfer Taxes and Recording Fees.

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan (including the execution and delivery of the Exit Facilities) shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, sale or use tax, mortgage recording tax, or other similar tax or governmental assessment, and, upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and are allowed to accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment.

Q. Directors and Officers Insurance Policies.

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code, effective as of the Effective Date. For the avoidance of doubt, all of the Debtors' D&O Liability Insurance Policies that provide protection to any Local Council's directors, managers, and officers shall be deemed assumed under this provision. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' foregoing assumption of the unexpired D&O Liability Insurance Policies.

R. Other Insurance Policies.

On the Effective Date, each of the Debtors' insurance policies in existence as of the Effective Date shall continue in accordance with their terms and, to the extent applicable, shall be deemed assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and this Article V. Nothing in the Plan shall affect, impair, or prejudice the rights of the insurance carriers, the insureds, or the Reorganized Debtors under the insurance policies in any manner, and such insurance carriers, the insureds, and Reorganized Debtors shall retain all rights and defenses under such insurance policies, subject to Section IV.F.

ARTICLE VI

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption of Executory Contracts and Unexpired Leases.

On the Effective Date, all Executory Contracts and Unexpired Leases shall be deemed assumed by the applicable Reorganized Debtor as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court under sections 365 and 1123 of the Bankruptcy Code, except for Executory Contracts or Unexpired Leases (1) that are identified on the Rejected Contracts Schedule; (2) that previously expired or terminated pursuant to their terms; (3) that the Debtors have previously assumed or rejected pursuant to a Final Order of the Bankruptcy Court; (4) that are the subject of a motion to reject that remains pending as of

the Confirmation Date; or (5) as to which the effective date of rejection will occur (or is requested by the Debtors to occur) after the Confirmation Date.

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumption or rejection, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan or the Rejected Contracts Schedule, pursuant to sections 365 and 1123 of the Bankruptcy Code. Except as otherwise set forth herein, the assumption or rejection of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or a Final Order of the Bankruptcy Court shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any Final Order of the Bankruptcy Court authorizing and providing for its assumption. Any motions to assume Executory Contracts or Unexpired Leases pending on the Confirmation Date shall be subject to approval by a Final Order on or after the Confirmation Date but may be withdrawn, settled, or otherwise prosecuted by the Reorganized Debtors.

To the maximum extent permitted by law, to the extent that any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, purports to restrict or prevent, or is breached or deemed breached by the assumption of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

B. Rejection Damages Claims.

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim for Rejection Damages Claims, if any, must be filed within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Effective Date. **Any Rejection Damages Claim that is not timely filed shall be automatically Disallowed, forever barred from assertion, and unenforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court, and any such Rejection Damages Claim shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Proof of Claim to the contrary**. All Allowed Rejection Damages Claims shall be classified as Allowed General Unsecured Claims and treated in accordance with Section III.B.6.

C. Cure of Defaults under Executory Contracts and Unexpired Leases.

Not later than the date of filing of the Plan Supplement, the Debtors shall provide notices of proposed Cure Amounts to the counterparties to the Executory Contracts and Unexpired Leases proposed to be assumed under the Plan, which shall include a description of the procedures for objecting to the Cure Amount, the ability of the Debtors to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code)

under the Executory Contract or Unexpired Lease to be assumed, or any other matter pertaining to assumption.

Unless otherwise agreed in writing by the parties to the applicable Executory Contract or Unexpired Lease, **any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related Cure Amount must be filed, served, and actually received by the counsel to the Debtors within ten (10) days of the service of assumption and proposed Cure Amount, or such shorter period as agreed to by the parties or authorized by the Bankruptcy Court**. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or Cure Amount shall be deemed to have assented to such assumption and Cure Amount and shall be forever barred, estopped, and enjoined from contesting the Debtors' assumption of the applicable Executory Contract or Unexpired Lease and from requesting payment of a Cure Amount that differs from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors, in each case without the need for any objection by the Debtors or the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court. The Reorganized Debtors may settle any Cure Amount without any further notice to or action, order, or approval of the Bankruptcy Court.

The Debtors or the Reorganized Debtors, as applicable, shall pay undisputed Cure Amounts, if any, on the Effective Date or as soon as reasonably practicable thereafter, or on such other terms as the parties may agree. If there is any dispute regarding the Cure Amount, the ability of the Debtors to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or any other matter pertaining to assumption, then the Debtors or the Reorganized Debtors, as applicable, shall pay the applicable Cure Amount as reasonably practicable after entry of a Final Order resolving such dispute and approving such assumption, or as may otherwise be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. The payment of Cure Amounts required by section 365(b)(1) of the Bankruptcy Code following the entry of a Final Order resolving the dispute and approving the assumption and shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

The Debtors' assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and payment of the applicable Cure Amount shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged as of the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such assumption, (2) the effective date of such assumption or (3) the Effective Date, in each case without the need for any objection by the Debtors or the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

D. Contracts and Leases Entered into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the Debtor or Reorganized Debtor counterparty thereto in the ordinary course of its operations. Accordingly, such contracts and leases (including any assumed Executory Contract and Unexpired Leases) shall survive and remain unaffected by entry of the Confirmation Order.

E. Compensation and Benefits Programs.

Other than those Compensation and Benefits Programs assumed by the Debtors prior to entry of the Confirmation Order, all of the Compensation and Benefits Programs entered into before the Petition Date and not since terminated shall be deemed to be, and shall be treated as though they are, Executory Contracts under the Plan and deemed assumed under sections 365 and 1123 of the Bankruptcy Code, and the Debtors' and Reorganized Debtors' obligations under the Compensation and Benefits Programs survive and remain unaffected by entry of the Confirmation Order and be fulfilled in the ordinary course of the Debtors' and Reorganized Debtors' operations. Compensation and Benefits Programs assumed by the Debtors prior to entry of the Confirmation Order shall continue to be fulfilled in the ordinary course of the Debtors' non-profit operations from and after the date of any order of the Bankruptcy Court authorizing the assumption of such Compensation and Benefits Program.

F. Workers' Compensation Program.

As of the Effective Date, the Debtors and the Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation laws in all applicable states; and (b) the Workers' Compensation Program. All Proofs of Claims on account of the Workers' Compensation Program shall be deemed withdrawn automatically and without any further notice to or action, order, or approval of the Bankruptcy Court; provided, however, that nothing in the Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to the Workers' Compensation Programs; provided further, however, that nothing herein shall be deemed to impose any obligations on the Debtors or their insurers in addition to what is provided for under the terms of the Workers' Compensation Programs and applicable state law.

G. Indemnification Obligations.

Notwithstanding anything in the Plan to the contrary, each Indemnification Obligation shall be assumed by the applicable Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code or otherwise. Each Indemnification Obligation shall remain in full force and effect, shall not be modified, reduced, discharged, impaired, or otherwise affected in any way, and shall survive Unimpaired and unaffected, irrespective of when such obligation arose. For the avoidance of doubt, this Section VI.G affects only the obligations of the Debtors and Reorganized Debtors with respect to any Indemnification Obligations owed to or for the benefit of past and present directors, officers, employees, attorneys, accountants, investment bankers, and other professionals and agents of the Debtors, and shall have no effect on nor in any way discharge or reduce, in whole or in part, any obligation of any other Person owed to or for the benefit of such directors, officers, employees, attorneys, accountants, investment bankers, and other professionals and agents of the Debtors.

H. Local Council Charters.

All charters granted to Local Councils before the Petition Date and not since revoked shall be deemed to be, and shall be treated as though they are, Executory Contracts under the Plan and deemed assumed under sections 365 and 1123 of the Bankruptcy Code.

I. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless the Debtors reject or repudiate any of the foregoing agreements. Modifications, amendments, and supplements to, or restatements of, prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

J. Reservation of Rights.

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors that a contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute as of the Confirmation Date regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors, or, after the Effective Date, the Reorganized Debtors, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease, including by rejecting such contract or lease *nunc pro tunc* to the Confirmation Date.

ARTICLE VII

DISTRIBUTIONS

A. Distributions Generally.

Except with respect to Trust Distributions on account of Abuse Claims and payment of Trust Expenses, which shall be made in accordance with the terms of the Trust Documents, the Reorganized Debtors shall make all distributions to the appropriate holders of Allowed Claims in accordance with the terms of the Plan, including this Article VII.

B. Distribution Record Date.

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed for purposes of determining whether a holder of such a Claim or Interest is a record holder entitled to a Plan Distribution, and there shall be no further changes in the record holders or the permitted designees of any such Claims or Interests. The Debtors or the

Reorganized Debtors, as applicable, shall have no obligation to recognize any transfer or designation of such Claims or Interests occurring after the close of business on the Distribution Record Date. With respect to payment of any Cure Amounts or assumption disputes, neither the Debtors nor the Reorganized Debtors shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable Executory Contract or Unexpired Lease as of the close of business on the Distribution Record Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure Amount.

C. Date of Plan Distributions.

Except as otherwise provided in the Plan, any Plan Distributions shall be made on the Effective Date or as otherwise determined in accordance with the Plan, including the treatment provisions of Article III, or as soon as practicable thereafter; provided, however, that the Reorganized Debtors shall from time to time determine subsequent distribution dates to the extent they determine them to be appropriate; provided further, however, that the Reorganized Debtors reserve their right to seek Bankruptcy Court approval of procedures and mechanisms for Plan Distributions.

D. No Postpetition Interest on Claims.

Except as otherwise provided in the Plan, the Confirmation Order, the Cash Collateral Order, or another order of the Bankruptcy Court or required by the Bankruptcy Code (including postpetition interest in accordance with sections 506(b) and 726(a)(5) of the Bankruptcy Code), interest shall not accrue or be paid on any Claims on or after the Petition Date; provided, however, that if interest is payable pursuant to the preceding sentence, interest shall accrue at the federal judgment rate pursuant to 28 U.S.C. § 1961 on a non-compounded basis from the date the obligation underlying the Claim becomes due and is not timely paid through the date of payment.

E. Undeliverable and Non-Negotiated Plan Distributions.

1. *Undeliverable Plan Distributions*.

If any Plan Distribution to a holder of an Allowed Claim is returned to the Reorganized Debtors as undeliverable, no further Plan Distributions shall be made to such holder unless and until the Reorganized Debtors are notified in writing of such holder's then-current address or other necessary information for delivery, at which time such previously undeliverable Plan Distribution shall be made to such holder within ninety (90) days of receipt of such holder's then-current address or other necessary information; provided, however, that any such undeliverable Plan Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of 180 days after the date of the initial attempted Plan Distribution. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without the need for any notice to or further order of the Bankruptcy Court (notwithstanding any applicable non-bankruptcy escheatment, abandoned, or unclaimed property laws to the contrary), and the right, title, and interest of any holder to such property or interest in property shall be discharged and forever barred.

2. *Non-Negotiated Plan Distributions*.

If any Plan Distribution to a holder of an Allowed Claim is not negotiated for a period of 180 days after the Plan Distribution, then such Plan Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and re-vest in the applicable Reorganized Debtor. After such date, all non-negotiated property or interests in property shall revert to the Reorganized Debtors automatically and without the need for any notice to or further order of the Bankruptcy Court (notwithstanding any applicable non-bankruptcy escheatment, abandoned, or unclaimed property laws to the contrary), and the right, title, and interest of any holder to such property or interest in property shall be discharged and forever barred.

F. Manner of Payment under the Plan.

Except as otherwise specifically provided in the Plan, at the option of the Reorganized Debtors, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Reorganized Debtors.

G. Satisfaction of Claims.

Except as otherwise specifically provided in the Plan, any Plan Distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

H. Minimum Cash Distributions.

The Reorganized Debtors shall not be required to make any Plan Distribution of Cash less than twenty dollars ($20) to any holder of an Allowed Claim; provided, however, that if any Plan Distribution is not made pursuant to this Section VII.H, such distribution shall be added to any subsequent Plan Distribution to be made on behalf of the holder's Allowed Claim.

I. Setoffs and Recoupments.

The Debtors or the Reorganized Debtors, as applicable, may, but shall not be required to, set off or recoup against any Claim, and any Plan Distribution to be made on account of such Claim, any and all claims, rights, and Causes of Action of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the holder of such Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by a Debtor or Reorganized Debtor or its successor of any claims, rights, or Causes of Action that a Debtor or Reorganized Debtor or its successor or assign may possess against the holder of such Claim.

J. Allocation of Plan Distributions Between Principal and Interest.

Except as otherwise required by law (as reasonably determined by the Reorganized Debtors), Plan Distributions with respect to an Allowed Claim shall be allocated first to the principal portion of such Allowed Claim (as determined for United States federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

K. No Plan Distribution in Excess of Amount of Allowed Claim.

Except as provided in Section VII.D, no holder of an Allowed Claim shall receive, on account of such Allowed Claim, Plan Distributions in excess of the Allowed amount of such Claim.

L. Withholding and Reporting Requirements.

1. *Withholding Rights*.

The Reorganized Debtors shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Plan Distribution and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash Plan Distribution that is subject to withholding, the Reorganized Debtors may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Person that receives a Plan Distribution shall have responsibility for any taxes imposed by any governmental unit, including income, withholding, and other taxes, on account of such Plan Distribution. The Reorganized Debtors have the right, but not the obligation, to not make a Plan Distribution until such holder has made arrangements satisfactory to the Reorganized Debtors for payment of any such tax obligations.

2. *Forms*.

Any Person entitled to receive any property as a Plan Distribution shall, upon request, deliver to the Reorganized Debtors an appropriate Form W-9 or (if the payee is a foreign Entity) Form W-8. If such request is made by the Reorganized Debtors and the holder fails to comply before the earlier of (a) the date that is 180 days after the request is made and (b) the date that is 180 days after the date of distribution, the amount of such Plan Distribution shall irrevocably revert to the applicable Reorganized Debtor and any Claim in respect of such Plan Distribution shall be discharged and forever barred from assertion against such Reorganized Debtor or its respective property.

M. Allowed Claims Paid by Third Parties.

To the extent a holder receives a Plan Distribution on account of an Allowed Claim and also receives payment from a party other than the Debtors or the Reorganized Debtors on account of such Allowed Claim, such holder shall, within thirty (30) days of receipt thereof, repay or return the Plan Distribution to the Reorganized Debtors, to the extent the holder's total recovery on account of such Allowed Claim from the third party and under the Plan exceeds the amount of the Allowed Claim as of the date of any such Plan Distribution.

N. Claims for Indemnification Obligations.

All Proofs of Claim filed on account of an Indemnification Obligation to a current or former director, officer, or employee shall be deemed satisfied and expunged from the claims register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VIII

DISPUTED CLAIMS

A. Objections to Claims.

The Reorganized Debtors shall exclusively be entitled to object to all Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, and General Unsecured Claims. The Victims Compensation Trustee shall exclusively be entitled to administer and resolve Abuse Claims in accordance with the Trust Agreement and the Trust Distribution Procedures. After the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim to which they may object, except with respect to any Claim that is Allowed. The Reorganized Debtors shall serve and file any objection to a Proof of Claim on or before the Claims Objection Deadline; provided, however, that the Victims Compensation Trustee shall administer the Abuse Claims on a timeline determined by the Victims Compensation Trustee, in consultation with the Future Claimants' Representative and the Trust Advisory Committee, subject to approval by the Bankruptcy Court. The expiration of the Claims Objection Deadline shall not limit or affect the Debtors' or Reorganized Debtors' rights to dispute Claims asserted in the ordinary course of business other than through a Proof of Claim.

B. Resolution of Disputed Administrative Expenses and Disputed Non-Abuse Claims.

On and after the Effective Date, the Reorganized Debtors shall have the authority to prosecute and withdraw objections to, compromise, settle, or otherwise resolve Administrative Expense Claims (other than with respect to Professional Fee Claims), Priority Tax Claims, Other Priority Claims, and General Unsecured Claims without approval of the Bankruptcy Court. For the avoidance of doubt, only the Victims Compensation Trustee shall have the authority to administer and resolve Abuse Claims in accordance with the Trust Agreement and the Trust Distribution Procedures.

C. Resolution of Abuse Claims.

Abuse Claims shall be resolved in accordance with the Trust Documents, subject to the provisions of Article IV and subject to the right of any Insurer to raise any Insurer Coverage Defense in response to a demand by the Victims Compensation Trust that such Insurer handle, defend, or pay any such Abuse Claim.

D. Payments and Distributions with Respect to Disputed Claims.

Notwithstanding anything herein to the contrary, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

E. Distributions After Allowance.

After such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the holder thereof shall be entitled to Plan Distributions, if any, to which such holder is then entitled as provided in the Plan, without interest, as provided in Section VIII.I. Such Plan Distributions shall be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court Allowing such Disputed Claim (or portion thereof) becomes a Final Order.

F. Estimation of Claims.

The Debtors or the Reorganized Debtors, with respect to contingent, unliquidated, and/or Disputed Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, and General Unsecured Claims, may at any time request that the Bankruptcy Court estimate any such contingent, unliquidated, or Disputed Claim or Class of Claims pursuant to section 502(c) of the Bankruptcy Code or otherwise, including to establish a reserve for Plan Distribution purposes, regardless of whether the Debtors, the Reorganized Debtors, or any other Person had previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Class of Claims at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim or Class of Claims, the amount so estimated shall constitute either the Allowed amount of such Claim or Class of Claims, or a maximum limitation on such Claim or Class of Claims, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim or Class of Claims, the Debtors or the Reorganized Debtors, as applicable, may pursue supplementary proceedings to object to the allowance of such Claims; provided, however, that such limitation shall not apply to Claims requested by the Debtors to be estimated for voting purposes only.

G. No Distributions Pending Allowance.

If an objection, motion to estimate, or other challenge to a Claim is filed, no payment or Plan Distribution shall be made on account of such Claim unless and until (and only to the extent that) such Claim becomes an Allowed Claim.

H. Claims Resolution Procedures Cumulative.

All of the objection, estimation, and resolution procedures in the Plan are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently settled, compromised, withdrawn, or resolved in accordance with the Plan without further notice or Bankruptcy Court approval.

I. Interest.

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest that accrued thereon from and after the Effective Date, except as provided in Section VII.D.

J. Insured Non-Abuse Claims.

To the extent that an Insurer satisfies an Insured Non-Abuse Claim in whole or in part (based on either a settlement or judgment), then immediately upon such satisfaction, the portion of such Claim so satisfied may be expunged without an objection to such Claim having to be filed and without any further notice to or action, order or approval of the Court.

ARTICLE IX

CONFIRMATION AND CONSUMMATION OF PLAN

A. Conditions Precedent to Confirmation.

Confirmation of the Plan shall not occur unless all of the following conditions precedent have been satisfied:

1. the Confirmation Order is in form and substance acceptable to the Debtors;

2. the Confirmation Order shall approve and implement the Channeling Injunction set forth in Article X.D; and

3. the Plan Documents shall be in form and substance acceptable to the Debtors.

B. Conditions Precedent to the Effective Date.

The Effective Date shall not occur unless all of the following conditions precedent have been satisfied, unless waived in accordance with Section IX.C:

1. the Confirmation Order, in form and substance acceptable to the Debtors, shall have been entered by the Bankruptcy Court, shall have become a Final Order, and shall have been adopted, affirmed, issued or ratified by the District Court;

2. the Trust Agreement and the Trust Distribution Procedures shall have become effective in accordance with the terms of the Plan;

3. the Trust shall have been established and funded in accordance with the Plan;

4. the Debtors shall have obtained all authorizations, consents, certifications, approvals, rulings, opinions or other documents that are necessary to implement and effectuate the Plan;

5. all actions, documents, and agreements necessary to implement and effectuate the Plan shall have been effected or executed; and

6. the Debtors shall have filed a notice of occurrence of the Effective Date.

C. Waiver of Conditions Precedent to the Effective Date.

Except for the condition precedent set forth in Section IX.B.1, each of the conditions precedent to the occurrence of the Effective Date set forth in Section IX.B may be waived in whole or in part by the Debtors without notice to or leave or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan. The failure to satisfy any condition precedent to the Confirmation Date or satisfy or waive any condition precedent to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied.

D. *Vacatur* of Confirmation Order; Non-Occurrence of Effective Date.

If the Confirmation Order is vacated or the Effective Date does not occur within 180 days after entry of the Confirmation Order (subject to extension by the Debtors in their sole discretion), the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (1) constitute a waiver or release of any Causes of Action by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any holders of a Claim or Interest or any other Person; (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any holders, or any other Person in any respect; or (4) be used by the Debtors or any other Person as evidence (or in any other way) in any litigation, including with respect to the strengths and weaknesses of positions, arguments or claims of any of the parties to such litigation.

ARTICLE X

EFFECT OF PLAN CONFIRMATION

A. Binding Effect.

As of the Effective Date, all provisions of the Plan, including all agreements, instruments and other documents filed in connection with the Plan by the Debtors or the Reorganized Debtors, the Victims Compensation Trust, the Protected Parties, shall be binding upon the Debtors, the Estates, the Reorganized Debtors, all holders of Claims against and Interests in the Debtors, each such holder's respective successors and assigns, and all other Persons that are affected in any manner by the Plan, regardless of whether the Claim or Interest of such holder is Impaired under the Plan and whether such holder has accepted the Plan. Except as otherwise expressly provided in the Plan, all agreements, instruments and other documents filed in connection with the Plan shall be given full force and effect and shall bind all Persons referred to therein on and after the Effective Date, whether or not such agreements are actually issued, delivered or recorded on or after the Effective Date and whether or not such Persons have actually executed such agreement.

B. Pre-Confirmation Injunctions and Stays.

All injunctions and stays arising under or entered during the Chapter 11 Cases, whether under sections 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay, if any.

C. Discharge.

1. *Discharge of the Debtors*.

Except as expressly provided in the Plan or the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, termination and release of, all Claims and Interests of any nature whatsoever against or in the Debtors or any of their assets or properties based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date, and, as of the Effective Date, each of the Debtors shall be deemed discharged and released, and each holder of a Claim or Interest and any successor, assign, and affiliate of such holder shall be deemed to have forever waived, discharged and released each of the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities, and all debts of the kind specified in section 502 of the Bankruptcy Code, based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date, in each case whether or not (a) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (c) a Claim based upon such debt is or has been Disallowed by order of the Bankruptcy Court, or (d) the holder of a Claim based upon such debt is deemed to have accepted the Plan.

2. *Discharge Injunction*.

As of the Effective Date, except as expressly provided in the Plan or the Confirmation Order, all holders of Claims of any nature whatsoever against or in the Debtors or any of their assets or properties based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date shall be precluded and permanently enjoined from prosecuting or asserting any such discharged Claim against the Debtors or the Reorganized Debtors or the property of the Debtors or the Reorganized Debtors. In accordance with the foregoing, except as expressly provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge or termination of all Claims, Interests and other debts and liabilities against or in the Debtors pursuant to sections 105, 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time to the extent such judgment relates to a discharged Claim.

D. **Channeling Injunction**.

1. ***Terms***.

To preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the discharge as provided in sections 1141 and 524 of the Bankruptcy Code and as described in this Article X, pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court

and the District Court under section 105(a) of the Bankruptcy Code, all Persons that have held or asserted, currently hold or assert, or that may in the future hold or assert, any Abuse Claim against the Protected Parties, or any of them, shall be permanently and forever stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any Protected Party with respect to any such Abuse Claim, including:

a. **commencing, conducting, or continuing, in any manner, whether directly or indirectly, any suit, action, or other proceeding of any kind in any forum with respect to any such Abuse Claim against any Protected Party or any property or interest in property of any Protected Party;**

b. **enforcing, levying, attaching, collecting or otherwise recovering, by any manner or means, either directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim;**

c. **creating, perfecting, or enforcing in any manner, whether directly or indirectly, any Lien or Encumbrance of any kind against any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim;**

d. **asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind, whether directly or indirectly, against any obligation due to any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim; and**

e. **taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents with respect to any such Abuse Claim.**

2. ***Reservations***.

Notwithstanding anything to the contrary in this <u>Section X.D</u>, the Channeling Injunction shall not enjoin:

a. **the right of any Person to the treatment afforded to such Person under the Plan, including the rights of holders of Abuse Claims to assert such Abuse Claims in accordance with the Trust Documents solely against the Victims Compensation Trust;**

b. **the right of any Person to assert any Claim for payment of Trust Expenses solely against the Victims Compensation Trust;**

c. **the Victims Compensation Trust from enforcing its rights under the Trust Documents; or**

d. **the rights of the Victims Compensation Trust and the Reorganized Debtors (to the extent permitted or required under the Plan) to prosecute any action against the Insurers based on or arising from the Insurance Policies.**

E. Provisions Relating to Channeling Injunctions.

1. *Modifications*.

There can be no modification, dissolution, or termination of the Channeling Injunction, which shall be a permanent injunction.

2. *Non-Limitation*.

Nothing in the Plan or the Trust Documents shall or shall be construed in any way to limit the scope, enforceability, or effectiveness of the Channeling Injunction or the Victims Compensation Trust's assumption of all liability with respect to Abuse Claims.

3. *Bankruptcy Rule 3016 Compliance*.

The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute or be deemed to constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

4. *No Duplicative Recovery*.

In no event shall any holder of an Abuse Claim be entitled to receive any duplicative payment, reimbursement, or restitution from any Protected Party under any theory of liability for the same loss, damage, or other Claim that is reimbursed by the Victims Compensation Trust or is otherwise based on the same events, facts, maters, or circumstances that gave rise to the applicable Abuse Claim.

5. *District Court Approval*.

The Debtors shall seek an order of the District Court approving (a) the Channeling Injunction and the Victims Compensation Trust's assumption of all liability with respect to Abuse Claims and (b) the releases by holders of Abuse Claims for the benefit of the Protected Parties, each as set forth in this Article X.

F. **Injunction Against Interference with Plan**.

Upon entry of the Confirmation Order, all holders of Claims and Interests shall be precluded and enjoined from taking any actions to interfere with the implementation and consummation of the Plan.

G. **Releases**.

1. ***Releases by the Debtors***.

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, including the service of the Released Parties to facilitate and implement the reorganization of the Debtors, as an integral component of the Plan, the Debtors, the Reorganized Debtors, and the Estates shall, and shall be deemed to, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each and all of the Released Parties of and from any and all Causes of Action (including Avoidance Actions), any and all other Claims, Interests, obligations, rights, demands, suits, judgments, damages, debts, remedies, losses and liabilities of any nature whatsoever (including any derivative claims or Causes of Action asserted or that may be asserted on behalf of the Debtors, the Reorganized Debtors, or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, contract, tort or otherwise, based on or relating to, or in any manner arising from, in whole or in part, any act, omission, transaction, event, or other circumstance taking place or existing on or before the Effective Date (including before the Petition Date) in connection with or related to the Debtors, the Reorganized Debtors, the Estates, their respective assets and properties, the Chapter 11 Cases, the Plan Documents, and any related agreements, instruments, and other documents created or entered into before or during the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth in this Section X.G.1 shall not be construed as (a) releasing any Released Party from Causes of Action arising from an act or omission that is judicially determined by a Final Order to have constituted fraud, gross negligence or willful misconduct or (b) releasing any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement executed to implement the Plan or Reinstated under the Plan.

2. ***Releases by Holders of Abuse Claims***.

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, including the service of the Released Parties to facilitate and

implement the reorganization of the Debtors, as an integral component of the Plan, and except as otherwise expressly provided in the Plan or the Confirmation Order, to the maximum extent permitted under applicable law, as such law may be extended subsequent to the Effective Date, all holders of Abuse Claims shall, and shall be deemed to, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release each and all of the Protected Parties and their respective property and successors and assigns of and from all Abuse Claims and any and all Claims and Causes of Action whatsoever, whether known or unknown, asserted or unasserted, derivative or direct, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, fraud, contract, veil piercing or alter-ego theories of liability, successor liability, contribution, indemnification, joint liability, or otherwise, arising from or related in any way to such Abuse Claims.

H. **Exculpation**.

From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to, or be subject to any right of action by, any Person for any act, omission, transaction, event, or other circumstance in connection with or related to the Debtors, the Reorganized Debtors, the Estates, their respective assets and properties, the Chapter 11 Cases, the Plan Documents, the pursuit of Confirmation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to the foregoing; provided, however, that this Section X.H shall not apply to release (a) obligations under the Plan or any contracts, instruments, releases, agreements, and documents delivered, Reinstated or assumed under the Plan, (b) any Claims or Causes of Action arising from or related to an act or omission that is judicially determined by a Final Order to have constituted fraud, gross negligence or willful misconduct, or (c) any Claims or Causes of Action against the Debtors or the Reorganized Debtors that are Reinstated under the Plan or otherwise survive the Effective Date.

I. **Injunctions Related to Releases and Exculpation**.

1. ***Injunction Related to Releases***.

As of the Effective Date, all holders of Claims that are the subject of Section X.G.2 are, and shall be, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against any Released Party or its property or successors or assigns on account of or based on the subject matter of such Claims, whether directly or indirectly, derivatively or otherwise: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien or Encumbrance; and/or (d) setting off, seeking reimbursement or contributions from, or subrogation against, or

otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation that is discharged under Section X.C or released under Section X.G.2.

2. ***Injunction Related to Exculpation***.

As of the Effective Date, all holders of Claims that are the subject of Section X.H are, and shall be, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against any Exculpated Party and, solely to the extent provided by section 1125(e) of the Bankruptcy Code, any Section 1125(e) Party or its or their property or successors or assigns on account of or based on the subject matter of such Claims, whether directly or indirectly, derivatively or otherwise: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien or Encumbrance; and/or (d) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation that is discharged under Section X.C or released under Section X.H.

J. Reservation of Rights.

Notwithstanding any other provision of the Plan to the contrary, no provision of this Article X shall be deemed or construed to satisfy, discharge, release or enjoin claims by the Victims Compensation Trust, the Reorganized Debtors, or (subject to Article IV) any other Person, as the case may be, against (1) the Victims Compensation Trust for payment of Abuse Claims in accordance with the Trust Distribution Procedures, (2) the Victims Compensation Trust for the payment of Trust Expenses, or (3) any Insurer that has not performed under an Insurance Policy or an Insurance Settlement Agreement.

K. Disallowed Claims.

On and after the Effective Date, the Debtors and the Reorganized Debtors shall be fully and finally discharged of any and all liability or obligation on any and all Disallowed Claims, and any Order Disallowing a Claim that is not a Final Order as of the Effective Date solely because of a Person's right to move for reconsideration of such Order pursuant to section 502 of the Bankruptcy Code or Bankruptcy Rule 3008 shall nevertheless become and be deemed to be a Final Order on the Effective Date. The Confirmation Order, except as otherwise provided herein, shall constitute an Order: (a) Disallowing all Claims (other than Abuse Claims) to the extent such Claims are not allowable under any provision of Section 502 of the Bankruptcy Code, including time-barred Claims, and Claims for unmatured interest and (b) in relation to each Debtor, Disallowing or subordinating to all other Claims, as the case may be, any Claims for penalties, punitive damages or any other damages not constituting compensatory damages.

ARTICLE XI

RETENTION OF JURISDICTION

A. General Retention.

Until the Chapter 11 Cases are closed, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(c) and 1142 of the Bankruptcy Code to the fullest extent permitted by law, including the jurisdiction necessary to ensure that the purposes and the intent of the Plan are carried out. Following Confirmation, the administration of the Chapter 11 Cases will continue until the Chapter 11 Cases are closed by a Final Order of the Bankruptcy Court. The Bankruptcy Court shall also retain jurisdiction for the purpose of classification of any Claims and the re-examination of Abuse Claims and Claims that have been Allowed for purposes of voting, and the determination of such objections as may be filed with the Bankruptcy Court with respect to any Claims. The failure by the Debtors to object to, or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the rights of the Debtors, the Reorganized Debtors or the Victims Compensation Trust, as the case may be, to object to or re-examine such Claim in whole or part.

B. Specific Purposes.

In addition to the foregoing, the Bankruptcy Court shall retain jurisdiction for each of the specific purposes enumerated in this Section XI.B after Confirmation of the Plan. Notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(c) and 1142 of the Bankruptcy Code and to the fullest extent permitted by law, including the following purposes:

1. to modify the Plan after Confirmation pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules;

2. to correct any defect, cure any omission, reconcile any inconsistency or make any other necessary changes or modifications in or to the Plan, the Trust Documents or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance in the Plan in the event the Effective Date does not occur as provided herein so that the intended effect of the Plan may be substantially realized thereby;

3. to enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or if distributions pursuant to the Plan or the Trust Documents are enjoined or stayed;

4. to hear and determine all applications for compensation of Professionals and reimbursement of expenses under sections 328, 330, 331 and/or 503(b) of the Bankruptcy Code;

5. to hear and determine any Causes of Action arising during the period from the Petition Date to the Effective Date, or in any way related to the Plan or the transactions contemplated hereby, against the Debtors, the Reorganized Debtors, the Victims Compensation Trust, the Victims Compensation Trustee, or the Official Committees or the Future Claimants' Representative and their respective officers, directors, employees, members, attorneys, accountants, financial advisors, representatives and agents;

6. to determine any and all motions, including motions pending as of Confirmation, for the rejection, assumption or assumption and assignment of Executory Contracts or Unexpired Leases and the Allowance of any Claims resulting therefrom;

7. to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

8. to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

9. to determine any and all motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date (which jurisdiction shall be non-exclusive as to any such non-core matters);

10. to determine the Allowance and/or Disallowance of any Claims against the Debtors or their Estates, including any objections to any such Claims and the compromise and settlement of any Claim against the Debtors or their Estates;

11. to determine all questions and disputes regarding title to the assets of the Debtors or their Estates or the Trust Assets;

12. to ensure that Plan Distributions to holders of Allowed Claims and that Trust Distributions to holders of Abuse Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes relating to distributions under the Plan or the Trust Documents;

13. to construe, enforce and resolve all questions and disputes relating to employment agreements existing or approved by the Bankruptcy Court at or before Confirmation;

14. to hear and determine the Insurance Actions and to determine all questions and issues arising thereunder. Notwithstanding anything herein to the contrary, however, such retention of jurisdiction by the Bankruptcy Court in this Section XI.B.14 shall not be deemed to be a retention of exclusive jurisdiction with respect to any matter described in this Section XI.B.14; rather, any court other than the Bankruptcy Court that has jurisdiction over any matter described in this Section XI.B.14 shall have the right to exercise such jurisdiction;

15. to hear and determine any matters related to the Victims Compensation Trust's indemnification obligations under Article IV and the Trust Documents;

16. to hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Chapter 11 Cases;

17. to enter in aid of implementation of the Plan such orders as are necessary, including orders in aid of the implementation and enforcement of the releases, the Channeling Injunction, and the other injunctions described herein;

18. to enter and implement such orders as may be necessary or appropriate if any aspect of the Plan, the Victims Compensation Trust or the Confirmation Order is, for any reason or in any respect, determined by a court to be inconsistent with, to violate, or to be insufficient to satisfy any of the terms, conditions, or other duties associated with any Insurance Policies; provided, however, that (a) such orders shall not impair the Insurer Coverage Defenses or the rights, claims or defenses, if any, of any Insurer that are set forth or provided for in the Plan, the Plan Documents, the Confirmation Order, or any other orders entered in the Chapter 11 Cases and (b) the rights of all interested parties, including any Insurer, are reserved to oppose or object to any such motion or order seeking such relief; and

19. to enter a Final Order or decree concluding or closing the Chapter 11 Cases.

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the foregoing matters, the reference the "Bankruptcy Court" in this Article XI shall be deemed to be replaced by the "District Court."

ARTICLE XII

MISCELLANEOUS PROVISIONS

A. Substantial Consummation of the Plan.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

B. Amendment or Modification of the Plan.

1. *Plan Modifications*.

The Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code, and after entry of the Confirmation Order, the Debtors may, upon order of the Court, amend, modify or supplement the Plan in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, in each case without additional disclosure pursuant to section 1125

of the Bankruptcy Code. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to the Plan, the Debtors may remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes or effects of the Plan, and any holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as amended, modified, or supplemented.

2. *Other Amendments*.

Before the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan Supplement without further order or approval of the Bankruptcy Court.

C. Effectuating Documents and Further Transactions.

Each of the officers, managers, or members of the Debtors or the Reorganized Debtors or the Victims Compensation Trustee is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

D. Successors and Assigns.

The rights, benefits and obligations of any Person named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of, any heir, executor, guardian, agent, representative, administrator, successor, or permitted assign, if any, of each such Person.

E. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan, including the Trust Documents, shall be deemed null and void; and (3) nothing contained in the Plan shall (i) constitute a waiver or release of any Claim by or against, or any Interest in, the Debtors or any other Person; (ii) prejudice in any manner the rights of the Debtors or any other Person; or (iii) constitute an admission of any sort by the Debtors or any other Person.

F. The Official Committees and the Future Claimants' Representative.

Except as set forth below, the Official Committees and the Future Claimants' Representative shall continue in existence until the Effective Date. After the Effective Date, the rights, duties and responsibilities of the Future Claimants' Representative shall be as set forth in

the Trust Agreement. On the Effective Date, the Official Committees shall dissolve and, as of the Effective Date, each member (including each officer, director, employee, or agent thereof) of the Official Committees and each Professional retained by the Official Committees shall be released and discharged from all rights, duties, responsibilities, and obligations arising from, or related to, the Debtors, its membership on the Official Committees, the Plan, or the Chapter 11 Cases, except with respect to any matters concerning any Professional Fee Claims held or asserted by any Professional retained by the Official Committees. For the avoidance of doubt, neither the Debtors nor the Reorganized Debtors shall have any obligation to pay any fees or expenses of any Professional retained by the Official Committees or the Future Claimants' Representative that are earned or incurred on or after the Effective Date. Nor shall the Debtors or the Reorganized Debtors have any obligation to pay fees or expenses of any Professional retained by the Official Committees or the Future Claimants' Representative that are earned or incurred before the Effective Date to the extent such fees or expenses (or any portion thereof) qualify as Trust Expenses, in which case such fees and expenses (or the applicable portion thereof) shall be paid by the Victims Compensation Trust in accordance with the Trust Agreement.

G. Request for Expedited Determination of Taxes.

The Debtors and the Reorganized Debtors, as applicable, shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date to and including the Effective Date.

H. Non-Severability of Plan Provisions.

If, before the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (1) valid and enforceable pursuant to its terms, (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Reorganized Debtors (as the case may be), and (3) nonseverable and mutually dependent.

I. Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule in the Plan Supplement, an Exit Facility Document, or any other Plan Document provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof; provided,

however, that governance matters relating to the Reorganized BSA shall be governed by the laws of the District of Columbia.

J. Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan (including the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the holders of Claims and Interests, the Released Parties, and each of their respective successors and assigns, including the Reorganized Debtors.

K. Computation of Time.

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided herein, the provisions of Bankruptcy Rule 9006(a) shall apply. In the event that any payment, distribution, act or deadline under the Plan is required to be made or performed or occurs on a day that is not a Business Day, then such payment, distribution, act or deadline shall be deemed to occur on the next succeeding Business Day, but if so made, performed or completed by such next succeeding Business Day, shall be deemed to have been completed or to have occurred as of the required date.

L. Deemed Acts.

Whenever an act or event is expressed under the Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred by virtue of the Plan and/or the Confirmation Order without any further act by any Person.

M. Entire Agreement.

The Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions, negotiations, understandings and documents. No Person shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for in the Plan or the other Plan Documents or as may hereafter be agreed to by the affected parties in writing.

N. Exhibits to Plan.

All exhibits, schedules, supplements, and appendices to the Plan (including the Plan Supplement) are incorporated into and are a part of the Plan as if set forth in full herein.

O. Notices.

All notices, requests, and demands to or upon the Debtors or the Reorganized Debtors to be effective shall be in writing (including by email transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered, addressed as follows:

1. If to the Debtors or the Reorganized Debtors, to:

Boy Scouts of America
1325 W. Walnut Hill Lane
Irving, Texas 75015
Attn: Steven McGowan, Secretary and General Counsel
Email: Steve.McGowan@scouting.org

with copies to:

Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Attn: Matthew E. Linder
Email: mlinder@sidley.com

– and –

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attn: Jessica C. K. Boelter
Email: jboelter@sidley.com

– and –

Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Attn: Derek C. Abbott
Email: dabbott@mnat.com

After the Effective Date, the Reorganized Debtors are authorized to send a notice to any Person providing that, to continue to receive documents filed in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002, such Person must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to such Persons who have filed such renewed requests.

[Remainder of Page Intentionally Left Blank]

Dated: February 18, 2020

Boy Scouts of America
BSA Delaware, LLC

Steven P. McGowan
Secretary and General Counsel

EXHIBIT A

TRUST AGREEMENT

(to be supplemented)

EXHIBIT B

TRUST DISTRIBUTION PROCEDURES

(to be supplemented)

EXHIBIT C

VICTIMS COMPENSATION TRUSTEE

(to be supplemented)

EXHIBIT D

TRUST ADVISORY COMMITTEE

(to be supplemented)

EXHIBIT E

IDENTIFIED PROPERTY

EXHIBIT E - LISTING OF IDENTIFIED PROPERTY
Boy Scouts of America (excluding subsidiaries & affiliates)
Breakdown of Assets as of 11/30/19
Unaudited
Subject to Amendment

	Balance as of 11/30/2019	Identified Property	Other Property
Cash			
Cash	$ 123,102,266	$ 39,987,574	$ 83,114,692
Restricted Cash - LC Collateral (JPM)	62,773,574	62,773,574	-
Total Cash	185,875,840	102,761,148	83,114,692
Investments			
General Investments	192,500,191	81,114,899	111,385,293
Order of the Arrow	7,399,346	7,399,346	-
Total Investments	199,899,538	88,514,245	111,385,293
Land & Buildings			
Admin Buildings in TX	4,160,897	-	4,160,897
Supply & Distribution - Charlotte, NC	3,026,876	-	3,026,876
Subtotal Land & Buildings	7,187,774	-	7,187,774
High Adventure Facilities: [1]			
Philmont Scout Ranch	40,058,766	40,058,766	-
Florida Sea Base	16,702,866	16,702,866	-
Northern Tier	6,561,178	6,561,178	-
Subtotal Adventure Bases	63,322,810	63,322,810	-
Total Land & Buildings	70,510,584	63,322,810	7,187,774
Furniture & Equipment	29,906,205	-	29,906,205
Accounts Receivable	23,651,417	-	23,651,417
Pledges Receivable (NPV, net of allowances)			
Donor Restricted Pledges Receivable, net	52,949,984	52,949,984	-
Unrestricted Receivable, net	12,800,000	-	12,800,000
Total Pledge Receivable	65,749,984	52,949,984	12,800,000
Inventory	67,948,152	-	67,948,152
Prepaids & Deferred Charges	21,686,203	-	21,686,203
Other Assets			
Misc Summit Assets	6,012,908	6,012,908	-
Gift Annuity & Pooled Income Investments	8,117,898	8,117,898	-
Total Other Assets	14,130,806	14,130,806	-
Other Receivables			
Note Receivable from Arrow WV	345,396,380	345,396,380	-
Other Interfund Rec/(Pay)	(10,594,646)	-	(10,594,646)
Total Interfund Receivable	334,801,734	345,396,380	(10,594,646)
TOTAL ASSETS PER BALANCE SHEET	**$ 1,014,160,463**	**$ 667,075,374**	**$ 347,085,089**
OFF BALANCE SHEET ASSETS			
Oil & Gas Royalties	-		√
Artwork - Original Rockwell paintings, etc.	-		√

[1] The Summit high adventure facility is in a separate legal entity, Arrow WV. BSA has a note receivable due from Arrow.

EXHIBIT F

LOCAL COUNCILS

Abraham Lincoln
Alabama-Florida
Alameda
Alamo Area
Allegheny Highlands
Aloha
Andrew Jackson
Anthony Wayne Area
Arbuckle Area
Atlanta Area
Baden-Powell
Baltimore Area
Bay Area
Bay-Lakes
Black Hills Area
Black Swamp Area
Black Warrior
Blackhawk Area
Blue Grass
Blue Mountain
Blue Ridge
Blue Ridge Mountains
Buckeye
Buckskin
Bucktail
Buffalo Trace
Buffalo Trail
Caddo Area
Calcasieu Area
California Inland Empire
Cape Cod and Islands
Cape Fear
Capitol Area
Cascade Pacific
Catalina
Central Florida
Central Georgia
Central Minnesota
Central North Carolina
Chattahoochee
Cherokee Area
Cherokee Area
Chester County
Chickasaw
Chief Cornplanter
Chief Seattle
Chippewa Valley
Choctaw Area
Cimarron
Circle Ten
Coastal Carolina
Coastal Georgia
Colonial Virginia
Columbia-Montour
Connecticut Rivers
Connecticut Yankee
Conquistador
Cornhusker
Coronado Area
Cradle of Liberty
Crater Lake
Crossroads of America
Dan Beard
Daniel Boone
Daniel Webster
De Soto Area
Del-Mar-Va
Denver Area
East Carolina
East Texas Area
Erie Shores
Evangeline Area
Far East
Five Rivers
Flint River
French Creek
Gamehaven
Garden State
Gateway Area
Georgia-Carolina
Glacier's Edge
Golden Empire
Golden Spread
Grand Canyon
Grand Columbia
Grand Teton
Great Alaska
Great Lakes
Great Rivers
Great Salt Lake
Great Smoky Mountain
Great Southwest

Great Trail
Greater Alabama
Greater Los Angeles Area
Greater New York
Greater Niagara Frontier
Greater St. Louis Area
Greater Tampa Bay Area
Greater Wyoming
Greater Yosemite
Green Mountain
Greenwich
Gulf Coast
Gulf Stream
Hawk Mountain
Hawkeye Area
Heart of America
Heart of New England
Heart of Virginia
Hoosier Trails
Housatonic
Hudson Valley
Illowa
Indian Nations
Indian Waters
Inland Northwest
Iroquois Trail
Istrouma Area
Jayhawk Area
Jersey Shore
Juniata Valley
Katahdin Area
Lake Erie
Las Vegas Area
LaSalle
Last Frontier
Laurel Highlands
Leatherstocking
Lincoln Heritage
Long Beach Area
Longhorn
Longhouse
Longs Peak
Los Padres
Louisiana Purchase
Marin
Mason-Dixon
Mayflower
Mecklenburg County
Miami Valley
Mid-America
Middle Tennessee
Mid-Iowa
Midnight Sun
Minsi Trails
Mississippi Valley
Mobile Area
Monmouth
Montana
Moraine Trails
Mount Baker
Mount Diablo Silverado
Mountaineer Area
Muskingum Valley
Narragansett
National Capital Area
Nevada Area
New Birth of Freedom
North Florida
Northeast Georgia
Northeast Illinois
Northeast Iowa
Northeastern Pennsylvania
Northern Lights
Northern New Jersey
Northern Star
Northwest Georgia
Northwest Texas
Norwela
Occoneechee
Ohio River Valley
Old Hickory
Old North State
Orange County
Oregon Trail
Ore-Ida
Overland Trails
Ozark Trails
Pacific Harbors
Pacific Skyline
Palmetto
Pathway to Adventure
Patriots' Path

Pee Dee Area
Pennsylvania Dutch
Piedmont
Piedmont
Pikes Peak
Pine Burr Area
Pine Tree
Pony Express
Potawatomi Area
Prairielands
President Gerald R. Ford
Puerto Rico
Pushmataha Area
Quapaw Area
Quivira
Rainbow
Redwood Empire
Rio Grande
Rip Van Winkle
Rocky Mountain
Sagamore
Sam Houston Area
Samoset
San Diego-Imperial
San Francisco Bay Area
Santa Fe Trail
Seneca Waterways
Sequoia
Sequoyah
Shenandoah Area
Silicon Valley Monterey Bay
Simon Kenton
Sioux
Snake River
South Florida
South Georgia
South Plains
South Texas
Southeast Louisiana
Southern Shores
Southern Sierra
Southwest Florida
Spirit of Adventure
Stonewall Jackson Area
Suffolk County
Susquehanna
Suwannee River Area
Tecumseh
Texas Southwest
Texas Trails
Theodore Roosevelt
Three Fires
Three Harbors
Three Rivers
Tidewater
Transatlantic
Trapper Trails
Tukabatchee Area
Tuscarora
Twin Rivers
Twin Valley
Utah National Parks
Ventura County
Verdugo Hills
Voyageurs Area
W.D. Boyce
Washington Crossing
Water and Woods
West Tennessee Area
Westark Area
Westchester-Putnam
Western Los Angeles County
Western Massachusetts
Westmoreland-Fayette
Winnebago
Yocona Area
Yucca

EXHIBIT G

RELATED NON-DEBTOR ENTITIES

Arrow WV, Inc.
Atikaki Youth Ventures Inc.
Atikokan Youth Ventures Inc.
BSA Asset Management, LLC
BSA Endowment Master Trust
Learning for Life
National Boy Scouts of America Foundation
NewWorld19, LLC
Texas BSA, LLC

EXHIBIT H

LOCAL COUNCIL TRUST CONTRIBUTIONS

(to be supplemented)

EXHIBIT I

CHARTERED ORGANIZATION TRUST CONTRIBUTIONS

(to be supplemented)

EXHIBIT J

REJECTED CONTRACTS SCHEDULE

(to be supplemented)

EXHIBIT K

RESTATED 2010 BOND DOCUMENTS

(to be supplemented)

EXHIBIT L

RESTATED 2012 BOND DOCUMENTS

(to be supplemented)

EXHIBIT M

RESTATED 2010 CREDIT FACILITY DOCUMENTS

(to be supplemented)

EXHIBIT N

RESTATED 2019 RCF DOCUMENTS

(to be supplemented)

EXHIBIT O

SUMMARY OF EXIT FACILITY TERMS

(to be supplemented)

EXHIBIT P

REORGANIZED DEBTORS' DIRECTORS AND OFFICERS

(to be supplemented)

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 (___) (Joint Administration Requested)

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE.

DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF REORGANIZATION FOR BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC

SIDLEY AUSTIN LLP
James F. Conlan
Thomas A. Labuda
Michael C. Andolina
Matthew E. Linder
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000

– and –

SIDLEY AUSTIN LLP
Jessica C. K. Boelter
Alex R. Rovira
Andrew P. Propps
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Joseph C. Barsalona II (No. 6102)
Eric W. Moates (No. 6441)
Paige N. Topper (No. 6470)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200

Proposed Counsel for the Debtors and Debtors in Possession

Dated: February 18, 2020
Wilmington, Delaware

[1] The Debtors in these Chapter 11 Cases, together with the last four digits of each Debtors' 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.

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT

THE DEADLINE TO VOTE ON THE PLAN IS [___], 2020 AT [__]:00 [_].M. PREVAILING EASTERN TIME (THE "VOTING DEADLINE").

FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT BEFORE THE VOTING DEADLINE AS DESCRIBED HEREIN.

THE DATE BY WHICH OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED IS [_____], 2020 AT [___]:00 [_].M. PREVAILING EASTERN TIME.

THE HEARING ON CONFIRMATION OF THE PLAN IS SCHEDULED AT [___], 2020 AT [__]:00 [_].M. PREVAILING EASTERN TIME.

This Disclosure Statement contains, among other things, summaries of the *Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* (as such may be amended, altered, modified or supplemented from time to time, the "Plan"), dated February 18, 2020,[2] certain statutory provisions, and certain anticipated events in the Chapter 11 Cases. Although the Debtors believe that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that they do not set forth the entire text of such documents or statutory provisions or every detail of such anticipated events. In the event of any inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern for all purposes. Factual information contained in this Disclosure Statement has been provided by the Debtors' management except where otherwise specifically noted.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there can be no assurance that the statements contained herein will be correct at any time after this date. Although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so, except as otherwise provided in the Plan or in accordance with applicable law. The information contained in this Disclosure Statement, including the information regarding the history, charitable non-profit operations of the Debtors and their non-debtor affiliates and certain related entities, and the financial information regarding the Debtors, is included for purposes of disclosing information related to the Plan, but, as to contested matters, adversary proceedings, and any other litigation or disputes, is not to be construed as an admission or stipulation, but rather as a statement made in settlement negotiations as part of the Debtors' attempt to settle and resolve claims and controversies pursuant to the Plan. This Disclosure Statement will not be admissible in any non-bankruptcy proceeding, nor will it be construed to be conclusive advice on the tax, securities, or other legal effects of the Plan as to holders of Claims against, or Interests in, either the Debtors or the Reorganized Debtors. The Debtors do not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission. Except where specifically noted, the financial information contained in this Disclosure

[2] Except as otherwise set forth herein, capitalized terms used in this Disclosure Statement but not defined herein have the meanings ascribed to them in the Plan.

Statement and the exhibits hereto have not been audited by a certified public accountant and have not been prepared in accordance with generally accepted accounting principles in the United States.

The Debtors have not authorized any person or Entity in connection with this Disclosure Statement or the Plan to give any information or make any representation or statement regarding this Disclosure Statement or the Plan, in each case, other than that which is contained in this Disclosure Statement and the exhibits hereto or as otherwise incorporated by reference or referred to herein. If any such information, representation or statement is given or made, it may not be relied upon as having been authorized by the Debtors.

The Debtors' management, in consultation with the Debtors' financial advisors, prepared the financial projections provided in this Disclosure Statement. While the Debtors have presented these projections with numerical specificity, they have necessarily based the projections on a variety of estimates and assumptions that, although considered reasonable by management at the time of preparation, may not be realized, and are inherently subject to significant operational, economic, and financial uncertainties and contingencies, many of which will be beyond the Debtors' or the Reorganized Debtors' control. The Debtors caution that they cannot make any representations as to the accuracy of these projections or to the Debtors' or Reorganized Debtors' ability to achieve the projected results. Some assumptions inevitably will not materialize. Further, events and circumstances occurring subsequent to the date on which these projections were prepared may differ from any assumed facts and circumstances. Alternatively, any events and circumstances that come to pass may well have been unanticipated, and thus may affect financial results in a materially adverse or materially beneficial manner. The projections, therefore, may not be relied upon as a guaranty or other assurance of the actual results that will occur.

Certain of the information contained in this Disclosure Statement is by its nature forward looking and contains estimates, assumptions and projections that may be materially different from actual future results. The words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect" and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in Article VIII of this Disclosure Statement, "Risk Factors." In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. Except as required by law, the Debtors disclaim any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

[Remainder of Page Intentionally Left Blank]

TABLE OF CONTENTS

ARTICLE I. INTRODUCTION 1
A. GENERAL BACKGROUND 1
B. GENERAL OVERVIEW OF THE PLAN 2
1. The Victims Compensation Trust 3
2. Channeling of Abuse Claims to the Victims Compensation Trust 4
3. Treatment of General Unsecured Claims 4
4. Treatment of the Claims under the Debtors' Secured Facilities 4
5. Exit Facility 4
6. General Settlement of Claims and Interests 4
7. Releases 4
C. OVERVIEW OF CHAPTER 11 5
D. VOTING ON THE PLAN 5
E. VOTING PROCEDURES, BALLOTS, AND VOTING DEADLINE 6
1. Holders of Claims and Interests Entitled to Vote 6
2. Vote Required for Acceptance by a Class of Claims 8
3. Solicitation Package 8
4. Voting Procedures, Ballots and Voting Deadlines 9
5. Confirmation Hearing and Deadline for Objections to Confirmation 10

ARTICLE II. ORGANIZATION OVERVIEW AND CORPORATE HISTORY 11
A. Organization Overview 11
1. The Boy Scouts of America 11
2. The Scouting Experience 13
3. Delivery of the Scouting Programs 16
B. Corporate and Capital Structure 18
1. Affiliated Entities 18
2. Capital Structure 20
3. General Unsecured Claims 23
C. Corporate Governance 23

ARTICLE III. EVENTS LEADING TO THE CHAPTER 11 CASES 23
A. Child Sexual Abuse Claims against the BSA 23
1. The Impact of Statute-of-Limitations Changes on Claims against the BSA and Non-Debtor Stakeholders 24
2. Other Defendants 25
3. Insurance 26
B. The BSA Engaged in Extensive Efforts to Reach a Global Resolution of Abuse Claims Before the Commencement of these Proceedings. 27
C. Given the BSA's Inability to Reach Agreement on a Prearranged Reorganization, the BSA has Taken Several Immediate Steps to Promote Efficiency at the Outset of these Chapter 11 Cases. 28

ARTICLE IV. THE CHAPTER 11 CASES 28
A. Voluntary Petitions 28
B. First Day Relief 29

C. Other Relief Requested on the Petition Date 29
1. Scheduling Motion for Asset Characterization Disputes 29
2. Bar Date Motion 29
3. Consolidation and Stay of Pending Abuse Lawsuits 30
4. Motion for Appointment of a Judicial Mediator 30

ARTICLE V. OVERVIEW OF THE PLAN 30
A. Distributions 30
B. Exit Facilities 30
C. Sources of Consideration for Plan Distributions 30
D. Treatment of Unclassified Claims 31
1. Unclassified Claims Summary 31
2. Unclassified Claims Details 31
E. Classification of Claims and Interests 32
1. Classified Claims and Interests Summary 32
2. Classified Claims and Interests Details 34
3. Elimination of Vacant Classes 38
F. The Victims Compensation Trust 38
1. Establishment and Purpose of the Victims Compensation Trust 38
2. Receipt of Trust Assets 38
3. The Trust Distribution Procedures 39
4. Discharge of Liabilities to Holders of Abuse Claims 39
5. Imposition of Channeling Injunction 39
6. Insurance Rights Transfer 39
7. Indemnification Obligation 41
8. Excess Assets in Victims Compensation Trust 41
9. Trust Expenses 42
10. Victims Compensation Trustee 42
11. Compensation of Victims Compensation Trustee and Retention of Professionals 42
12. Future Claimants' Representative 42
13. Consent Rights of the Debtors and the Reorganized Debtors 43
14. Cooperation; Transfer of Books and Records 43
15. No Liability 43
16. U.S. Federal Income Tax Treatment of the Victims Compensation Trust 43
17. Institution and Maintenance of Legal and Other Proceedings 44
18. Insurance Neutrality 44
G. Due Authorization 44
H. Continued Legal Existence 44
I. Vesting of Assets in the Reorganized Debtors 45
J. Cancellation of Indebtedness 45
K. Preservation of Causes of Action 45
L. Workers' Compensation Programs 45
M. Local Council Charters 46
N. Treatment of Executory Contracts and Unexpired Leases 46
1. Assumption of Executory Contracts and Unexpired Leases 46

2. Rejection Damages Claims 47
O. Provisions for Resolving Disputed Claims 47
1. Objections to Claims 47
2. Resolution of Disputed Administrative Expenses and Disputed Non-Abuse Claims 48
3. Resolution of Abuse Claims 48
4. Payments and Distributions with Respect to Disputed Claims 48
5. Distributions After Allowance 48
6. Estimation of Claims 48
7. No Distributions Pending Allowance 49
8. Claims Resolution Procedures Cumulative 49
9. Interest 49
10. Insured Non-Abuse Claims 49
P. Discharges, Channeling Injunction, Releases, Exculpations and Injunctions; Survival of Indemnification and Exculpation Obligations 49
1. Discharge 49
2. Channeling Injunction 50
3. Provisions Relating to Channeling Injunction 51
4. Injunction Against Interference with Plan 52
5. Releases 52
6. Exculpation 53
7. Injunctions 54
Q. Reservation of Rights 55
R. Disallowed Claims 55
S. Retention of Jurisdiction 55
1. General Retention 55
2. Specific Purposes. 55

ARTICLE VI. ACCEPTANCE OR REJECTION OF THE PLAN 57
A. Classes Entitled to Vote on the Plan 57
B. Votes Required for Acceptance by a Class 58
C. Certain Factors to Be Considered Prior to Voting 58

ARTICLE VII. CONFIRMATION PROCEDURES 59
A. Hearing on Plan Confirmation 59
B. Requirements for Confirmation of the Plan 59
C. Best Interests of Creditors / Liquidation Analysis 61
D. Feasibility 62
E. Acceptance by Impaired Class 62
F. Conditions Precedent to Confirmation of the Plan 62
G. Conditions Precedent to the Effective Date 63
H. Waiver of Conditions Precedent to the Effective Date 63
I. Vacatur of Confirmation Order; Non-Occurrence of Effective Date 63
J. Alternatives to Confirmation and Consummation of the Plan 64

ARTICLE VIII. RISK FACTORS 64
A. Business-Related Risks 64

B. Bankruptcy-Specific Considerations 64
1. General 64
2. Nonacceptance of the Plan—Confirmation by Nonconsensual "Cram-down" 65
3. Objections to the Plan's Classification or Amounts of Claims and Interests 65
4. The Conditions Precedent to Plan Confirmation and the Effective Date of the Plan May Not Occur 65
5. Non-Confirmation or Delay of Confirmation of the Plan 65
6. Amendment of Plan Prior to Confirmation by the Debtors 66
7. Failure to Obtain Approval of Releases, Injunctions and Exculpation 66
8. Plan Based on Assumptions 67

ARTICLE IX. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN 67
A. The Victims Compensation Trust 68
B. Holder of Class 3A, 3B, 4A, and 4B Claims 69
C. Holders of Class 5 and Class 6 Claims 69
D. Holders that are Non-United States Persons 70

ARTICLE X. CONCLUSION AND RECOMMENDATION 70

Table of Exhibits

EXHIBIT A Plan of Reorganization

EXHIBIT B Liquidation Analysis (to be attached to a subsequent amendment to this Disclosure Statement)

EXHIBIT C Financial Projections Analysis (to be attached to a subsequent amendment to this Disclosure Statement)

ARTICLE I. INTRODUCTION

A. GENERAL BACKGROUND

Boy Scouts of America and Delaware BSA, LLC (the "Debtors"), submit this Disclosure Statement pursuant to section 1125 of Title 11 of the United States Code (the "Bankruptcy Code") in connection with the solicitation of acceptances of the Plan. A copy of the Plan is attached hereto as **Exhibit A**. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement. **Please note that to the extent any inconsistencies exist between this Disclosure Statement and the Plan, the Plan governs.**

The Plan provides for the reorganization of the Debtors under chapter 11 of the Bankruptcy Code. If the Plan is confirmed and consummated, the Debtors, as Reorganized Debtors, will emerge from bankruptcy able to continue the BSA's mission, and holders of Abuse Claims will have a streamlined and certain process by which they may obtain compensation for Abuse.

Under the Plan, (1) Abuse Claims shall be channeled to the Victims Compensation Trust pursuant to the Channeling Injunction and may be asserted only and exclusively against the Victims Compensation Trust, (2) the holders of all 2010 Credit Facility Claims, 2019 RCF Claims, 2010 Bond Claims, and 2012 Bond Claims will have their claims restructured under restated documentation, and (3) holders of General Unsecured Claims will receive *Pro Rata* shares of the GUC Plan Distribution.

The Plan also provides for the payment in full in Cash of Claims entitled to administrative expense or priority status under the Bankruptcy Code.

In addition, the Plan includes certain release, injunctive, and exculpatory provisions described in greater detail below.

The Debtors are proposing the Plan following extensive arm's length, good faith discussions with certain of their key stakeholders, as described in more detail below. The Debtors believe the Plan represents the best available option for all creditors and parties in interest. For all of the reasons described in this Disclosure Statement, the Debtors urge you to return your ballot accepting the Plan by the Voting Deadline (*i.e.*, the date by which your ballot must actually be received), which is [_____], 2020, at [__]:00 [_].m. (prevailing Eastern Time).

This Disclosure Statement sets forth certain information regarding the prepetition operating and financial history of the Debtors, the events leading up to the commencement of the Chapter 11 Cases, material events that have occurred during the Chapter 11 Cases, and the anticipated organization, operations, and capital structure of the Reorganized Debtors if the Plan is confirmed and becomes effective. This Disclosure Statement also describes terms and provisions of the Plan, including certain effects of confirmation of the Plan, certain risk factors, the manner in which distributions will be made under the Plan, and certain alternatives to the Plan.

On [_____], 2020, the Bankruptcy Court entered an order approving this Disclosure Statement as containing "adequate information," *i.e.*, information of a kind and in sufficient detail to enable a hypothetical reasonable investor typical of the holders of Claims or Interests to make an informed judgment about the Plan. **THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE MERITS OF THE PLAN.**

EACH HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN SHOULD REVIEW THIS DISCLOSURE STATEMENT AND THE PLAN AND ALL EXHIBITS HERETO AND THERETO BEFORE CASTING A BALLOT. THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN AND CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AS OF THE DATE HEREOF AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED; HOWEVER, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THOSE DOCUMENTS AND AS OTHERWISE PROVIDED HEREIN.

B. GENERAL OVERVIEW OF THE PLAN

The Plan provides for the reorganization of the Debtors as a going concern and will enable them to continue the BSA's mission. Specifically, the Plan contemplates (i) the establishment of a Victims Compensation Trust for the benefit of holders of Abuse Claims that shall assume liability for all Abuse Claims and hold, administer, and distribute Trust Assets for the benefit of holders of Abuse Claims, and the channeling of all Abuse Claims to such trust, (ii) making distributions to holders of General Unsecured Claims, (iii) restructuring certain of the Debtors' prepetition Secured Claims, and (iv) entering into the Exit Facility.

The following chart summarizes the projected distributions to holders of Allowed Claims against and Interests in each of the Debtors under the Plan. Although every reasonable effort was made to be accurate, the projections of estimated recoveries are only an estimate. Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts allowed by the Bankruptcy Court. As a result of the foregoing and other uncertainties which are inherent in the estimates, the estimated recoveries in this Disclosure Statement may vary from the actual recoveries received. In addition, the ability to receive distributions under the Plan depends upon the ability of the Debtors to obtain confirmation of the Plan and meet the conditions to confirmation and effectiveness of the Plan, as discussed in this Disclosure Statement. The recoveries set forth below are projected recoveries only and may change based upon changes in the amount of Allowed Claims as well as other factors related to the Debtors' business operations and general economic conditions. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Allowed Claims against and Interests in each of the Debtors.

Class	Claim or Interest	Estimated Allowed Amount[3]	Treatment	Plan Recovery
N/A	Administrative Expense Claims	$[__]	Paid in full / Unimpaired	100%
N/A	Professional Fee Claims	$[__]	Paid in full / Unimpaired	100%
N/A	Priority Tax Claims	$[__]	Paid in full / Unimpaired	100%
1	Other Priority Claims	$[__]	Paid in full / Reinstated / Unimpaired	100%
2	Other Secured Claims	$[__]	Paid in full / Collateral Returned / Reinstated / Unimpaired	100%
3A	2010 Credit Facility Claims	$[__]	Reinstated with modifications / Impaired	100%
3B	2019 RCF Claims	$[__]	Reinstated with modifications / Impaired	100%
4A	2010 Bond Claims	$[__]	Reinstated with modifications / Impaired	100%
4B	2012 Bond Claims	$[__]	Reinstated with modifications / Impaired	100%
5	General Unsecured Claims	$[__]	*Pro Rata* share of GUC Plan Distribution / Impaired	[___]%
6	Abuse Claims	$[__]	Channeled to Victims Compensation Trust / Impaired	[___]%
7	Interests in Delaware BSA, LLC	N/A	Reinstated / Unimpaired	100%

The key terms of the Plan are as set forth below.

1. The Victims Compensation Trust

On the Effective Date of the Plan, the Debtors shall establish a trust for the benefit holders of Abuse Claims. The Victims Compensation Trust shall assume liability for all Abuse Claims and hold, administer and distribute Trust Assets for the benefit of holders of Abuse Claims.

[3] Figures with respect to the Allowed amounts of the Claims set forth in this chart are based upon the Debtors' best estimates of such Claims as of the date of this Disclosure Statement.

2. *Channeling of Abuse Claims to the Victims Compensation Trust*

From and after the Effective Date, all Abuse Claims shall be subject to the Channeling Injunction, and the Protected Parties shall not have any obligation with respect to any liability of any nature or description arising out of, relating to, or in connection with any Abuse Claims.

3. *Treatment of General Unsecured Claims*

Holders of prepetition trade debt and other General Unsecured Claims, which do not include Abuse Claims, will receive *Pro Rata* shares of the GUC Plan Distribution, which will be funded by Cash on hand and the proceeds of the Exit Facility.

4. *Treatment of the Claims under the Debtors' Secured Facilities*

The 2010 Credit Facility Claims, 2019 RCF Claims, 2010 Bond Claims, and 2012 Bond Claims will be allowed and deemed fully Secured. On the Effective Date of the Plan, all such Claims will be restructured under restated documentation.

5. *Exit Facility*

On the Effective Date of the Plan, the Debtors anticipate securing access to a credit facility or credit facilities, which will provide additional liquidity to supplement the Debtors' capability to continue carrying out the BSA's charitable mission after emergence from bankruptcy.

6. *General Settlement of Claims and Interests*

As described more fully in Section V.B of the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that holders of Claims or Interests might have with respect to any Claim or Interest under the Plan. Distributions made to holders of Claims in any Class are intended to be final.

7. *Releases*

The Plan contains certain releases (as described more fully in Section V.P.5 hereof), including releases by the Debtors, Reorganized Debtors, and the Estates of the Released Parties (each solely in their capacity as such). The Plan also provides that each Holder of an Abuse Claim will be deemed to have expressly, conclusively, absolutely, unconditionally, irrevocably, and forever discharged and released from all Abuse Claims and any and all Claims and Causes of Action against the Debtors and the other Protected Parties. Under the Plan, the Released Parties means the parties listed in Section I.A.113 of the Plan, and the Protected Parties means the parties listed in Section I.A.107 of the Plan.

C. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its creditors, and its equity security holders. In addition to permitting the rehabilitation of a debtor, another goal of chapter 11 is to promote the equality of treatment of similarly situated creditors and equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and equity interests in the debtor. Confirmation of a plan of reorganization by the bankruptcy court makes the plan binding upon the debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

D. VOTING ON THE PLAN

The Disclosure Statement Order approved certain procedures governing the solicitation of votes on the Plan from holders of Claims against the Debtors, including setting the deadline for voting, specifying which holders of Claims are eligible to receive Ballots to vote on the Plan, and establishing other voting procedures.

THE DISCLOSURE STATEMENT ORDER IS HEREBY INCORPORATED BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN. YOU SHOULD READ THE DISCLOSURE STATEMENT ORDER, THE CONFIRMATION HEARING NOTICE, AND THE INSTRUCTIONS ATTACHED TO YOUR BALLOT IN CONNECTION WITH THIS SECTION, AS THEY SET FORTH IN DETAIL PROCEDURES GOVERNING VOTING DEADLINES AND OBJECTION DEADLINES.

The Plan, though proposed jointly and consolidated for purposes of making distributions to holders of Claims under the Plan, constitutes a separate Plan proposed by each Debtor. Therefore, the classifications set forth in the Plan apply separately with respect to each Plan proposed by, and the Claims against and Interests in, each Debtor. Your vote will count as votes for or against, as applicable, each Plan proposed by each Debtor.

This summary does not contain all of the information that is important to you and is qualified in its entirety by the more detailed information concerning solicitation of votes on the Plan included in Section I.E of this Disclosure Statement and in the accompanying Plan.

The Voting Classes	The Debtors are soliciting votes to accept or reject the Plan from the holders of Claims in Classes 3A, 3B, 4A, 4B, 5, and 6.
Voting Record Date:	Only holders in the Voting Classes as of [____], 2020 will be entitled to vote on the Plan. The Debtors reserve the right to set a later Voting Record Date if the Debtors decide to extend the Voting Deadline.
Voting Deadline; Extension:	The Voting Deadline is [_]:00 [_].m., prevailing eastern time, on [___], 2020, unless the Debtors in their sole discretion extend the date by which Ballots will be accepted. If the Voting Deadline is extended, the term "Voting Deadline" will mean the time and date that is designated. Any extension of the Voting Deadline will be followed as promptly as practicable by notice of the extension.
Voting Procedures:	If you are a holder of a Claim in the Voting Classes, you should deliver a properly completed Ballot to the Claims and Noticing Agent. Ballots must be received by the Claims and Noticing Agent on or before the Voting Deadline. Ballots may be delivered via [_____].
Revocation or Withdrawal of Ballots:	Upon the expiration or termination of this Solicitation, holders may not revoke or withdraw their Ballots; provided, that prior to the Voting Deadline, as may be extended, voting holders may withdraw any votes cast even if such votes have been delivered to the Voting Agent.
Claims and Noticing Agent:	The Debtors have retained Omni Agent Solutions as the Claims and Noticing Agent in connection with this Solicitation. Deliveries of Ballots should be directed to Omni Agent Solutions as set forth below or pursuant to the instructions contained in the Ballots.

E. VOTING PROCEDURES, BALLOTS, AND VOTING DEADLINE

The following instructions for voting to accept or reject the Plan, together with the instructions contained in the Ballot constitute the Voting Instructions. To vote on the Plan, you must be a holder of a Claim in the Voting Classes as of the Voting Record Date. To vote, you must fill out and sign the Ballot enclosed in the Solicitation Package (as defined below).

1. Holders of Claims and Interests Entitled to Vote

Under section 1124 of the Bankruptcy Code, a class of claims or equity interests is deemed to be "impaired" under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder thereof or (2) notwithstanding any legal right to an accelerated payment of such claim or equity interest, the plan (a) cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy or defaults of a kind that do not require cure), (b) reinstates the maturity of such claim or equity interest as it existed before the default, (c) compensates the holder of such claim or equity interest for any damages from such holder's reasonable reliance on such legal right to an accelerated payment, (d) if such claim or such interest arises from a failure to perform nonmonetary obligations, other than a default arising from a failure to operate a nonresidential real property lease, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure and

(e) does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

The following table sets forth (a) a simplified summary of which Classes are entitled to vote on the Plan and which are not, and (b) the estimated Allowed amount (in USD millions), the estimated recovery percentage and/or the voting status for each of the separate Classes of Claims and Interests provided for in the Plan.

Class	Claim or Interest	Entitled to Vote	Estimated Allowed Amount[4]	Plan Recovery
1	Other Priority Claims	No—Presumed to Accept	$[__]	100%
2	Other Secured Claims	No—Presumed to Accept	$[__]	100%
3A	2010 Credit Facility Claims	Yes	$[__]	100%
3B	2019 RCF Claims	Yes	$[__]	100%
4A	2010 Bond Claims	Yes	$[__]	100%
4B	2012 Bond Claims	Yes	$[__]	100%
5	General Unsecured Claims	Yes	$[__]	[___]%
6	Abuse Claims	Yes	$[__]	[___]%
7	Interests in Delaware BSA, LLC	No—Presumed to Accept	N/A	100%

In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Voting Classes are impaired under the Plan and, to the extent Claims in the Voting Classes are deemed Allowed, the holders of such Claims will receive distributions under the Plan. As a result, the holders of Allowed Claims in each of these Classes are entitled to vote to accept or reject the Plan.

Holders of Claims in Classes 1 and 2 and holders of Interests in Class 7 are Unimpaired under the Plan and are therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, no holders of Claims or Interests in such Classes shall be entitled to vote to accept or reject the Plan.

Accordingly, the Debtors are only soliciting votes on the Plan from holders of Allowed Claims or Interests in Classes 3A, 3B, 4A, 4B, 5, and 6. If your Claim or Interest is not included in the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package, including a Ballot setting forth detailed voting instructions. If your Claim is included in the Voting Classes, you should read your Ballot and carefully follow the instructions included in the Ballot. Please use only the Ballot that accompanies this Disclosure Statement or the Ballot that the Debtors otherwise provided to you.

[4] Figures with respect to the Allowed amounts of the Claims set forth in this chart are based upon the Debtors' best estimates of such Claims as of the date of this Disclosure Statement.

If an objection has been filed with respect to your Claim, you are not entitled to vote on the Plan (unless your Claim is only disputed in part, in which case you shall be entitled to vote solely on account of the undisputed portion of your Claim) unless you obtain an order of the Bankruptcy Court either resolving the objection or temporarily allowing your claim for voting purposes. In addition, if your Claim is identified in the Schedules as disputed, contingent, or unliquidated, you are not entitled to vote on the Plan unless you obtain any order of the Bankruptcy Court temporarily allowing such Claim for voting purposes (or otherwise allowing such Claim).

As set forth in the Confirmation Hearing Notice and in the Disclosure Statement Order, holders of Claims who seek to have their claims temporarily allowed by the Bankruptcy Court for voting purposes must file on the docket and serve on parties entitled to receive service thereof a motion seeking such relief no later than [____], 2020.

A vote on the Plan may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for determining the amount of Claims that each creditor is entitled to vote in these Chapter 11 Cases and how votes will be counted under various scenarios.

Your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a plan of reorganization that each class that is impaired and entitled to vote under a plan votes to accept such plan, unless the plan is being confirmed under the "cram-down" provisions of section 1129(b) of the Bankruptcy Code. Section 1129(b) permits confirmation of a plan of reorganization, notwithstanding the nonacceptance of the plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims or interests votes to accept a proposed plan. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each nonaccepting class.

2. Vote Required for Acceptance by a Class of Claims

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims in such class that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims in such class that have voted. Acceptance by a class of interests requires an affirmative vote of at least two-thirds in amount of the total allowed interests in such class that have voted.

3. Solicitation Package

The package of materials (the "Solicitation Package") sent to the Voting Classes contains:

a. the Ballot and applicable voting instructions;

b. this Disclosure Statement and all exhibits hereto, including the Plan and all exhibits thereto;

c. the order approving to Disclosure Statement Motion (without exhibits) (the "Disclosure Statement Order");

d. a notice of the Confirmation Hearing (the "Confirmation Hearing Notice"); and

e. a cover letter from the Debtors.

The Debtors will distribute the Solicitation Packages to holders of Claims in the Voting Classes via [_____] before the Voting Deadline. In addition, the Plan, this Disclosure Statement, and, once they are filed, all exhibits to both documents (including the Plan Supplement) will be made available online at no charge at the website maintained by the Noticing and Claims Agent, Omni Agent Solutions (the "Claims and Noticing Agent"), at [_____]. In addition, the Debtors will provide parties in interest (at no charge) with hard copies of the Plan and/or Disclosure Statement, as well as any exhibits thereto, upon request to the Noticing and Claims Agent by email at [_____] or by telephone at [(___) ___-____].

4. Voting Procedures, Ballots and Voting Deadlines

[_____], 2020 (the "Voting Record Date") is the date that will be used for determining which holders of Interests are entitled to vote to accept or reject the Plan and receive the Solicitation Package in accordance with the solicitation procedures. Except as otherwise set forth in the Plan or in this Disclosure Statement, the Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' creditors and other parties in interest.

If you are entitled to vote to accept or reject the Plan, one or more Ballot(s) has been enclosed in your Solicitation Package for the purpose of voting on the Plan. Please vote and return your Ballot(s) in accordance with the instructions accompanying your Ballot(s).

You should carefully review (1) the Plan, (2) this Disclosure Statement, (3) the Disclosure Statement Order, (4) the Confirmation Hearing Notice, and (5) the detailed instructions accompanying your Ballot prior to voting on the Plan.

After carefully reviewing these materials, including the detailed instructions accompanying your Ballot(s), please indicate your acceptance or rejection of the Plan by completing the Ballot(s). All votes to accept or reject the Plan with respect to any Class of Claims entitled to vote on the Plan must be cast by properly submitting the duly completed and executed form of Ballot designated for such Class. Holders of Claims voting on the Plan should complete and sign the Ballot(s) in accordance with the instructions thereon, being sure to check the appropriate box entitled "Accept the Plan" or "Reject the Plan." In order for your vote to be counted, you must complete and return your Ballot(s) in accordance with the instructions accompanying your Ballot(s) on or before the Voting Deadline. Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you.

In order for the Holder of a Claim in the Voting Class to have such Holder's Ballot counted as a vote to accept or reject the Plan, such Holder's Ballot must be properly completed, executed, and delivered to [_____] so that such Holder's Ballot is actually received by the Claims and Noticing Agent on or before the Voting Deadline, *i.e.* [_____], 2020 at [__]:00 [_].m. prevailing Eastern Time.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM IN THE VOTING CLASSES BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN, OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM IN THE VOTING CLASSES MUST VOTE ALL OF ITS CLAIMS WITHIN SUCH CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM IN THE VOTING CLASSES WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTOR THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE VOTING CLASSES AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASSES FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

5. Confirmation Hearing and Deadline for Objections to Confirmation

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, shall hold a hearing to confirm a plan of reorganization. The Confirmation Hearing pursuant to section 1128 of the Bankruptcy Code will be held on [_____], 2020 at [_].m. prevailing Eastern Time, before the Honorable Judge [_____], United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, [___] Floor, Courtroom [___], Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the

Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. Any objection to Confirmation of the Plan must: (i) be made in writing; (ii) state the name and address of the objecting party and the nature of the claim or interest of such party; (iii) state with particularity the legal and factual basis and nature of any objection to the Plan; and (iv) be filed with the Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy court so that they are received on or before [_____] at [__]:00 [_].m. prevailing Eastern Time.

ARTICLE II. ORGANIZATION OVERVIEW AND CORPORATE HISTORY

A. Organization Overview

1. The Boy Scouts of America

The BSA was incorporated in the District of Columbia on February 8, 1910, and subsequently chartered by Congress as a non-profit corporation under Title 36 of the United States Code on June 15, 1916. 36 U.S.C. §§ 30901-08. The Congressional Report in Support of the Act to Incorporate the Boy Scouts of America provides that the Scouting program "is intended to supplement and enlarge established modern educational facilities in activities in the great and healthful out of doors where may be the better developed physical strength and endurance, self-reliance, and the powers of initiative and resourcefulness, all for the purpose of establishing through the boys of today the very highest type of American citizenship." H.R. Rep. No. 64-130 at 245 (1916). Consistent with this intention, the BSA's congressional charter states that the purpose of the organization is to "promote, through organization, and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in Scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by Boy Scouts." BSA Charter, § 3; *see also* BSA Bylaws, § 2 ("In achieving this purpose, emphasis shall be placed upon its educational program and the oaths, promises, and codes of the Scouting program for character development, citizenship training, leadership, and mental and physical fitness."). These mandates have been the guiding light for the BSA's work for over a century.

As a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. It is the BSA's mission "to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law." *See* https://www.scouting.org/legal/mission/. Unlike a profit-seeking corporation, the BSA's senior leadership owes fiduciary duties to the Scouting mission, not the generation of profits. The successful delivery of this mission to youth in America is the BSA's fiduciary obligation. To that end, all Scouting policies, practices, and programming are specifically designed to train Scouts in responsible citizenship, character development, and self-reliance, in a manner consistent with the BSA's mission. Thus, to be eligible for Scouting, individuals must subscribe to, and conduct themselves in accordance with, the Scout Oath and the Scout Law:

- **Scout Oath.** "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight."[5]

- **Scout Law.** "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."[6]

At all levels of Scouting, these fundamental tenets of the BSA's mission are taught to Scouts so they can successfully develop into our nation's next generation of great leaders.

In support of its mission, the BSA has long facilitated the spread of Scouting in the United States through units chartered by local partners and has also designed and implemented an array of its own outdoor activities, educational and skill-building programs, and career training. Since its inception, more than 130 million Scouts have participated in the BSA's programming, and more than 35 million adult leaders have helped carry out the BSA's mission. The BSA has grown to be one of the largest youth organizations in the country, as well as one of the largest Scouting organizations in the world. In 2019, nearly three million Scouts and adult leaders were involved in Scouting and helped deliver more than 13 million Scouting service hours to communities across the country.

Throughout its 110-year history, the BSA has continually looked for ways to offer Scouting to more young men and women. In 1912, the BSA formed the Camp Fire Girls as a sister organization. In the 1930s, the BSA introduced Cub Scouts as a program for younger participants. Other past and current BSA programs include Air Scouts, Sea Scouts, Exploring, Venturing, and STEM Scouts. In 2018, the BSA welcomed girls into Cub Scouts, and in 2019, the BSA began chartering girl units to join Scouts BSA, the program previously known as Boy Scouts. Since 2017, over 200,000 girls have participated in Scouting, including approximately 130,000 in Cub Scouts, 30,000 in Scouts BSA, and 65,000 in Venturing, Sea Scouts, and Exploring. The BSA has also organized affiliated organizations and affinity groups—such as Learning for Life, Order of the Arrow, and National Eagle Scout Association—to provide additional educational, civic, and developmental programs for Scouts, as well as engagement opportunities for Scouting alumni and supporters.

The BSA also provides other services critical to continued Scouting opportunities for America's young men and women, including core program content, such as events and other activities at high adventure facilities; the procurement and sale of uniforms and equipment; information technology and digital resources; training of professional Scouters to serve in Local Councils; communications and publications including magazines and online content for Scouts and adult leaders; training development and delivery; national events; registration systems; and other quality control services. In addition, every four years, the BSA hosts a National Jamboree, where tens of thousands of Scouts from around the country gather to celebrate Scouting, learn about teamwork and leadership, and develop lifelong friendships.

The national headquarters of the BSA is in Irving, Texas. The BSA has approximately

[5] *See* BSA, *What are the Scout Oath and Law?*, available at https://www.scouting.org/discover/faq/question10/.
[6] *See* BSA, *About the BSA*, available at https://www.scouting.org/about/.

1,650 employees, all of whom are located in the United States and its territories. The BSA's employees are located at its headquarters; at the BSA's national warehouse and distribution center in Charlotte, North Carolina; at approximately 174 official BSA Scout Shops located throughout the country; and at the BSA's four high adventure facilities located in Florida and the U.S. Virgin Islands, New Mexico, West Virginia, and Minnesota and parts of Canada. The BSA's sources of funding include membership fees, high adventure facility fees, donor contributions, legacies, and bequests, corporate sponsorships, grants from foundations, and supply sales at Scout shops, on its website, and directly to Local Councils. In 2019, the BSA's total gross revenues were approximately $394 million. Of this total, approximately 30% were attributable to supply sales, approximately 16% to membership fees, approximately 15% to high adventure facility operations, approximately 13% to investments, approximately 8% to contributions, and approximately 8% to event fees.

2. The Scouting Experience

Delivery of the Scouting mission is the fiduciary obligation of the BSA. Local Councils and Chartered Organizations, and the Scouting units that they sponsor, operationalize this mission. Through these organizations, Scouts learn the values embodied in the Scout Oath and Scout Law. From the beginner-level Cub Scouts to the most advanced offerings at high adventure facilities, all Scouting programming is intended to instill in the next generation of leaders the fundamental tenets of the BSA's mission.

a. Cub Scouts

The gateway to the Scouting program is Cub Scouts, where younger participants (kindergarten through fifth grade) first build character, learn citizenship, and develop personal skills and physical fitness. The den—a small group of six to eight children who are the same grade and gender—is the cornerstone of Cub Scouting. In the den, Cub Scouts make friends, develop new skills and interests, and learn respectfulness, sportsmanship, and citizenship. Several dens in the same community form a pack. At pack meetings, Cub Scouts engage in a wide range of fun and interactive activities, including games, arts and crafts, skits, and songs. Packs also hold special events and activities, such as advancement banquets, field trips, community service projects, and, most famously, the Pinewood Derby. Cub Scouts attend camp outings and participate in other local outdoor activities, such as hiking, biking, swimming, sledding, and a variety of team sports, all of which help instill in them a life-long respect for the environment, a core principle of the Scouting mission. Many of these outdoor adventures are held at Local Council-owned properties specifically developed and maintained for the purpose of delivering the Scouting program. Cub Scout programming is family-oriented and adult volunteers, many of whom are parents of participating Cub Scouts, play an active role in den and pack leadership.

b. Scouts BSA

After Cub Scouts, youth participants progress to Scouts BSA. The Scouts BSA program focuses on service to others, community engagement, leadership development, respect for the environment, and personal and professional growth. In Scouts BSA, adult volunteers take a back seat, and Scouts themselves assume important leadership roles at their own meetings and

activities. Scouts BSA units, known as "troops," are single-gender and composed of several smaller groups called "patrols." At patrol and troop meetings, Scouts engage in knowledge- and skill-based challenges, team building exercises, and community service projects, such as cleaning parks and other public spaces, enhancing nature preserves, building trails in wildlands, constructing playgrounds, creating libraries, collecting meals for food banks, visiting with the sick or elderly, or responding to national emergencies.

In Scouts BSA, every Scout is able to take on a leadership role in his or her patrol, which provides one of the unique experiences in Scouting that inspires young people from all backgrounds, experiences, and capabilities to see themselves as a leader and hone skills that will last a lifetime. In addition, Scouts are encouraged to participate in a wider suite of outdoor activities, including weekend camping trips, summer camps, and themed-camporees where they are exposed to more advanced Scouting programming and skill-building in diverse areas, such as first aid, rock climbing, forestry, conservation, and environmental awareness. At these events, Scouts from different troops work together and form life-long bonds. Local Council camps and other facilities are the hub for many of these outdoor adventures.

Central tenets of Scouts BSA programming are rank advancement and merit badges. Young men and women begin their journey in Scouts BSA at the rank of Scout. As they master skills and learn important life lessons, they progress to the ranks of Tenderfoot, Second Class, First Class, Star, and then Life. Along the way, Scouts earn merit badges that recognize hard work and achievement in sports, arts, sciences, trades, personal finance, and future careers. Just last year, young men and women earned more than 1.7 million merit badges that represent skills that will help them succeed throughout their lives.

Scouts who successfully complete this rigorous program, serve as a leader in their troop of a designated period of time, and design and lead a significant service project, are awarded Scouts BSA's highest rank of Eagle. Less than 8% of Scouts achieve the Eagle Scout rank, and past Scouts achieving this honor permeate our nation's government, economy, and culture, including President Gerald Ford, astronaut Neil Armstrong, civil rights leader Percy Sutton, and entrepreneurs Sam Walton and Ross Perot, to name a few.

c. Advanced Scouting

In addition to Scouting's core Cub Scouts and Scouts BSA offerings, older Scouts participate in other advanced programs. In Venturing, co-ed groups form their own Scout-led "crews" that design and carry out specialized programming and activities. The opportunities available through Venturing are endless: A Scout interested in the outdoors can join a Venturing crew that backpacks in state or national parks and kayaks in local or remote rivers; a Scout interested in the sciences can join one that builds robots or volunteers at planetariums and museums; and a Scout interested in community service can join one that volunteers at soup kitchens or rebuilds homes in the wake of natural disasters. Venturing crews instill in their members the importance of adventure, leadership, personal growth, and service, all of which are fundamental to the Scouting mission.

Other advanced programs for older Scouts include Sea Scouts, where Scouts learn boating skills and water safety, and also study maritime heritage. Sea Scouts participate in

boating and other water-based excursions, such as scuba diving off the Florida Keys and kayaking in the Everglades. Another program, Exploring, is the BSA's preeminent workforce development program. Through Exploring, Scouts join career-specific clubs sponsored by local businesses, government agencies, and community organizations. Scouts develop important personal and professional skills through immersive, on-the-job training. And STEM Scouts offers the Scouting experience with less emphasis on the outdoors. Participating young men and women learn about and nurture a lifelong interest in science, technology, engineering, and math through creative, hands-on activities, educational field trips, and interaction with STEM professionals.

d. High Adventure Facilities

The apex of the Scouting program is found at the four iconic high adventure facilities operated by the BSA. At these facilities, Scouts experience the truest embodiment of what Congress envisioned when it chartered the organization more than a century ago—unparalleled facilities hosting outdoor activities, educational programs, and leadership training. As Scouts progress through Scouting, these high adventure facilities provide them with opportunities to implement the knowledge and training that they gained through Cub Scouts and Scouts BSA at locations and in programs that are not available anywhere else in the country. Not surprisingly, there is strong demand for these high adventure facilities—more than 70,000 Scouts and Scouters participate in the programs and events held there every year, and more than two million have done so since their openings. As their storied histories portend, these facilities and the programming they allow play a critical role in the BSA's delivery of the Scouting program to young Americans.

(i) Northern Tier

The BSA opened Northern Tier—located on the boundary waters between Minnesota and Canada—as its first high adventure facility in 1923. For nearly a century, the BSA has maintained several wilderness canoe bases at Northern Tier from which generations of Scouts have explored millions of acres of lakes, rivers, forests, and wetlands of northern Minnesota, northwestern Ontario, and southeastern Manitoba. Scouts at Northern Tier embark on canoe treks covering up to 150 miles and lasting as long as two weeks. Along the way, Scouts camp at remote, unstaffed campgrounds, where they must learn and implement Scouting's philosophy of self-sufficiency. In the winter, Northern Tier transforms into a cold-weather camping outpost, where Scouts can engage in winter activities such as cross-country skiing, dog sledding, snow shoeing, and ice fishing. Over the years, the BSA has hosted almost 250,000 Scouts and Scouters at Northern Tier. *See generally* Northern Tier*, About Northern Tier*, available at https://www.ntier.org/about/.

(ii) Philmont Scout Ranch

The BSA's largest high adventure facility, Philmont, was opened in 1938 on nearly 150,000 acres of rugged mountain wilderness in the Sangre de Cristo range of the Rocky Mountains in northeastern New Mexico. At Philmont, Scouts have access to a labyrinth of backpacking trails, as well as 35 staffed camps and 55 trail camps, spread across mountainous terrain ranging in elevation from 6,500 to 12,500 feet. In addition, the BSA's programming at

Philmont features the best of the Old West—horseback riding, burro packing, gold panning, chuckwagon dinners, and interpretive history—along with physical challenges such as rock climbing, mountain biking, and sport shooting. These experiences teach Scouts about our nation's frontier history and instill in them a lifelong sense of adventure and confidence in challenging situations. In addition, Philmont hosts a series of leadership training programs for adult leaders. Well over a million Scouts and Scouters have experienced the unique and diverse offerings of Philmont. *See generally* Philmont Scout Ranch*, About Philmont*, available at https://www.philmontscoutranch.org/about/.

(iii) Florida Sea Base

Florida Sea Base ("Sea Base") was commissioned by the BSA as its third high adventure facility in 1980. At several facilities in south Florida and the U.S. Virgin Islands, Scouts swim, snorkel, scuba dive, and fish. Scouts also participate in boating and sailing adventures throughout the Caribbean, as well as primitive camping on several island-based settlements. Through Sea Base's programming, Scouts learn to trust one another and work as a team, and also learn the importance of conservation and the preservation of our environment. Since opening its doors, the BSA has provided aquatic adventures to nearly 300,000 Scouts and Scouters at Sea Base. *See generally* Sea Base*, About Sea Base*, available at https://www.bsaseabase.org/about/.

(iv) Summit Bechtel Reserve

Most recently, in 2013, the BSA opened the Summit Bechtel Reserve ("Summit") in the wilds of West Virginia. It is the preeminent summer camp, high adventure facility, and leadership training center for the millions of Scouts and adult leaders involved in Scouting now and for generations to come. At the Summit, Scouts explore the New River Gorge region through white-water rafting, kayaking, canyoneering, and advanced orienteering, Scouts also participate in more modern adventures, such as skateboarding, ATV riding, freestyle BMXing, and zip-lining. This programming pushes Scouts past their comfort zones, where they can better develop and master the leadership, character, citizenship, and fitness that are core to the BSA's mission. In addition to its regular programming, the BSA hosts a National Jamboree at the Summit every four years. In 2019, the BSA hosted the largest World Jamboree ever, with over 45,000 attendees Scouts in attendance from 167 countries. It was the first such event held in the United States in over 50 years. All told, approximately 200,000 Scouts and Scouters have experienced the wonders of the Summit since it opened less than a decade ago. *See generally* Summit Bechtel Reserve, *About Us*, available at https://www.summitbsa.org/about-us/summit-story/.

3. Delivery of the Scouting Programs

Local Councils, and Chartered Organizations work closely together to carry out the mission of Scouting. Each of these entities plays a vital role in training Scouts in responsible citizenship, character development, and self-reliance. Despite their common purpose, the BSA, Local Councils, and Chartered Organizations are legally independent entities. Each Local Council is a non-profit corporation under the laws of its respective state and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Each Local Council also maintains its own senior management and independent volunteer board of directors. The BSA does not hold any equity interest in any Local Council, Chartered Organization, or Scouting unit,

and only the BSA and its wholly owned subsidiary, Delaware BSA, LLC, are debtors in these Chapter 11 Cases.[7]

a. Local Councils

In furtherance of its mission, the BSA charters independently incorporated Local Councils to facilitate the delivery of the Scouting program. Local Councils are not agents of the BSA, and they have no authority to bind the organization.

There are currently 261 Local Councils, covering geographic areas of varying size, population, and demographics. Although they are legally independent of the BSA, Local Councils are required to organize, operate, and promote Scouting in a manner that is consistent with the BSA's mission and with the BSA's charter, bylaws, rules and regulations, policies, and guidelines. Local Councils generally do not receive financial support from the BSA; instead, they rely upon their own fundraising through donations, product sales, special events, and corporate gifts. The BSA does, however, provide certain corporate and administrative support to the Local Councils in exchange for shared-services and other fees and reimbursements, as well as for the assistance of Local Councils in delivering the Scouting mission. This support includes human resources, access to training facilities, marketing services, and general liability insurance coverage.

Although not a precise analogue, the relationship between the BSA and the Local Councils is similar to that of a franchisor and franchisee. The BSA is responsible for developing and disseminating the structure and content of the Scouting program, owns and licenses intellectual property, and provides training and support services, including corporate services such as human resources, marketing and legal functions, and information technology. The BSA, in addition to holding the power to grant charters to Local Councils, may also revoke a Local Council's charter for failing to meet national standards. Local Councils, for their part, play a key role in delivering the Scouting program. Local Councils also serve the vital function of collecting member fees and remitting such funds to the BSA. Each of these Local Councils is crucial to the BSA's ability to carry out its mission.

The most important functions served by Local Councils are their recruiting of Chartered Organizations and their oversight of the operation of the Scouting units that those Chartered Organizations create. Local Councils also provide other services essential to Scouting, including: funding of local Scouting programs and initiatives; recruiting of Scouts and volunteer leaders; providing Scout and volunteer training; offering opportunities for rank advancement; locally enforcing the BSA's policies, rules, and regulations; and registering members and leaders. In addition, many Local Councils own and operate service centers, camps, and other facilities that provide the local resources necessary for a successful Scouting program.

A corps of qualified and trained professional and volunteer Scouters is essential for Local Councils to provide these services. To that end, each of the Local Councils hires a professional

[7] In addition to Local Councils and Chartered Organizations, the BSA is also affiliated with several non-stock entities, each of which is related to, but legally independent of, the BSA. Several of these affiliated, non-stock entities are directly involved in delivering the Scouting program, while others, such as the National Boy Scouts of America Foundation, serve the BSA's mission in other ways.

Scout executive and other key staff from a pool of professionals—pre-commissioned by the BSA—who have demonstrated the moral, educational, and emotional qualities necessary for leadership. Those commissioned professionals and other staff members support the Local Councils in connection with day-to-day operations, recruitment of new Chartered Organizations, management of fundraising, maintenance of program facilities, and numerous other services. Thousands of volunteers also donate their time and resources to support the Local Councils, including through assistance with programming, such as unit leadership, unit activities, merit badge colleges, youth and adult leader training and advancement opportunities, and fundraising events.

b. Chartered Organizations

There are currently more than 41,000 Chartered Organizations in the country. They are typically local organizations—such as faith-based institutions, clubs, civic associations, educational institutions, businesses, and groups of citizens—that sponsor the more than 81,000 local Scouting units throughout the country. Some Chartered Organizations are actively involved with the units that they sponsor and use Scouting as a means to further in their own mission or serve their broader communities. In addition, Chartered Organizations assist with recruiting and vetting adult leaders and other volunteers, and provide meeting space and other monetary and in-kind support to the packs and troops that they sponsor.

B. Corporate and Capital Structure

1. Affiliated Entities

a. Delaware BSA, LLC

Debtor Delaware BSA, LLC ("Delaware BSA"), of which the BSA is the sole member, is a non-profit limited liability company that was incorporated under the laws of Delaware on July 11, 2019. Delaware BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Delaware BSA has pledged substantially all of its assets to secure the obligations of the BSA and Arrow under the 2019 RCF Agreement, the Prepetition Security Agreement (2020), the 2010 Bond Agreement and the 2012 Bond Agreement. Delaware BSA's principal asset is a depository account located in Delaware.

b. BSA Asset Management, LLC and BSA Commingled Endowment Fund, LP

Related Non-Debtor Entity BSA Asset Management, LLC ("Asset Management") is a Delaware limited liability company of which the BSA is the sole member. BSAAM manages the BSA's and certain Local Councils' investments through the BSA Commingled Endowment Fund, LP (the "Endowment Fund"), a Delaware limited partnership of which BSAAM is the general partner. The BSA and certain Local Councils are limited partners of the Partnership. Each limited partner receives units of partnership interest in proportion to, and in exchange for, its financial contributions to the Partnership. In addition to its role as general partner of the Partnership, BSAAM is the settlor of the BSA Endowment Master Trust.

c. BSA Endowment Master Trust

Related Non-Debtor Entity BSA Endowment Master Trust (the "Master Trust") is a non-profit 501(c)(3) Delaware trust established under the laws of Delaware exclusively for the purpose of investing funds contributed to the Partnership by the BSA and participating Local Councils. The Master Trust is a multiple pooled account trust arrangement established to provide economies of scale and efficiency of administration to eligible entities that elect to invest their funds in the Master Trust. Global Trust Co. is the trustee of the Master Trust as of the Petition Date. In addition, the Master Trust is also a limited partner of the Endowment Fund

d. National Boy Scouts of America Foundation

Related Non-Debtor Entity National Boy Scouts of America Foundation (the "National Foundation") is a non-stock, non-profit corporation under the laws of the District of Columbia and exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. The Foundation exists to help secure the future of Scouting at the Local Council level by providing support for major-gift fundraising efforts across the organization. The Foundation is governed by a separate board of directors.

e. Learning for Life

Related Non-Debtor Entity Learning for Life is a non-stock, non-profit corporation under the laws of the District of Columbia that is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. The mission of Learning for Life is to empower students to build exceptional character and leadership skills by guiding them through an innovative, research-based curriculum that enhances the learning experience and teaches the skills necessary to succeed both academically and throughout their lives. Learning for Life also administers the Exploring club career education program for young men and women. The Exploring program teaches important life and career skills to young people from all backgrounds through immersive career experiences and mentorship provided by thousands of local, regional and national businesses and organizations, which offer career-specific posts or clubs that help youth pursue their special interests, grow and develop. Learning for Life is governed by a separate board of directors.

f. Arrow WV, Inc.

Arrow WV, Inc. ("Arrow") is a non-stock, non-profit corporation under the laws of West Virginia that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Arrow was formed in 2009 to facilitate the acquisition and development of the Summit. Arrow owns the real property and improvements that comprise the Summit and leases the Summit to BSA. Construction of the Summit was accomplished with the proceeds from the 2010 Bond and the 2012 Bond to the BSA from Fayette County, West Virginia. The bonds were issued and purchased by JPMorgan Chase Bank, National Association ("JPMorgan" or the "Prepetition Secured Lender"). The BSA provided funding for the construction of the facility utilizing donations and pledges to the BSA and other BSA financial support. Arrow is governed by separate board of directors.

g. Atikaki Youth Ventures Inc. and Atikokan Youth Ventures Inc.

Related Non-Debtor Entities Atikaki Youth Ventures Inc. ("Atikaki") and Atikokan Youth Ventures Inc. ("Atikokan") are non-share capital corporations formed under the laws of Canada, with registered addresses in Winnipeg, Manitoba. Atikaki maintains the Bissett, Manitoba base for the Northern Tier high adventure facility, which offers canoe trips into the Atikaki Provincial Park and Woodland Caribou Provincial Park. Atikokan maintains the Don Rogert Canoe Base for the Northern Tier high adventure facility in Atikokan, Ontario, Canada, which offers canoe trips into the Quetico and Crown Lands. Each of Atikaki and Antikokan are governed by separate boards of directors.

h. Texas BSA, LLC

Related Non-Debtor Entity Texas BSA, LLC ("Texas BSA") is a non-profit limited liability company that was incorporated under the laws of Texas on July 12, 2019. The BSA is the sole member of Texas BSA. As of the Petition Date, Texas BSA is an inactive entity.

i. NewWorld 19, LLC

Related Non-Debtor Entity NewWorld 19, LLC, ("NewWorld") was formed in connection with the 2019 World Jamboree. As of the Petition Date, NewWorld is an inactive entity.

2. Capital Structure

The following is an overview of the BSA's capital structure and approximate outstanding obligations (collectively, "Prepetition Obligations") under the 2010 Credit Agreement, the 2010 Bond Agreement, the 2012 Bond Agreement, and the 2019 RCF Agreement (collectively, the "Prepetition Secured Agreements") as of the Petition Date:

Description	Amount ($mm)[8]	Interest Rate	Maturity
2019 RCF Agreement			
- 2019 RCF Revolver	$[0]	L + 125	Mar. 2021
- 2019 RCF Letters of Credit	$61,542,720		
2010 Credit Agreement			
- 2010 Revolver	$25,212,317	L + 125	Mar. 2020
- 2010 Term Loan	$11,250,000	L + 100	Mar. 2022
- 2010 Letters of Credit	$44,299,743		
2012 Bond Agreement	$145,662,101	2.94%	Mar. 2022
2010 Bond Agreement	$40,137,274	3.22%	Nov. 2020

[8] Estimated amounts as of February 18, 2020.

Total Secured Debt	**$328,104,155**[9]		

Collectively, the Prepetition Obligations total approximately $328,104,155. Each Prepetition Secured Agreement is secured by the same collateral ("Prepetition Collateral")—substantially all property loaned, leased, or operated by the Debtors and Arrow. Under each Prepetition Secured Agreement, the BSA is the borrower and JPMorgan is the sole secured lender thereto. The Debtors assert that the value of the Prepetition Collateral exceeds the value of the Prepetition Obligations.

a. 2010 Credit Agreement

On August 11, 2010, the BSA entered into the $100.0 million 2010 Credit Agreement with JPMorgan. Arrow is a guarantor under the facility. The 2010 Credit Agreement has been amended seven times, most recently in conjunction with the entry into the 2019 RCF Agreement on March 21, 2019.

The 2010 Credit Agreement has two components, a $75.0 million revolving credit component (the "2010 Revolver") and a $25.0 million term loan component (the "2010 Term Loan"). The 2010 Revolver, which allows the organization to issue letters of credit, is scheduled to mature on March 2, 2020, while the 2010 Term Loan is scheduled to mature on March 2, 2022.

Pursuant to the terms of the 2010 Credit Agreement, the BSA's outstanding obligations under the 2010 Credit Agreement are secured by the "Collateral," which was defined under that certain *Security Agreement* dated August 11, 2010 (as amended on November 5, 2010 and March 9, 2012, the "Original Security Agreement") and the 2010 Credit Agreement as (a) a lien on all "accounts," "payment intangibles," (each as such defined in Article 9 of the Uniform Commercial Code) and the proceeds thereof and (b) all property in which liens were granted to the Prepetition Agent.

In connection with the BSA's entry into the 2019 RCF Agreement on March 21, 2019, the Original Security Agreement was amended and restated pursuant to the Prepetition Security Agreement (2019). Pursuant to the Prepetition Security Agreement (2019) and certain mortgages (collectively, the "Mortgages"), BSA and Arrow granted to JPMorgan contemporaneously with the BSA's entry into the 2019 RCF Agreement a security interest in the organization's (a) headquarters in Texas and (b) high-adventure facilities in Florida, West Virginia, New Mexico, and Minnesota/Canada ((a) and (b), collectively, the "Mortgaged Properties"). The Original Security Agreement is secured by the Prepetition Collateral *pari passu* with the other Prepetition Secured Agreements.

As of the Petition Date, the Debtors are truly, justly, and lawfully indebted and liable to JPMorgan for $25,212,317 in respect of revolving loans made, $11,250,000 in respect of term loans made, and $44,299,743 in respect of undrawn letters of credit issued by JPMorgan under the 2010 Credit Agreement.

[9] These amounts include contingent, undrawn letters of credit under the 2019 RCF Agreement and the 2010 Credit Agreement totaling $105,842,463.

b. 2010 Bond Agreement

On November 5, 2010, BSA and Arrow entered into the 2010 Bond Agreement, pursuant to which the Issuer issued the Series 2010A Bonds in an aggregate principal amount of $50,000,000 and Series 2010B Bonds in an aggregate principal amount of $50,000,000 (collectively, the "2010 Bonds"), the proceeds of which were loaned to BSA. On November 5, 2015, the BSA repaid the Series 2010A Bonds in full. The loans from the Issuer to BSA were evidenced by that certain Promissory Note - 2010A executed by BSA and payable to the order of the Issuer in the original principal amount of $50,000,000 which notes were pledged by the Issuer to secure the repayment of the Series 2010A Bonds, and the 2010 Note,. As of the date of issuance of the 2010 Bonds and all dates thereafter, the 2010 Bonds were secured *pari passu* in the same collateral as the loans under the 2010 Credit Agreement.

As of the Petition Date, the Debtors are truly, justly, and lawfully indebted and liable to JPMorgan for $40,137,274 for the remaining outstanding 2010 Bonds under the 2010 Bond Agreement.

c. 2012 Bond Agreement

On March 9, 2012, the BSA and Arrow entered into the 2012 Bond Agreement with the Issuer and JPMorgan, pursuant to which the Issuer issued the Series 2012 Bonds("2012 Bonds") in an aggregate principal amount not to exceed $175 million. As of the date of issuance of the 2012 Bonds and all dates thereafter, the 2012 Bonds were secured *pari passu* in the same collateral as the loans under the 2010 Credit Agreement and the 2010 Bonds. The loans from the Issuer to BSA are evidenced by 2012 Note.

As of the Petition Date, the Debtors are truly, justly, and lawfully indebted and liable to JPMorgan for $145,662,101 under the 2012 Bond Agreement.

d. 2019 RCF Agreement

On March 21, 2019, the BSA entered into the $71.5 million 2019 RCF Agreement with JPMorgan, with Arrow as a guarantor. The 2019 RCF Agreement, which matures on March 21, 2021, is a secured facility with a revolving component and a component under which the BSA can issue letters of credit.

In connection with the execution of the 2019 RCF Agreement, the Debtors granted JPMorgan security interests in the Prepetition Collateral. At the time of the execution, the Debtors contemporaneously entered into the Prepetition Security Agreement (2019) and granted JPMorgan the Mortgages in the Mortgaged Property. The 2019 RCF Agreement is secured *pari passu* with the other Prepetition Secured Agreements.

As of the Petition Date, the Debtors are truly, justly, and lawfully indebted and liable to JPMorgan for $0 in respect of loans made and $61,542,720 in respect of undrawn letters of credit issued by JPMorgan under the 2019 RCF Agreement.

e. Prepetition Security Agreement (2020)

On February 3, 2020, in connection with a capital contribution by the BSA to Delaware BSA, the BSA, Delaware BSA, and JPMorgan entered into the Prepetition Security Agreement (2020). Pursuant to the Prepetition Security Agreement (2020), Delaware BSA pledged its accounts and other property, except to the extent excluded by the Prepetition Security Agreement (2020), as security for the Prepetition Obligations.

3. General Unsecured Claims

General Unsecured Claims consist of any Claim against the Debtors that is not an Administrative Expense Claim, a Priority Tax Claim, an Other Priority Claim, an Other Secured Claim, a 2010 Credit Facility Claim, a 2019 RCF Claim, a 2010 Bond Claim, a 2012 Bond Claim, or an Abuse Claim that are neither secured by collateral nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court.

Any Rejection Damages Claims for damages alleged to arise from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be classified as Allowed General Unsecured Claims and treated in accordance with Section III.B.7 of the Plan.

The Debtors anticipate that General Unsecured Claims will include trade Claims, workers compensation Claims, non-Abuse litigation Claims (primarily for personal injury), deferred compensation Claims, and Claims relating to the Debtors' retirement programs.

C. Corporate Governance

Pursuant to section 1129(a)(5) of the Bankruptcy Code, to the extent that there are anticipated changes in the Reorganized Debtors' directors and officers, the Debtors will identify those changes in the Plan Supplement and thereafter such changes will be attached to the Plan as Exhibit Q. After the Effective Date, the Reorganized Debtors' organizational documents, as each may be amended thereafter from time to time, shall govern the designation and election of directors of the Reorganized Debtors.

ARTICLE III. EVENTS LEADING TO THE CHAPTER 11 CASES

The safety of children in its programs is the most important priority of the BSA. The BSA today enforces a robust set of multilayered policies and procedures to protect the young men and women involved in Scouting. These measures are informed by respected experts in the fields of child safety, law enforcement, and child psychology. The BSA is committed to the protection of its Scouts, and that commitment is integral to the BSA's identity and mission as it seeks to continue instilling values of leadership, service, and patriotism in millions of children who participate in Scouting programs across the country.

A. Child Sexual Abuse Claims against the BSA

Despite its current record, in the past, predominately at a time when there was little

expertise across any organization about the topic of abuse prevention, predators were able to use Scouting and other youth programs to access children. Given these past events and recent changes in the legal landscape governing sexual abuse claims, the BSA and Local Councils are defendants in hundreds of lawsuits related to acts of sexual abuse in its Scouting programs. The vast majority of these claims date back to more than 30 years ago, before the BSA implemented a series of strengthened policies and practices designed to keep Scouts safe. These enhanced youth-protection measures have proven effective—Scouts are now safer than they have ever been.

The BSA recognizes that current youth protection efforts cannot change the past. Nor can they repair the damage caused by abuse suffered by Scouts because of those who used the program to harm children. The BSA is committed to providing equitable compensation to victims and to continually improving its policies and practices to prevent future abuse in Scouting. However, the cost of addressing historical abuse claims has become unsustainable. The BSA cannot continue to address these claims through piecemeal litigation and remain viable as a non-profit corporation. Accordingly, the BSA has determined this filing is necessary to both compensate victims and ensure that the BSA retains the capability to carry out its mission.

As of the filing of this case, there were approximately 275 pending civil actions asserting personal injury claims against the BSA and certain Local Councils and Chartered Organizations related to abuse suffered by a Scout at the hands of a Scouting leader, volunteer, or another member of the BSA (collectively, "Pending Abuse Actions"). The Pending Abuse Actions are being litigated in dozens of state and federal jurisdictions around the country. Although the Pending Abuse Actions vary in their procedural posture, very few are close to trial and most are in either the discovery or motion-practice phase.

The BSA believes the ongoing publicity surrounding such claims has encouraged many victims to come forward in advance of this filing, and has been made aware of approximately 1,400 additional claims of Abuse. In sum, the BSA is aware of approximately 1,700 pending or asserted claims of Abuse against the BSA or a Local Council. To the extent claims of Abuse have not been asserted, the BSA encourages individuals to submit proofs of such claims prior to the BSA's requested bar date.

1. The Impact of Statute-of-Limitations Changes on Claims against the BSA and Non-Debtor Stakeholders

The number of claims against the BSA has increased dramatically over the past twenty years due to changes to state statutes of limitations governing causes of action alleging child sexual abuse. Since 2002, 17 states have enacted legislation allowing individuals to bring claims that would otherwise have been barred by the applicable limitations period. Most of these jurisdictions (including California, Delaware, Georgia, Hawaii, Minnesota, New Jersey, and North Carolina) have implemented revival windows that temporarily eliminate the civil statutes of limitations for victims whose claims have already expired. These revival windows have allowed older victims of child abuse to bring lawsuits decades after the abuse occurred, including against private organizations, such as the BSA and Local Councils. Other jurisdictions (including Vermont) have fully eliminated limitations periods going forward and revived expired claims.

The trend of retroactive revisions to limitations periods for sexual abuse claims accelerated in 2019, when more than a dozen states (including Arizona, California, District of Columbia, Montana, New Jersey, New York, and North Carolina) revised their limitations periods to allow victims of abuse to bring claims that would otherwise have been time-barred. As noted above, most recently, a group of plaintiffs has filed suit in the U.S. District Court in the District of Columbia alleging that the District's recent revival-window legislation permits plaintiffs to bring previously time-barred claims, regardless of where the abuse occurred or where the plaintiff resides.[10] The BSA expects the number of these claims would, but for the commencement of these Chapter 11 Cases, only have increased in 2020 and beyond.

These changes in statute of limitations have dramatically altered the legal landscape for sexual abuse claims. Specifically, the number of suits alleging claims from earlier years that would otherwise have been barred by the applicable limitations period has surged. These suits have forced the BSA to look backward—past the decades of progress and leadership in youth protection—to the mid- to late-twentieth century, when the vast majority of the Abuse in Scouting occurred. Claims alleging Abuse within the last thirty years make up a small fraction of total known Abuse claims.[11] The vast majority of the claims the BSA is now facing allege child sexual abuse from the 1940s to the 1980s. Fairly compensating victims that were Abused during this time frame has placed tremendous financial pressure on the BSA and its local partners.

2. Other Defendants

As discussed above, several organizations work together to deliver the Scouting program, including Local Councils and Chartered Organizations that are independently incorporated and chartered by the BSA. Historically, claims against the BSA, Local Councils, and Chartered Organizations, including the Pending Abuse Actions, generally have been litigated and administered solely by the BSA. The unique relationship between the BSA and these entities, as discussed above, has led the BSA to take a leading role in administering such litigation. In practice, the BSA coordinates with Local Councils and Chartered Organizations to efficiently respond to and manage such cases, while minimizing the risk of inconsistent treatment of actions and victims.

This approach also stems from the fact that the allegations made by plaintiffs in the Pending Abuse Actions and unfiled claims are substantially directed at the BSA. The resolution of the Pending Abuse Actions thus requires the BSA to pay careful attention to a wide variety of litigation matters, including, for example, responses to broad discovery requests, the overwhelming majority of which are directed at the BSA as opposed to Local Council or Chartered Organization defendants. Through this approach, the BSA has, among other things, facilitated the retention of joint defense counsel, responded to the vast majority of discovery requests, coordinated with insurance carriers, and authorized and funded the payment of any settlement amounts related to the Pending Abuse Actions or similar, previously resolved, claims. Given the complexity of the issues involved the Pending Abuse Actions, and the BSA's central

[10] *See Does 1-8 v. Boy Scouts of America*, Case No. 20–00017 (D.D.C.)
[11] Of the approximately 1,700 pending or asserted abuse claims against the BSA, approximately 1,500 involve claims alleging abuse that occurred before 1988.

role in litigating them, the organization has retained national coordinating counsel to oversee the handling of claims against it and the Local Councils and Chartered Organizations.

3. Insurance

The BSA has historically procured commercial, general-liability insurance ("CGL") policies from multiple insurers to protect itself from a myriad of risks, including claims of sexual abuse or sexual misconduct. These policies date back to 1962 and over time came to include both primary and excess insurance coverage that provide substantial limits of liability in many years. As set forth below, the BSA's insurance coverage has varied over time with traditional insurance in some years and fronting policies in other years. Also, while the amount of coverage remains substantial in many years, the insolvency of certain insurers and the resolution of sexual-abuse and other claims have either eroded, eliminated, or exhausted the liability limits for certain policies. In some instances, the availability of certain insurance policies remains contingent upon the resolution of active pending litigation between the BSA and some of its insurers. Nonetheless, with respect to most (if not all) policy years, at least some level of coverage under the CGL policies is available for bodily injury claims, including claims arising out of sexual abuse and sexual misconduct.

a. Overview of the BSA's Insurance Program

The type of coverage provided for by the BSA's insurance program has varied over the last six decades. Between 1962 and 1982, the BSA acquired insurance policies where each claim of bodily injury allowed the BSA to access the limits of liability under the applicable insurance policies.[12] These are more commonly referred to as "per-occurrence" policies. Beginning in 1983, the BSA shifted its insurance program to policies that contained overall aggregate limits of liability. The BSA purchased these types of policies from 1983 to the end of 1985. As a counterbalance to the imposition of aggregate limits, the BSA's towers of insurance in 1983 through 1985 included significant limits of liability and excess layers of coverage.

The BSA substantially altered its insurance program beginning in 1986 and through 2018, procuring primary insurance and excess policies where the deductible matches the policy's limit of liability. These policies are more commonly referred to as "fronting" policies. In addition, beginning in late-1990, the BSA procured significant insurance with limits of liability exceeding $100 million. In 2019, moreover, the BSA reverted to traditional insurance and expects to continue with such insurance in 2020.

b. The BSA's Insurance Coverage for the Local Councils and Chartered Organizations

For decades, the BSA has undertaken and committed to procuring general liability insurance coverage for Local Councils and volunteers. Starting around 1971, the BSA began adding certain Local Councils as additional insureds under its CGL policies. Then, in 1978, the BSA formalized this practice through the implementation of a General Liability Insurance Program ("GLIP"), whereby the BSA agreed to procure general liability insurance for all Local Councils by including them in the definition of "Named Insured" in all of the BSA CGL policies.

[12] For purposes of simplicity, this analysis is limited to the BSA's primary insurance policies.

Similarly, starting in 1978, the BSA began to provide insurance coverage under its CGL policies to certain Chartered Organizations.

B. The BSA Engaged in Extensive Efforts to Reach a Global Resolution of Abuse Claims Before the Commencement of these Proceedings.

In late 2018, the BSA retained legal and financial advisors to explore its restructuring options in light of, among other factors, the increasing number of Abuse Claims asserted against the BSA as a result of changes in state statutes of limitation. The BSA determined at the outset of this strategic review to pursue a potential agreement with a critical mass of Abuse victims and other relevant stakeholders that could be implemented through a prearranged chapter 11 plan. A prearranged bankruptcy filing was the most desirable option as it represented the quickest, most efficient, and least costly bankruptcy process. As a non-profit corporation, considerations of economy and speed are of the utmost importance to the BSA. A prearranged case would have avoided an open-ended bankruptcy process that could, without an appropriate sense of urgency, result in irreparable damage to the BSA's mission.

In connection with these strategic efforts, the BSA recognized that it would ultimately need to structure a settlement around a plan of reorganization that provides for channeling injunctions with respect to both current and potential future Abuse Claims.[13] Accordingly, the BSA determined, in consultation with its advisors, that it was necessary and appropriate to engage an independent third-party representative for holders of Future Abuse Claims. After considering possible candidates for the role, the BSA selected James L. Patton, Jr. in early 2019 to serve as prepetition future claimants' representative. The BSA selected Mr. Patton due to his significant experience in complex mass tort cases in the chapter 11 context and his reputation for integrity in serving as a fiduciary in bankruptcy proceedings. Mr. Patton, in turn, retained legal and financial advisors to assist him in conducting an analysis of the BSA's liabilities and assets and in negotiations with the BSA and other stakeholders.

The BSA also engaged in discussions with an ad hoc group of attorneys representing significant numbers of holders of Abuse Claims. The ad hoc group was advised on restructuring matters by James Stang of Pachulski Stang Ziehl & Jones LLP. The BSA provided information to these attorneys, including Mr. Stang, regarding its liabilities and assets, and some attorneys for Abuse victims provided information to the BSA regarding additional Abuse Claims that they asserted would be filed against the BSA in the future. In particular, the attorneys asserted that they represented hundreds of Abuse victims who had not yet filed suit.

---

[13] Unlike a future claim in other mass tort contexts, there is no latency period for abuse. In the abuse context, a future claim is properly understood as a claim related to abuse that has already occurred but which is held by an individual who (a) has not attained 18 years of age, (b) suffers from "repressed memory" such that he or she is not aware that he or she holds an abuse claim, or (c) has not discovered the injury or the connection between the injury and the abuse and who could not in the exercise of reasonable care have discovered the injury or connection between the injury and the abuse. Given (i) the significant advertising and publicity surrounding abuse in scouting over the past year; (ii) the highly publicized nature of this restructuring; and (iii) the robust and comprehensive claims and noticing procedures that the BSA will implement through these cases, the BSA expects that the vast majority of potential claimants will be identified as part of the bar date process in these Chapter 11 Cases and does not expect that there will be significant future claims relating to prior abuse in the BSA's Scouting programs.

In addition, the BSA engaged in discussions with certain of its insurers about the nature and extent of available coverage for pending and additional Abuse Claims that have not yet been filed. As noted above, the BSA has procured CGL policies from multiple insurers since 1962 to protect itself from risks including claims of sexual abuse or sexual misconduct. Local Councils were subsequently included as "additional insureds" under these policies. As a general matter, the amount of remaining coverage under these policies is substantial, and the BSA expects that the proceeds of these policies will comprise a significant portion of the assets contributed to any victims compensation trust.

These prepetition restructuring efforts involved several meetings with attorneys representing Abuse victims, including a two-day mediation in early November 2019 with many of these attorneys, as well as the prepetition future claimants' representative and certain of the BSA's insurers. The mediation, unfortunately, was unsuccessful. It became apparent that attorneys for Abuse victims believed that certain Local Councils with significant Abuse liabilities have significant assets that could be used to compensate victims. Further, it was clear to the BSA that attorneys for Abuse victims would only accept information about the nature and extent BSA's available assets if provided through a court-supervised process. The attorneys for holders of Abuse Claims have indicated a strong preference for the BSA to file for relief under chapter 11 so they can compel the production of information regarding the BSA's and Local Councils' liabilities and assets, as well as other data relating to Abuse Claims. Accordingly, the BSA recognized in late 2019 that there were no meaningful prospects for a global resolution of Abuse Claims without the commencement of these Chapter 11 Cases.

C. Given the BSA's Inability to Reach Agreement on a Prearranged Reorganization, the BSA has Taken Several Immediate Steps to Promote Efficiency at the Outset of these Chapter 11 Cases.

Beginning after the conclusion of the November 2019 mediation, the BSA and its advisors turned their attention to preparing for these Chapter 11 Cases. The BSA recognized that prolonged bankruptcy proceedings would be costly and deplete funds available to compensate Abuse victims. As a non-profit that relies on member fees and donations to sustain its operations, delays caused by protracted litigation and discovery, for example, would also negatively impact these revenue sources and ultimately jeopardize the BSA's capability to carry out its mission to serve young men and women, families, and communities. Accordingly, both prior to and immediately upon the commencement of these Chapter 11 Cases, the BSA took several decisive steps designed to ensure that these Chapter 11 Cases would proceed expeditiously, in the interest of safeguarding the future of the BSA's mission and maximizing the value of the Debtors' estates for the benefit of Abuse victims and other stakeholders, all as further detailed in the informational brief filed in these Chapter 11 Cases. *See* D.I. 4.

ARTICLE IV. THE CHAPTER 11 CASES

A. Voluntary Petitions

On February 18, 2020, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Concurrently with the filing of this Disclosure Statement, the Debtors have requested joint administration and procedural

consolidation of these Chapter 11 cases pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure. The Debtors have continued, and will continue until the Effective Date, to operate their organization as debtors-in-possession.

B. First Day Relief

On the Petition Date, the Debtors filed a number of "first day" motions and other pleadings. These were proposed to ensure the Debtors' orderly transition into chapter 11. The following table describes a number of the first day motions:

Description of Relief Requested	Docket No.
Joint administration of the Chapter 11 Cases	3
Utilize the Debtors' cash collateral and to provide adequate protection to the Prepetition Secured Parties (as defined therein)	5
Pay certain prepetition taxes	6
Pay prepetition claims of critical vendors, as well as shippers, warehousemen, and other lienholders	7
Maintain and administer the Debtors' customer, member, and donor programs and practices and honor related prepetition practices	8
Approval of notice procedures	9
Additional time to file schedules of assets and liabilities, statements of financial affairs, and Rule 2015.3 Reports	10
Employ Omni Agent Solutions as the claims and noticing agent	11
Prohibit utilities from discontinuing service and for approval adequate assurance of payment to utilities	12
Continued use of the Debtors' prepetition cash management system and maintain their existing business forms	13
Pay employee wages and honor employee-related programs	14
Pay certain prepetition obligations under shared services arrangements and to continue such services	15

C. Other Relief Requested on the Petition Date

1. Scheduling Motion for Asset Characterization Disputes

Concurrently with the commencement of these cases, the Debtors sought to establish a schedule for the Bankruptcy Court to hear and adjudicate any disputes regarding whether certain identified property of the BSA is subject to enforceable restrictions under applicable law and/or is otherwise unavailable to satisfy creditor claims.

2. Bar Date Motion

Concurrently with the commencement of these cases, the Debtors filed a motion to establish comprehensive procedures for providing notice of the applicable bar dates to the Debtors' creditors and for creditors, including holders of Abuse Claims, to file proofs of claim.

3. Consolidation and Stay of Pending Abuse Lawsuits

Concurrently with the commencement of these cases, the Debtors began taking measures to consolidate and stay all pending abuse litigation against the BSA, Local Councils, and Chartered Organizations. In particular, the BSA has removed to federal district court all Abuse Claims pending in state courts throughout the country against the BSA and/or the Local Councils and Chartered Organizations. The Debtors will also be filing a motion with the District Court to transfer all of the removed abuse actions to that court under 28 U.S.C. § 157(b)(5). Finally, the Debtors also are commencing an adversary proceeding seeking a preliminary injunction against the continued prosecution of Abuse Claims.

4. Motion for Appointment of a Judicial Mediator

Concurrently with the commencement of these cases, the Debtors sought the immediate appointment of a sitting bankruptcy judge as a mediator and the referral to mandatory mediation of all issues related to a global settlement of Abuse Claims through a consensual plan of reorganization.

ARTICLE V. OVERVIEW OF THE PLAN

A. Distributions

One of the key concepts under the Bankruptcy Code is that only claims and interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an Allowed Claim means that the Debtors agree, or if there is a dispute, the Bankruptcy Court determines, that the Claim, and the amount thereof, is in fact a valid obligation of the Debtors. A detailed discussion of the treatment and anticipated means of satisfaction for each Class of Allowed Claims is set forth in Section V.D and Section V.E of this Disclosure Statement.

B. Exit Facilities

On the Effective Date, the Reorganized Debtors shall enter into one or more Exit Facilities and provide any related guarantees, and such Exit Facilities shall be made available to the Reorganized Debtors pursuant and subject to the terms and conditions set forth in the Exit Facility Documents. The Confirmation Order shall constitute approval of the Exit Facilities (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Reorganized Debtors in connection therewith), and authorization for the Reorganized Debtors to enter into and perform under the Exit Facilities Documents and such other documents as may be required or appropriate.

C. Sources of Consideration for Plan Distributions

The Debtors, or the Reorganized Debtors, as applicable, shall fund Plan Distributions using (1) Cash on hand and (2) the proceeds of the Exit Facilities. Cash on hand refers to the Debtors' or the Reorganized Debtors' Cash that does not constitute Identified Property.

D. Treatment of Unclassified Claims

1. Unclassified Claims Summary

Claim	Estimated Allowed Amount[14]	Plan Treatment	Projected Plan Recovery
Administrative Expense Claims	$[__]	Paid in full in Cash	100%
Professional Fee Claims	$[__]	Paid in full in Cash	100%
Priority Tax Claims	$[__]	Paid in full in Cash	100%

2. Unclassified Claims Details

a. Administrative Expense Claims

(i) Administrative Expense Claims Bar Date

Except as provided for in the Plan or in any order of the Bankruptcy Court, and subject to section 503(b)(1)(D) of the Bankruptcy Code, holders of General Administrative Expense Claims must file and serve on the Debtors requests for the payment of such Claims not previously Allowed by a Final Order in accordance with the procedures specified in the Confirmation Order, on or before the Administrative Expense Claims Bar Date, or such Claims shall be automatically Disallowed, forever barred from assertion, and unenforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court, and any such Claims shall be deemed fully satisfied, released, and discharged.

(ii) Administrative Expense Claims Generally

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to less favorable treatment with respect to such Allowed Administrative Expense Claim, each holder of an Allowed Administrative Expense Claim shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Claim, payment of Cash in an amount equal to such Allowed Administrative Expense Claim on or as soon as reasonably practicable after the later of: (a) the Effective Date; (b) the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; (c) such other date(s) as such holder and the Debtors or the Reorganized Debtors shall have agreed; or (d) such other date ordered by the Bankruptcy Court; provided, however, that Allowed Administrative Expense Claims that arise in the ordinary course of the Debtors' operations during the Chapter 11 Cases may be paid by the Debtors or the Reorganized Debtors in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations, course of dealing, course of operations, or customary practice.

[14] Figures with respect to the Allowed amounts of the Claims set forth in this chart are based upon the Debtors' best estimates of such Claims as of the date of this Disclosure Statement.

(iii) Professional Fee Claims

All Professionals or other Persons requesting the final allowance and payment of compensation and/or reimbursement of expenses pursuant to sections 328, 330, 331 and/or 503(b) for services rendered during the period from the Petition Date to and including the Effective Date shall file and serve final applications for allowance and payment of Professional Fee Claims on counsel to the Debtors and the United States Trustee no later than the first Business Day that is forty-five (45) days after the Effective Date. Objections to any Professional Fee Claim must be filed and served on the Reorganized Debtors and the applicable Professional within twenty-one (21) calendar days after the filing of the final fee application that relates to the Professional Fee Claim (unless otherwise agreed by the Debtors or the Reorganized Debtors, as applicable, and the Professional requesting allowance and payment of a Professional Fee Claim).

Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court on or as soon as reasonably practicable after the later of: (a) the date upon which an order relating to any such Allowed Professional Fee Claim is entered; and (b) such other date(s) as the holders of the Allowed Professional Fee Claim and the Debtors or the Reorganized Debtors, as applicable, shall have agreed.

The Reorganized Debtors are authorized to pay compensation for services rendered or reimbursement of expenses incurred by their Professionals after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

b. Priority Tax Claims

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, at the sole option of the Debtors or the Reorganized Debtors, as applicable: (1) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date; (b) the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim; and (c) the date such Allowed Priority Tax Claim is due and payable in the ordinary course as such obligation becomes due; provided, however, that the Debtors reserve the right to prepay all or a portion of any such amounts at any time under this option without penalty or premium; or (2) regular installment payments in Cash of a total value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim over a period ending not later than five years the Petition Date.

E. Classification of Claims and Interests

1. Classified Claims and Interests Summary

The Plan constitutes a separate chapter 11 plan of reorganization for each Debtor. Except for the Claims addressed in Article II of the Plan, the Debtors have placed all Claims and Interests into Classes for each of the Debtors. In accordance with section 1123(a)(1) of the

Bankruptcy Code, the Debtors have not classified Administrative Claims or Priority Tax Claims, as described in Article II of the Plan.

The summary of Classes of Claims and Interests set forth below classifies Claims and Interests for all purposes, including Confirmation and distribution pursuant to the Plan. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class, and any Claim or Interest shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim (other than an Abuse Claim) is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid, released, or otherwise settled prior to the Effective Date. All Abuse Claims are included in Class 6 and all Interests of Delaware BSA, LLC are in Class 7.

The Plan establishes a comprehensive classification of Claims and Interests. The table below summarizes the classification, treatment, voting rights, and estimated recoveries of the Claims and Interests, by Class, under the Plan.

Class	Claim or Interest	Estimated Allowed Amount[15]	Voting Rights	Treatment	Plan Recovery
1	Other Priority Claims	$[__]	Not Entitled to Vote / Presumed to Accept	Paid in full / Reinstated / Unimpaired	100%
2	Other Secured Claims	$[__]	Not Entitled to Vote / Presumed to Accept	Paid in full / Collateral Returned / Reinstated / Unimpaired	100%
3A	2010 Credit Facility Claims	$[__]	Entitled to Vote	Reinstated with modifications / Impaired	100%
3B	2019 RCF Claims	$[__]	Entitled to Vote	Reinstated with modifications / Impaired	100%
4A	2010 Bond Claims	$[__]	Entitled to Vote	Reinstated with modifications / Impaired	100%
4B	2012 Bond Claims	$[__]	Entitled to Vote	Reinstated with modifications / Impaired	100%
5	General Unsecured Claims	$[__]	Entitled to Vote	*Pro Rata* share of GUC Plan Distribution / Impaired	[___]%
6	Abuse Claims	$[__]	Entitled to Vote	Channeled to Victims Compensation Trust / Impaired	[___]%
7	Interests in Delaware BSA, LLC	$[__]	Not Entitled to Vote / Presumed to Accept	Reinstated / Unimpaired	100%

[15] Figures with respect to the Allowed amounts of the Claims set forth in this chart are based upon the Debtors' best estimates of such Claims as of the date of this Disclosure Statement.

2. Classified Claims and Interests Details

Except to the extent that a Debtor and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

a. Class 1—Other Priority Claims

(i) Classification: Class 1 consists of all Other Priority Claims.

(ii) Treatment: Except to the extent that a holder of an Allowed Other Priority Claim agrees to less favorable treatment of such Claim, in exchange for full and final satisfaction of such Allowed Other Priority Claim, at the sole option of the Reorganized Debtors: (i) each such holder shall receive payment in Cash in an amount equal to such Allowed Other Priority Claim, payable on or as soon as reasonably practicable after the last to occur of (x) the Effective Date, (y) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, and (z) the date on which the holder of such Allowed Other Priority Claim and the Debtors or Reorganized Debtors, as applicable, shall otherwise agree in writing; or (ii) satisfaction of such Allowed Other Priority Claim in any other manner that renders the Allowed Other Priority Claim Unimpaired, including Reinstatement.

(iii) Voting: Allowed Other Priority Claims in Class 1 are Unimpaired. Each holder of an Other Priority Claim shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims shall not be entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Priority Claims.

b. Class 2—Other Secured Claims

(i) Classification: Class 2 consists of all Other Secured Claims. To the extent that Other Secured Claims are Secured by different collateral or different interests in the same collateral, such Claims shall be treated as separate subclasses of Class 2 for purposes of voting to accept or reject the Plan and receiving Plan Distributions under the Plan.

(ii) Treatment: Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment of such Claim, in exchange for full and final satisfaction of such Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim will receive, at the sole option of the Reorganized Debtors: (i) Cash in an amount equal to the Allowed amount of such Claim, including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code, payable on or as soon as reasonably practicable after the last to occur of (x) the Effective Date, (y) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, and (z) the date on which the holder of such Allowed Other Secured Claim and the Debtors or Reorganized Debtor, as applicable,

shall otherwise agree in writing; (ii) satisfaction of such Other Secured Claim in any other manner that renders the Allowed Other Secured Claim Unimpaired, including Reinstatement; or (iii) return of the applicable collateral on the Effective Date or as soon as reasonably practicable thereafter in satisfaction of the Allowed amount of such Other Secured Claim.

(iii) Voting: Allowed Other Secured Claims in Class 2 are Unimpaired. Each holder of an Other Secured Claim shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Secured Claims shall not be entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Secured Claims.

c. Class 3A—2010 Credit Facility Claims

(i) Classification: Class 3A consists of all 2010 Credit Facility Claims.

(ii) Allowance: On the Effective Date, all 2010 Credit Facility Claims shall be Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[__] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2010 Credit Facility Claims are deemed fully Secured, there are no unsecured 2010 Credit Facility Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2010 Credit Facility Claim.

(iii) Treatment: Except to the extent that a holder of an Allowed 2010 Credit Facility Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2010 Credit Facility Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2010 Credit Facility Documents.

Voting: Allowed 2010 Credit Facility Claims in Class 3A are Impaired. Each holder of a 2010 Credit Facility Claim shall be entitled to vote to accept or reject the Plan.

d. Class 3B—2019 RCF Claims

(i) Classification: Class 3B consists of all 2019 RCF Claims.

(ii) Allowance: On the Effective Date, all 2019 RCF Claims shall be Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[__] and not subject to any counterclaim, defense, offset or reduction of any kind. Because all 2019 RCF Claims are deemed fully Secured, there are no unsecured 2019 RCF Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2019 RCF Claim.

(iii) Treatment: Except to the extent that a holder of an Allowed 2019 RCF Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2019 RCF Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated RCF Documents.

Voting: Allowed 2019 RCF Claims in Class 3B are Impaired. Each holder of a 2019 RCF Claim shall be entitled to vote to accept or reject the Plan.

e. Class 4A—2010 Bond Claims

(i) Classification: Class 4A consists of all 2010 Bond Claims.

(ii) Allowance: On the Effective Date, all 2010 Bond Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[__] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2010 Bond Claims are deemed fully Secured, there are no unsecured 2010 Bond Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2010 Bond Claim.

(iii) Treatment: Except to the extent that a holder of an Allowed 2010 Bond Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2010 Bond Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2010 Bond Documents.

(iv) Voting: Allowed 2010 Bond Claims in Class 4A are Impaired. Each holder of a 2010 Bond Claim shall be entitled to vote to accept or reject the Plan.

f. Class 4B—2012 Bond Claims.

(i) Classification: Class 4B consists of all 2012 Bond Claims.

(ii) Allowance: On the Effective Date, all 2012 Bond Claims shall be deemed fully Secured and Allowed pursuant to section 506(a) of the Bankruptcy Code in the principal amount of $[__] and not subject to any counterclaim, defense, offset, or reduction of any kind. Because all 2012 Bond Claims are deemed fully Secured, there are no unsecured 2012 Bond Claims, and the holders of such Claims do not have or hold any Class 5 Claims against the Debtors on account of any 2012 Bond Claim.

(iii) Treatment: Except to the extent that a holder of an Allowed 2012 Bond Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for an Allowed 2012 Bond Claim, the Reorganized Debtors shall enter into, execute and deliver the Restated 2012 Bond Documents.

(iv) Voting: Allowed 2012 Bond Claims in Class 4B are Impaired. Each holder of a 2012 Bond Claim is entitled to vote to accept or reject the Plan.

g. Class 5—General Unsecured Claims

(i) Classification: Class 5 consists of all General Unsecured Claims.

(ii) Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment of such Claim, in exchange for full

and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed General Unsecured Claim, each holder thereof shall receive such holder's *Pro Rata* share of the GUC Plan Distribution.

(iii) Voting: Allowed General Unsecured Claims in Class 5 are Impaired. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

h. Class 6—Abuse Claims

(i) Classification: Class 6 consists of all Abuse Claims.

(ii) Treatment: As of the Effective Date, liability for all Abuse Claims shall be assumed in full by the Victims Compensation Trust without further act, deed, or court order and shall be satisfied solely from the Victims Compensation Trust as set forth in the Trust Documents. Pursuant to the Channeling Injunction, set forth in Article IV of the Plan, each holder of an Abuse Claim shall have his or her Abuse Claim permanently channeled to the Victims Compensation Trust, and such Abuse Claim shall thereafter be asserted exclusively against the Victims Compensation Trust and resolved in accordance with the terms, provisions, and procedures of the Trust Documents. Holders of Abuse Claims are enjoined from prosecuting any outstanding, or filing any future, litigation, Claims, or Causes of Action arising out of or related to such Abuse Claims against any of the Protected Parties and may not proceed in any manner against any such Persons in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum, and are required to pursue their Abuse Claims solely against the Victims Compensation Trust as provided in the Trust Documents.

HOLDERS OF ABUSE CLAIMS (OTHER THAN FUTURE ABUSE CLAIMS) SHALL BE REQUIRED TO SUBMIT A PROOF OF CLAIM ON OR BEFORE THE ABUSE CLAIMS BAR DATE IN ACCORDANCE WITH THE BAR DATE ORDER. HOLDERS OF ABUSE CLAIMS MAY BE REQUIRED TO SUBMIT ADDITIONAL DOCUMENTATION REGARDING SUCH CLAIMS IN ACCORDANCE WITH THE TRUST DOCUMENTS.

(iii) Voting: Abuse Claims in Class 6 are Impaired. Each holder of an Abuse Claim shall be entitled to vote to accept or reject the Plan.

i. Class 7 Interests in Delaware BSA, LLC

(i) Classification: Class 7 consists of all Interests in Delaware BSA, LLC.

(ii) Treatment: On the Effective Date, Interests in Delaware BSA, LLC shall be Reinstated, and the legal, equitable, and contractual rights to which holders of Interests in Delaware BSA, LLC are entitled shall remain unaltered to the extent necessary to implement the Plan.

(iii) Voting: Interests in Delaware BSA, LLC in Class 7 are Unimpaired. Each holder of an Interest in Delaware BSA, LLC shall be conclusively presumed

to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Interests in Delaware BSA, LLC shall not be entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Interests in Delaware BSA, LLC.

3. Elimination of Vacant Classes

Any Class of Claims against or Interests in the Debtors that, as of the commencement of the Confirmation Hearing, does not have at least one holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to that Class. For the avoidance of doubt, this section shall not apply to Class 6 or Class 7.

F. The Victims Compensation Trust

1. Establishment and Purpose of the Victims Compensation Trust

The Victims Compensation Trust shall be established on the Effective Date. The Victims Compensation Trust shall be administered and implemented by the Victims Compensation Trustee as provided in the Trust Documents. Specifically, the Victims Compensation Trust shall, without limitation: (1) assume liability for all Abuse Claims; and (2) hold and administer the Trust Assets, liquidate the Abuse Claims, and make Trust Distributions to holders of Abuse Claims from the Trust Assets.

The Victims Compensation Trust shall, as applicable, administer, process, settle, resolve, liquidate, satisfy, and make Trust Distributions from the Trust Assets on account of Abuse Claims in such a way that the holders of Abuse Claims are treated equitably and in a substantially similar manner, subject to the applicable terms of the Plan Documents and the Trust Documents. From and after the Effective Date, the Abuse Claims shall be channeled to the Victims Compensation Trust pursuant to the Channeling Injunction set forth in Article IV of the Plan and may be asserted only and exclusively against the Victims Compensation Trust.

2. Receipt of Trust Assets

On the Effective Date, all Trust Assets shall be automatically and without further act or deed, transferred to, vested in and assumed by the Victims Compensation Trust; provided, however, that to the extent that certain Trust Assets, because of their nature or because such assets will accrue or become transferable to the Victims Compensation Trust subsequent to the Effective Date, cannot be transferred to, vested in and assumed by the Victims Compensation Trust on the Effective Date, such Trust Assets shall be automatically, and without further act or deed, transferred to, vested in and assumed by the Victims Compensation Trust as soon as practicable after the Effective Date. Notwithstanding anything in the Plan to the contrary, no monies, causes of action, and/or assets comprising the Trust Assets that have been transferred, granted, assigned, or otherwise delivered to the Victims Compensation Trust shall be used for any purpose other than in accordance with the Plan and the Trust Documents, including the payment or administration of Abuse Claims as set forth in the Trust Documents. Any applicable

Insurance Proceeds recovered or received by the Victims Compensation Trust will be allocated as set forth in the Trust Documents.

3. The Trust Distribution Procedures

On the Effective Date, the Victims Compensation Trust shall implement the Trust Distribution Procedures in accordance with the terms of the Trust Agreement. From and after the Effective Date, the Victims Compensation Trustee shall have the authority to administer, amend, supplement, or modify the Trust Distribution Procedures in accordance with the terms thereof and the Trust Agreement. From and after the Effective Date, the Victims Compensation Trust shall liquidate and make Trust Distributions to holders of Abuse Claims in accordance with the Trust Documents.

4. Discharge of Liabilities to Holders of Abuse Claims

Except as provided in the Plan, the transfer to, vesting in and assumption by the Victims Compensation Trust of the Trust Assets as contemplated by the Plan shall, as of the Effective Date, discharge all obligations and liabilities of and bar any recovery or action against the Protected Parties for or in respect of all Abuse Claims, including all Indirect Abuse Claims (and the Confirmation Order shall provide for such discharge). The Victims Compensation Trust shall, as of the Effective Date, assume sole and exclusive responsibility and liability for all Abuse Claims and such Claims shall be paid by the Victims Compensation Trust from the Trust Assets or as otherwise directed in the Trust Documents.

5. Imposition of Channeling Injunction

From and after the Effective Date, all Abuse Claims shall be subject to the Channeling Injunction pursuant to section 105(a) of the Bankruptcy Code and the provisions of the Plan and the Confirmation Order. From and after the Effective Date, the Protected Parties shall not have any obligation with respect to any liability of any nature or description arising out of, relating to, or in connection with any Abuse Claims.

6. Insurance Rights Transfer

In furtherance of the purpose of the Victims Compensation Trust:

a. as of the Effective Date, the Protected Parties shall irrevocably transfer, grant, and assign to the Victims Compensation Trust, and the Victims Compensation Trust shall receive and accept, any and all of the Insurance Rights. To the extent any Insurer consented to a prepetition settlement agreement with respect to an Abuse Claim or otherwise has consented to pay an Abuse Claim on behalf of one or more of the Protected Parties, then the applicable Protected Parties shall transfer and assign to the Victims Compensation Trust the right to enforce such Insurer's obligation. This Insurance Rights Transfer is made to the Victims Compensation Trust for the benefit of Persons that have a Claim for compensation for damages against the Protected Parties on account of Abuse Claims;

b. the Insurance Rights Transfer is made free and clear of all Claims, Liens, Encumbrances, or Causes of Action of any nature whatsoever, except available limits of

liability for coverage of certain types of claims under one or more of the Insurance Policies that may have been reduced by certain prepetition payments made by an Insurer under any of the Insurance Policies;

c. the Victims Compensation Trust shall be solely responsible for satsifying, to the extent required under applicable law, any premiums, deductibles, self-insured retentions, and fronting obligations arising in any way out of any and all Abuse Claims;

d. the Victims Compensation Trust shall comply with any notice obligations required under the Insurance Policies and applicable law;

e. the Insurance Rights Transfer is made to the maximum extent possible under applicable law;

f. the Insurance Rights Transfer is absolute and does not require any further action by the Protected Parties, the Victims Compensation Trust, the Bankruptcy Court, or any other Person;

g. the Insurance Rights Transfer is not an assignment of any insurance policy itself and shall be valid and enforceable in accordance with the terms of any Insurance Policy, in each case notwithstanding any anti-assignment provision in or incorporated into any Insurance Policy; and

h. the Insurance Rights Transfer shall be governed by, and construed in accordance with, the Bankruptcy Code and the laws of the state of Delaware, without regard to its conflict of law principles.

For the avoidance of doubt, the Insurance Rights Transfer that is the subject of Section IV.F of the Plan shall not, and shall not be deemed to, transfer, grant, or assign to the Victims Compensation Trust any insurance rights of the Debtors or the Local Councils that pertain to any Insured Non-Abuse Claims. Nor shall the Insurance Rights Transfer violate or be deemed to violate any cooperation clause of any Insurance Policy. The insurance rights of the Debtors or the Local Councils that pertain to Insured Non-Abuse Claims are expressly reserved for the Debtors, the Reorganized Debtors, or the Local Councils, as applicable, and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust. Moreover, for the avoidance of doubt, the insurance rights of any Person that is not a Protected Party are expressly reserved for such Person (including any rights of any director, manager, officer, or employee of the Debtors or any Local Council under the D&O Liability Insurance Policies), and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust.

In that regard and notwithstanding the transfer of Insurance Rights pursuant Section IV.F of the Plan, with respect to any Insurance Policy with an inception date of January 1, 2000 to the present, the Debtors and the Reorganized Debtors expressly reserve the right to (1) tender any Insured Non-Abuse Claims to those Insurance Policies and (2) access the limits of liability of those Insurance Policies to settle or otherwise resolve Insured Non-Abuse Claims. Further, the Victims Compensation Trust cannot settle, compromise, or otherwise resolve any rights, duties, or obligations under those Insurance Policies issued after January 1, 2000 without the express

written consent and approval of the Debtors or the Reorganized Debtors, as applicable. Nonetheless, the Victims Compensation Trust shall have the same rights as the Debtors and the Reorganized Debtors with respect to any Insurance Policy with an inception date of January 1, 2000 to the present insofar as the Victims Compensation Trust may: (a) tender Abuse Claims to those Insurance Policies; and (b) access the limits of liability of those Insurance Policies to pay Abuse Claims pursuant to the Trust Distribution Procedures.

Moreover, for the avoidance of doubt, the insurance rights of any Person that is not a Protected Party are expressly reserved for such Person, and the Plan Documents shall not, and shall not be deemed to, transfer, grant, or assign such rights to the Victims Compensation Trust.

7. Indemnification Obligation

If for any reason an Abuse Claim is asserted against a Protected Party on or after the Effective Date in violation of the Channeling Injunction, the Victims Compensation Trust shall indemnify and hold each of the Protected Parties harmless from and against any and all Abuse Claims, as well as indemnify and reimburse such parties for all associated fees, costs and expenses, to the extent set forth in the Trust Documents.

In connection with the indemnification that must be provided by the Victims Compensation Trust, each Protected Party has the express right to:

a. appoint defense counsel of its choosing, subject to consent by the Victims Compensation Trust regarding the hourly rates to be charged, such consent not to be unreasonably withheld;

b. manage the defense of any such Claim subject to appropriate updates being provided to the Victims Compensation Trust, but the Victims Compensation Trust shall not control the defense of the Protected Party to any such Claim;

c. settle or otherwise resolve any Claim that is subject to indemnification by the Victims Compensation Trust, provided that notice of any such settlement or resolution is provided to the Victims Compensation Trust, but the Victims Compensation Trust is not required to consent to any such settlement or resolution; and

d. proceed to trial and verdict with respect to any Claim that is subject to indemnification by the Victims Compensation Trust, subject to the consent and approval by the Victims Compensation Trust to proceed to trial and verdict.

8. Excess Assets in Victims Compensation Trust

On the Trust Termination Date, after the payment of all Abuse Claims that are entitled to a Trust Distribution from the Victims Compensation Trust and all Trust Expenses that have been provided for, and the liquidation of all assets then held by the Victims Compensation Trust, any remaining value in the Victims Compensation Trust shall be distributed to a charity to be selected jointly by the Victims Compensation Trustee and the Reorganized Debtors.

9. Trust Expenses

The Victims Compensation Trust shall pay all Trust Expenses from the Victims Compensation Trust, as provided for in the Trust Agreement. The Protected Parties shall have no obligation to pay any Trust Expenses.

10. Victims Compensation Trustee

There shall be one Victims Compensation Trustee. On the Confirmation Date, the Bankruptcy Court shall appoint the Victims Compensation Trustee to serve in accordance with, and who shall have the functions and rights provided in, the Trust Agreement. Any successor Victims Compensation Trustee shall be appointed in accordance with the terms of the Trust Agreement. For purposes of any Victims Compensation Trustee performing his or her duties and fulfilling his or her obligations under the Victims Compensation Trust and the Plan, the Victims Compensation Trust and the Victims Compensation Trustee shall be deemed to be "parties in interest" within the meaning of section 1109(b) of the Bankruptcy Code. The Victims Compensation Trustee shall be the "administrator" of the Victims Compensation Trust as such term is used in Treas. Reg. Section 1.468B-2(k)(3).

11. Compensation of Victims Compensation Trustee and Retention of Professionals

The Victims Compensation Trustee shall be entitled to compensation as provided for in the Trust Agreement. The Victims Compensation Trustee may retain and reasonably compensate, without Bankruptcy Court approval, counsel and other professionals as reasonably necessary to assist in his or her duties as Victims Compensation Trustee, subject to the terms of the Trust Agreement. All fees and expenses incurred in connection with the foregoing shall be payable from the Victims Compensation Trust as provided for in the Trust Agreement.

12. Future Claimants' Representative

The Trust Agreement shall provide for the continuation of the Future Claimants' Representative to serve as an advisor to the Victims Compensation Trust representing the interests of holders of Future Abuse Claims. The Future Claimants' Representative shall have the functions and rights set forth in the Trust Agreement. The Victims Compensation Trustee shall consult with the Future Claimants' Representative on matters pertaining to the administration of the Victims Compensation Trust and must obtain the consent of the Future Claimants' Representative as set forth in the Trust Agreement and the Trust Distribution Procedures. The Victims Compensation Trustee shall meet with the Future Claimants' Representative no less frequently than quarterly. The Future Claimants' Representative shall receive reasonable compensation for his services from the Victims Compensation Trust and may utilize counsel and other professionals as reasonably necessary to assist in the performance of his or her duties, and the Future Claimants' Representative and his professionals shall be entitled to reasonable reimbursement of expenses by the Victims Compensation Trust, subject to compliance with an agreed-upon budget that shall be set forth in the Trust Agreement.

13. Consent Rights of the Debtors and the Reorganized Debtors

The Trust Documents may not be amended or modified without the consent of the Debtors or the Reorganized Debtors, as applicable, which shall not be unreasonably withheld. The Debtors shall also have consent rights with respect to any successor Victims Compensation Trustee and Trust Advisory Committee members, which consent shall not be unreasonably withheld. Notwithstanding any of the foregoing, the Indemnification Obligations of the Victims Compensation Trust described in Section IV.G of the Plan may not be amended or modified without the consent of the Protected Party that is otherwise entitled to indemnification pursuant to those provisions.

14. Cooperation; Transfer of Books and Records

As provided in Section IV.P of the Plan, on the Effective Date or as soon as reasonably practicable thereafter, the Debtors and the other Protected Parties shall transfer and assign, or cause to be transferred and assigned, to the Victims Compensation Trustee (1) copies of all of their books and records that pertain to Abuse Claims, including all ineligible volunteer files to the extent authorized and directed by the Court pursuant to the Confirmation Order, (2) copies of all Insurance Policies, (3) information relating to Abuse Claims previously noticed, tendered, or submitted under the Insurance Policies or paid by any Insurer so long as such information is presently stored and readily accessible on the Protected Parties' then-current electronic record-management systems, and (4) any other information reasonably necessary to operate the Victims Compensation Trust and preserve, secure, or obtain the benefit of the Insurance Rights. If at any time after the Effective Date, any of the Reorganized Debtors or the other Protected Parties discover the existence of an Insurance Policy that provides or may provide coverage for Abuse Claims, the Person discovering such policy or evidence of the existence of such policy shall promptly inform the Victims Compensation Trustee.

15. No Liability

Neither the Protected Parties nor the Local Council Committee shall have or incur any liability to, or be subject to any right of action by, any Person for any act, omission, transaction, event, or other circumstance in connection with or related to the Future Claimants' Representative, the Victims Compensation Trust, the Victims Compensation Trustee, or the Trust Documents, including the administration of Abuse Claims and the distribution of property by the Victims Compensation Trust, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to the foregoing.

16. U.S. Federal Income Tax Treatment of the Victims Compensation Trust

The Victims Compensation Trust shall be a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. The Victims Compensation Trust shall file (or cause to be filed) statements, returns, or disclosures relating to the Victims Compensation Trust that are required by any governmental unit. The Victims Compensation Trustee shall be responsible for the payment of any taxes imposed on the Victims Compensation Trust or the Trust Assets, including estimated and annual U.S. federal income taxes in accordance with the terms of the Trust Agreement. The Victims Compensation Trustee may request an expedited

determination of taxes on the Victims Compensation Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Victims Compensation Trust for all taxable periods through the dissolution of the Victims Compensation Trust.

17. Institution and Maintenance of Legal and Other Proceedings

As of the Effective Date, the Victims Compensation Trust shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any asset, liability, or responsibility of the Victims Compensation Trust. The Victims Compensation Trust shall be empowered to initiate, prosecute, defend, and resolve all such actions in the name of the Debtors if deemed necessary or appropriate by the Victims Compensation Trustee. The Victims Compensation Trust shall be responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees, and other charges incurred subsequent to the Effective Date arising from, relating to, or associated with any legal action or other proceeding brought pursuant to Section IV.R of the Plan and shall pay or reimburse all deductibles, retrospective premium adjustments, fronting obligations, or other charges which may arise from the receipt of the Insurance Proceeds by the Victims Compensation Trust. For the avoidance of doubt, the Victims Compensation Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable State corporate law, is appointed as the successor-in-interest to, and representative, of the Debtors and their Estates for the retention, enforcement, settlement, or adjustment of all Abuse Claims.

18. Insurance Neutrality

As provided in Section IV.S of the Plan, nothing contained in any Plan Documents shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying (1) the rights or obligations of any of any Insurer arising out of or under any Insurance Policy or (2) any rights or obligations of the Debtors arising out of or under any Insurance Policy.

G. Due Authorization

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by members, creditors, directors, or managers of the Debtors, the Reorganized Debtors, or any other Person.

H. Continued Legal Existence

Except as otherwise provided in the Plan, each of the Debtors shall continue to exist on and after the Effective Date as a separate Person, with all of the powers of such Person under applicable law in the jurisdiction in which each Debtor is organized, incorporated, or otherwise formed and pursuant to such Debtor's formation, organizational and governance documents in effect immediately prior to the Effective Date, without prejudice to any right of the Reorganized Debtors to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date.

I. Vesting of Assets in the Reorganized Debtors

In accordance with Section V.I of the Plan, and except as explicitly provided in the Plan, on the Effective Date, all property comprising the Estates, other than the BSA Trust Contributions, shall vest in each respective Reorganized Debtor free and clear of all Liens, Claims, interests, charges, other Encumbrances and liabilities of any kind unless expressly provided by the Plan or the Confirmation Order. On and after the Effective Date, each Reorganized Debtor may continue is operations and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

J. Cancellation of Indebtedness

Except as otherwise provided in the Plan, or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date, all agreements, instruments, and other documents evidencing or issued pursuant to the 2010 Credit Facility Documents, the 2010 Bond Documents, the 2012 Bond Documents, or any indebtedness or other obligations thereunder, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged, and of no force or effect, and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged.

K. Preservation of Causes of Action

In accordance with section 1123(b)(3) of the Bankruptcy Code, subject to Section V.N] of the Plan, all Causes of Action that a Debtor may hold against any Person shall vest in the applicable Reorganized Debtor on the Effective Date. Thereafter, subject to Section V.N of the Plan, the Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, whether arising before or after the Petition Date, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. **No Person may rely on the absence of a specific reference in the Plan or this Disclosure Statement to any specific Cause of Action as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action. The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan**, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to any Cause of Action upon, after, or as a consequence of the Confirmation or the occurrence of the Effective Date.

L. Workers' Compensation Programs

As of the Effective Date, the Debtors and the Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation laws in all applicable states; and (b) the Workers' Compensation Program. All Proofs of Claims on account of the

Workers' Compensation Program shall be deemed withdrawn automatically and without any further notice to or action, order, or approval of the Bankruptcy Court; provided, however, that nothing in the Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to the Workers' Compensation Programs; provided further, however, that nothing in the Plan shall be deemed to impose any obligations on the Debtors or their insurers in addition to what is provided for under the terms of the Workers' Compensation Programs and applicable state law.

M. Local Council Charters

All charters granted to Local Councils before the Petition Date and not since revoked shall be deemed to be, and shall be treated as though they are, Executory Contracts under the Plan and deemed assumed under sections 365 and 1123 of the Bankruptcy Code.

N. Treatment of Executory Contracts and Unexpired Leases

1. Assumption of Executory Contracts and Unexpired Leases

As set forth in Section VI of the Plan, on the Effective Date, all Executory Contracts and Unexpired Leases shall be deemed assumed by the applicable Reorganized Debtor as of the Effective Date without the need for any further notice to or action, order, or approval of the Bankruptcy Court under sections 365 and 1123 of the Bankruptcy Code, except for Executory Contracts or Unexpired Leases that:

a. are identified on the Rejected Contracts Schedule;

b. previously expired or terminated pursuant to their terms;

c. the Debtors have previously assumed or rejected pursuant to a Final Order of the Bankruptcy Court;

d. are the subject of a motion to reject that remains pending as of the Confirmation Date; or

e. as to which the effective date of rejection will occur (or is requested by the Debtors to occur) after the Confirmation Date

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumption or rejection, as applicable, of Executory Contracts or Unexpired Leases as set forth in the Plan or the Rejected Contracts Schedule, pursuant to sections 365 and 1123 of the Bankruptcy Code. Except as otherwise set forth in the Plan, the assumption or rejection of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or a Final Order of the Bankruptcy Court shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any Final Order of the Bankruptcy Court authorizing and providing for its assumption. Any motions to assume Executory Contracts or Unexpired Leases pending on the Confirmation Date shall be subject to approval by a Final

Order on or after the Confirmation Date but may be withdrawn, settled, or otherwise prosecuted by the Reorganized Debtors

The Debtors' assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and payment of the applicable Cure Amount shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed Disallowed and expunged as of the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such assumption, (2) the effective date of such assumption or (3) the Effective Date, in each case without the need for any objection by the Debtors or the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

2. Rejection Damages Claims

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim for Rejection Damages Claims, if any, must be filed within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Effective Date. **Any Rejection Damages Claim that is not timely filed shall be automatically Disallowed, forever barred from assertion, and unenforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court, and any such Rejection Damages Claim shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Proof of Claim to the contrary**. All Allowed Rejection Damages Claims shall be classified as Allowed General Unsecured Claims and treated in accordance with Section III.B.7 of the Plan.

O. Provisions for Resolving Disputed Claims

1. Objections to Claims

The Reorganized Debtors shall exclusively be entitled to object to all Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, and General Unsecured Claims. The Victims Compensation Trustee shall exclusively be entitled to administer and resolve Abuse Claims in accordance with the Trust Agreement and the Trust Distribution Procedures. After the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim to which they may object, except with respect to any Claim that is Allowed. The Reorganized Debtors shall serve and file any objection to a Proof of Claim on or before the Claims Objection Deadline; provided, however, that the Victims Compensation Trustee shall administer the Abuse Claims on a timeline determined by the Victims Compensation Trustee, in consultation with the Future Claimants' Representative and the Trust Advisory Committee, subject to approval by the

Bankruptcy Court. The expiration of the Claims Objection Deadline shall not limit or affect the Debtors or Reorganized Debtors' rights to dispute Claims asserted in the ordinary course of business other than through a Proof of Claim.

2. Resolution of Disputed Administrative Expenses and Disputed Non-Abuse Claims

On and after the Effective Date, the Reorganized Debtors shall have the authority to prosecute and withdraw objections to, compromise, settle, or otherwise resolve Administrative Expense Claims (other than with respect to Professional Fee Claims), Priority Tax Claims, Other Priority Claims, and General Unsecured Claims without approval of the Bankruptcy Court. For the avoidance of doubt, only the Victims Compensation Trustee shall have the authority to administer and resolve Abuse Claims in accordance with the Trust Agreement and the Trust Distribution Procedures.

3. Resolution of Abuse Claims

Abuse Claims shall be resolved in accordance with the Trust Documents, subject to the provisions of Article IV of the Plan and subject to the right of any Insurer to raise any Insurer Coverage Defense in response to a demand by the Victims Compensation Trust that such Non-Settling Insurer handle, defend, or pay any such Abuse Claim.

4. Payments and Distributions with Respect to Disputed Claims

Notwithstanding anything contrary in the Plan Documents, if any portion of a Claim is a Disputed Claim, no payment or distribution provided for in the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

5. Distributions After Allowance

After such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the holder thereof shall be entitled to Plan Distributions, if any, to which such holder is then entitled as provided in the Plan, without interest, as provided in Section VIII.I of the Plan. Such Plan Distributions shall be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court Allowing such Disputed Claim (or portion thereof) becomes a Final Order.

6. Estimation of Claims

The Debtors or the Reorganized Debtors, with respect to contingent, unliquidated, and/or Disputed Administrative Expense Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, and General Unsecured Claims, may at any time request that the Bankruptcy Court estimate any such contingent, unliquidated, or Disputed Claim or Class of Claims pursuant to section 502(c) of the Bankruptcy Code or otherwise, including to establish a reserve for Plan Distribution purposes, regardless of whether the Debtors, the Reorganized Debtors, or any other Person had previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Class of Claims at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court

estimates any contingent, unliquidated, or Disputed Claim or Class of Claims, the amount so estimated shall constitute either the Allowed amount of such Claim or Class of Claims, or a maximum limitation on such Claim or Class of Claims, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim or Class of Claims, the Debtors or the Reorganized Debtors, as applicable, may pursue supplementary proceedings to object to the allowance of such Claims; provided, however, that such limitation shall not apply to Claims requested by the Debtors to be estimated for voting purposes only.

7. No Distributions Pending Allowance

If an objection, motion to estimate, or other challenge to a Claim is filed, no payment or Plan Distribution shall be made on account of such Claim unless and until (and only to the extent that) such Claim becomes an Allowed Claim.

8. Claims Resolution Procedures Cumulative

All of the objection, estimation, and resolution procedures in the Plan are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently settled, compromised, withdrawn, or resolved in accordance with the Plan without further notice or Bankruptcy Court approval.

9. Interest

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest that accrued thereon from and after the Effective Date, except as provided in Section VII.D of the Plan.

10. Insured Non-Abuse Claims

To the extent that an Insurer satisfies an Insured Non-Abuse Claim in whole or in part (based on either a settlement or judgment), then immediately upon such satisfaction, the portion of such Claim so satisfied may be expunged without an objection to such Claim having to be filed and without any further notice to or action, order or approval of the Court.

P. Discharges, Channeling Injunction, Releases, Exculpations and Injunctions; Survival of Indemnification and Exculpation Obligations

1. Discharge

a. Discharge of the Debtors

Except as expressly provided in the Plan or the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, termination and release of, all Claims and Interests of any nature whatsoever against or in the Debtors or any of their assets or properties based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date, and, as of the Effective Date, each of the Debtors shall be deemed discharged and released, and each holder of a Claim or Interest and any

successor, assign, and affiliate of such holder shall be deemed to have forever waived, discharged and released each of the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities, and all debts of the kind specified in section 502 of the Bankruptcy Code, based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date, in each case whether or not (a) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (c) a Claim based upon such debt is or has been Disallowed by order of the Bankruptcy Court, or (d) the holder of a Claim based upon such debt is deemed to have accepted the Plan.

b. Discharge Injunction

As of the Effective Date, except as expressly provided in the Plan or the Confirmation Order, all holders of Claims of any nature whatsoever against or in the Debtors or any of their assets or properties based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date shall be precluded and permanently enjoined from prosecuting or asserting any such discharged Claim against the Debtors or the Reorganized Debtors or the property of the Debtors or the Reorganized Debtors. In accordance with the foregoing, except as expressly provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge or termination of all Claims, Interests and other debts and liabilities against or in the Debtors pursuant to sections 105, 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time to the extent such judgment relates to a discharged Claim.

2. Channeling Injunction

a. Terms

Subject to the Reservations as described in Section X.D of the Plan, to preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the discharge as provided in sections 1141 and 524 of the Bankruptcy Code and as described in Article X of the Plan, pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court and the District Court under section 105(a) of the Bankruptcy Code, all Persons that have held or asserted, currently hold or assert, or that may in the future hold or assert, any Abuse Claim against the Protected Parties, or any of them, shall be permanently and forever stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any Protected Party with respect to any such Abuse Claim, including:

(i) commencing, conducting, or continuing, in any manner, whether directly or indirectly, any suit, action, or other proceeding of any kind in any forum with respect to any such Abuse Claim against any Protected Party or any property or interest in property of any Protected Party;

(ii) enforcing, levying, attaching, collecting or otherwise recovering, by any manner or means, either directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim;

(iii) creating, perfecting, or enforcing in any manner, whether directly or indirectly, any Lien or Encumbrance of any kind against any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim;

(iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind, whether directly or indirectly, against any obligation due to any Protected Party or any property or interest in property of any Protected Party with respect to any such Abuse Claim; and

(v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents with respect to any such Abuse Claim.

b. Reservations

Notwithstanding anything to the contrary in Section X.D of the Plan, the Channeling Injunction shall not enjoin:

(i) the right of any Person to the treatment afforded to such Person under the Plan, including the rights of holders of Abuse Claims to assert such Abuse Claims in accordance with the Trust Documents solely against the Victims Compensation Trust;

(ii) the right of any Person to assert any Claim for payment of Trust Expenses solely against the Victims Compensation Trust;

(iii) the Victims Compensation Trust from enforcing its rights under the Trust Documents; or

(iv) the rights of the Victims Compensation Trust and the Reorganized Debtors (to the extent permitted or required under the Plan) to prosecute any action against the Insurers based on or arising from the Insurance Policies.

3. Provisions Relating to Channeling Injunction

a. Modifications

There can be no modification, dissolution, or termination of the Channeling Injunction, which shall be a permanent injunction.

b. Non-Limitation.

Nothing in the Plan or the Trust Documents shall or shall be construed in any way to limit the scope, enforceability, or effectiveness of the Channeling Injunction or the Victims Compensation Trust's assumption of all liability with respect to Abuse Claims.

c. Bankruptcy Rule 3016 Compliance

The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute or be deemed to constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

d. No Duplicative Recovery.

In no event shall any holder of an Abuse Claim be entitled to receive any duplicative payment, reimbursement, or restitution from any Protected Party under any theory of liability for the same loss, damage, or other Claim that is reimbursed by the Victims Compensation Trust or is otherwise based on the same events, facts, maters, or circumstances that gave rise to the applicable Abuse Claim.

e. District Court Approval

The Debtors shall seek an order of the District Court approving (a) the Channeling Injunction and the Victims Compensation Trust's assumption of all liability with respect to Abuse Claims and (b) the releases by holders of Abuse Claims for the benefit of the Protected Parties, each as set forth in Article X of the Plan.

4. Injunction Against Interference with Plan

Upon entry of the Confirmation Order, all holders of Claims and Interests shall be precluded and enjoined from taking any actions to interfere with the implementation and consummation of the Plan.

5. Releases

a. Releases by the Debtors

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, including the service of the Released Parties to facilitate and implement the reorganization of the Debtors, as an integral component of the Plan, the Debtors, the Reorganized Debtors, and the Estates shall, and shall be deemed to, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each and all of the Released Parties of and from any and all Causes of Action (including Avoidance Actions), any and all other Claims, Interests, obligations, rights, demands, suits, judgments, damages, debts, remedies, losses and liabilities of any nature whatsoever (including any derivative claims or Causes of Action asserted or that may be asserted on

behalf of the Debtors, the Reorganized Debtors, or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, contract, tort or otherwise, based on or relating to, or in any manner arising from, in whole or in part, any act, omission, transaction, event, or other circumstance taking place or existing on or before the Effective Date (including before the Petition Date) in connection with or related to the Debtors, the Reorganized Debtors, the Estates, their respective assets and properties, the Chapter 11 Cases, the Plan Documents, and any related agreements, instruments, and other documents created or entered into before or during the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, including the distribution of property under the Plan, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth in Section X.G of the Plan shall not be construed as (a) releasing any Released Party from Causes of Action arising from an act or omission that is judicially determined by a Final Order to have constituted fraud, gross negligence or willful misconduct or (b) releasing any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement executed to implement the Plan or Reinstated under the Plan.

b. Releases by Holders of Abuse Claims

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, including the service of the Released Parties to facilitate and implement the reorganization of the Debtors, as an integral component of the Plan, and except as otherwise expressly provided in the Plan or the Confirmation Order, to the maximum extent permitted under applicable law, as such law may be extended subsequent to the Effective Date, all holders of Abuse Claims shall, and shall be deemed to, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release each and all of the Protected Parties and their respective property and successors and assigns of and from all Abuse Claims and any and all Claims and Causes of Action whatsoever, whether known or unknown, asserted or unasserted, derivative or direct, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, fraud, contract, veil piercing or alter-ego theories of liability, successor liability, contribution, indemnification, joint liability, or otherwise, arising from or related in any way to such Abuse Claims.

6. Exculpation

From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to, or be subject to any right of action by, any Person for any act, omission, transaction, event, or other circumstance in connection with or related to the Debtors, the Reorganized Debtors, the Estates, their respective assets and properties, the Chapter 11 Cases, the Plan Documents, the pursuit of Confirmation, the administration and implementation of the Plan, including the distribution of property under the Plan, or

any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to the foregoing; provided, however, that Section X.H of the Plan shall not apply to release (a) obligations under the Plan or any contracts, instruments, releases, agreements, and documents delivered, Reinstated or assumed under the Plan, (b) any Claims or Causes of Action arising from or related to an act or omission that is judicially determined by a Final Order to have constituted fraud, gross negligence or willful misconduct, or (c) any Claims or Causes of Action against the Debtors or the Reorganized Debtors that are Reinstated under the Plan or otherwise survive the Effective Date

7. Injunctions

a. Injunction Related to Releases

As of the Effective Date, all holders of Claims that are the subject of Section X.G.2 of the Plan are, and shall be, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against any Released Party or its property or successors or assigns on account of or based on the subject matter of such Claims, whether directly or indirectly, derivatively or otherwise: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien or Encumbrance; and/or (d) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation that is discharged under Section X.C of the Plan or released under Section X.G.2 of the Plan.

b. Injunction Related to Exculpation

As of the Effective Date, all holders of Claims that are the subject of Section X.H of the Plan are, and shall be, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against any Exculpated Party and, solely to the extent provided by section 1125(e) of the Bankruptcy Code, any Section 1125(e) Party or its or their property or successors or assigns on account of or based on the subject matter of such Claims, whether directly or indirectly, derivatively or otherwise: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien or Encumbrance; and/or (d) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation that is discharged under Section X.C of the Plan or released under Section X.H of the Plan.

Q. Reservation of Rights

Notwithstanding any other provision of the Plan to the contrary, no provision of Article X of the Plan shall be deemed or construed to satisfy, discharge, release or enjoin claims by the Victims Compensation Trust, the Reorganized Debtors, or (subject to Article IV of the Plan) any other Person, as the case may be, against (1) the Victims Compensation Trust for payment of Abuse Claims in accordance with the Trust Distribution Procedures, (2) the Victims Compensation Trust for the payment of Trust Expenses, or (3) any Insurer that has not performed under an Insurance Policy or an Insurance Settlement Agreement.

R. Disallowed Claims

On and after the Effective Date, the Debtors and the Reorganized Debtors shall be fully and finally discharged of any and all liability or obligation on any and all Disallowed Claims, and any Order Disallowing a Claim that is not a Final Order as of the Effective Date solely because of a Person's right to move for reconsideration of such Order pursuant to section 502 of the Bankruptcy Code or Bankruptcy Rule 3008 shall nevertheless become and be deemed to be a Final Order on the Effective Date. The Confirmation Order, except as otherwise provided in the Plan, shall constitute an Order: (a) Disallowing all Claims (other than Abuse Claims) to the extent such Claims are not allowable under any provision of Section 502 of the Bankruptcy Code, including time-barred Claims, and Claims for unmatured interest and (b) in relation to each Debtor, Disallowing or subordinating to all other Claims, as the case may be, any Claims for penalties, punitive damages or any other damages not constituting compensatory damages.

S. Retention of Jurisdiction

1. General Retention

Until the Chapter 11 Cases are closed, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(c) and 1142 of the Bankruptcy Code to the fullest extent permitted by law, including the jurisdiction necessary to ensure that the purposes and the intent of the Plan are carried out. Following Confirmation, the administration of the Chapter 11 Cases will continue until the Chapter 11 Cases are closed by a Final Order of the Bankruptcy Court. The Bankruptcy Court shall also retain jurisdiction for the purpose of classification of any Claims and the re-examination of Abuse Claims and Claims that have been Allowed for purposes of voting, and the determination of such objections as may be filed with the Bankruptcy Court with respect to any Claims. The failure by the Debtors to object to, or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the rights of the Debtors, the Reorganized Debtors or the Victims Compensation Trust, as the case may be, to object to or re-examine such Claim in whole or part.

2. Specific Purposes.

In addition to the foregoing, the Bankruptcy Court shall retain jurisdiction after Confirmation of the Plan for each of the specific purposes enumerated in Section XI.B of the Plan. Notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the

Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(c) and 1142 of the Bankruptcy Code and to the fullest extent permitted by law, including the following purposes:

a. modify the Plan after Confirmation pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules;

b. correct any defect, cure any omission, reconcile any inconsistency or make any other necessary changes or modifications in or to the Plan, the Trust Documents or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance in the Plan in the event the Effective Date does not occur as provided herein so that the intended effect of the Plan may be substantially realized thereby;

c. to enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or if distributions pursuant to the Plan or the Trust Documents are enjoined or stayed;

d. to hear and determine all applications for compensation of Professionals and reimbursement of expenses under sections 328, 330, 331 and/or 503(b) of the Bankruptcy Code;

e. to hear and determine any Causes of Action arising during the period from the Petition Date to the Effective Date, or in any way related to the Plan or the transactions contemplated hereby, against the Debtors, the Reorganized Debtors, the Victims Compensation Trust, the Victims Compensation Trustee, or the Official Committees or the Future Claimants' Representative and their respective officers, directors, employees, members, attorneys, accountants, financial advisors, representatives and agents;

f. to determine any and all motions, including motions pending as of Confirmation, for the rejection, assumption or assumption and assignment of Executory Contracts or Unexpired Leases and the Allowance of any Claims resulting therefrom;

g. to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

h. to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

i. to determine any and all motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date (which jurisdiction shall be non-exclusive as to any such non-core matters);

j. to determine the Allowance and/or Disallowance of any Claims against the Debtors or their Estates, including any objections to any such Claims and the compromise and settlement of any Claim against the Debtors or their Estates;

k. to determine all questions and disputes regarding title to the assets of the Debtors or their Estates or the Trust Assets;

l. to ensure that Plan Distributions to holders of Allowed Claims and that Trust Distributions to holders of Abuse Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes relating to distributions under the Plan or the Trust Documents;

m. to construe, enforce and resolve all questions and disputes relating to employment agreements existing or approved by the Bankruptcy Court at or before Confirmation;

n. to hear and determine the Insurance Actions and to determine all questions and issues arising thereunder;

o. to hear and determine any matters related to the Victims Compensation Trust's indemnification obligations under Article IV of the Plan and the Trust Documents;

p. to hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Chapter 11 Cases;

q. to enter in aid of implementation of the Plan such orders as are necessary, including orders in aid of the implementation and enforcement of the releases, the Channeling Injunction, and the other injunctions described herein;

r. to enter and implement such orders as may be necessary or appropriate if any aspect of the Plan, the Victims Compensation Trust or the Confirmation Order is, for any reason or in any respect, determined by a court to be inconsistent with, to violate, or to be insufficient to satisfy any of the terms, conditions, or other duties associated with any Insurance Policies; and

s. to enter a Final Order or decree concluding or closing the Chapter 11 Cases.

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the foregoing matters, the reference to the "Bankruptcy Court" in Section V.S of this Disclosure Statement and Article XI of the Plan shall be deemed to be replaced by the "District Court."

ARTICLE VI. ACCEPTANCE OR REJECTION OF THE PLAN

A. Classes Entitled to Vote on the Plan

Under the Bankruptcy Code, holders of claims and interests are not entitled to vote if their contractual rights are unimpaired by the proposed plan or if they will receive no property under the plan. Holders of Claims in Classes 1 and 2 and holders of Interests in Class 7 are

Unimpaired under the Plan and are therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, no holders of Claims or Interests in such Classes shall be entitled to vote to accept or reject the Plan.

Each of Classes 3A (2010 Credit Facility Claims), 3B (2019 RCF Claims), 4A (2010 Bond Claims), 4B (2012 Bond Claims), 5 (General Unsecured Claims), and 6 (Abuse Claims) are Impaired and the holders of Allowed Claims in Classes 3A, 3B, 4A, 4B, and 5, and all Claims in Class 6, are entitled to vote to accept or reject the Plan.

If your Claim or Interest is not included in the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package, including a Ballot setting forth detailed voting instructions. If your Claim is included in the Voting Classes, you should read your Ballot and carefully follow the instructions included in the Ballot. Please use only the Ballot that accompanies this Disclosure Statement or the Ballot that the Debtors otherwise provided to you.

B. Votes Required for Acceptance by a Class

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims in such class that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims in such class that have voted. Acceptance by a class of interests requires an affirmative vote of at least two-thirds in amount of the total allowed interests in such class that have voted.

C. Certain Factors to Be Considered Prior to Voting

There are a variety of factors that all holders of Interests entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors, which may impact recoveries under the Plan, include the following:

1. unless otherwise specifically indicated, the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;

2. although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;

3. the Debtors may request Confirmation without the acceptance of all Impaired Classes entitled to vote in accordance with section 1129(b) of the Bankruptcy Code; and

4. any delays of either Confirmation or the occurrence of Effective Date could result in, among other things, increased Administrative Expense Claims and Professional Fee Claims.

While these factors could affect distributions available to holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of the Voting Classes or necessarily require a re-solicitation of the votes of holders of Claims in the Voting Classes.

For a further discussion of risk factors, please refer to Article VIII of this Disclosure Statement, entitled "Risk Factors."

ARTICLE VII. CONFIRMATION PROCEDURES

A. Hearing on Plan Confirmation

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, shall hold a hearing to confirm a plan of reorganization. The Confirmation Hearing pursuant to section 1128 of the Bankruptcy Code will be held on [_____], 2020 at [_].m. prevailing Eastern Time, before the Honorable Judge [_____], United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, [___] Floor, Courtroom [___], Wilmington, Delaware. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. Any objection to Confirmation of the Plan must: (i) be made in writing; (ii) state the name and address of the objecting party and the nature of the claim or interest of such party; (iii) state with particularity the legal and factual basis and nature of any objection to the Plan; and (iv) be filed with the Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy court so that they are received on or before [_____] at [__]:00 [_].m. prevailing Eastern Time.

B. Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan (i) is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, (ii) is feasible and (iii) is in the "best interests" of holders of Claims and Interests Impaired under the Plan.

The Plan fully complies with the statutory requirements for Confirmation listed below.

1. The proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.

2. The Plan has been proposed in good faith and not by any means forbidden by law.

3. Any payment made or to be made by the Debtors (or any other proponent of the Plan) or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, in connection with the Plan and incident to the Chapter 11 Cases is subject to the approval of the Bankruptcy Court as reasonable.

4. The Debtors have disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director or officer of the Reorganized Debtors, any Affiliate of the Debtors reorganized under the Plan, or any successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and holders of Interests and with public policies.

5. The Debtors have disclosed the identity of any Insider that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such Insider.

6. With respect to each Holder within an Impaired Class of Claims or Interests, each such Holder has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

7. With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or is Unimpaired under the Plan (subject to the "cram-down" provisions discussed below).

8. The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.

9. If a Class of Claims or Interests is Impaired under the Plan, at least one Class of Claims or Interests that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any Insider.

10. Confirmation is not likely to be followed by the liquidation or the need for further financial reorganization, of the Reorganized Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

11. All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

AS EXPLAINED IN SECTION VIII.B OF THIS DISCLOSURE STATEMENT, THE BANKRUPTCY CODE CONTAINS PROVISIONS FOR CONFIRMATION OF A PLAN EVEN IF IT IS NOT ACCEPTED BY ALL CLASSES. THESE SO-CALLED "CRAM-DOWN" PROVISIONS ARE SET FORTH IN SECTION 1129(b) OF THE BANKRUPTCY CODE, WHICH PROVIDES THAT A PLAN OF REORGANIZATION

CAN BE CONFIRMED EVEN IF IT HAS NOT BEEN ACCEPTED BY ALL IMPAIRED CLASSES OF CLAIMS AND INTERESTS AS LONG AS AT LEAST ONE IMPAIRED CLASS OF NON-INSIDER CLAIMS HAS VOTED TO ACCEPT THE PLAN.

C. Best Interests of Creditors / Liquidation Analysis

Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Six Classes of Impaired Claims, 2010 Credit Facility Claims (Class 3A), 2019 RCF Claims (Class 3B), 2010 Bond Claims (Class 4A), 2012 Bond Claims (Class 4B) General Unsecured Claims (Class 5), and Abuse Claims (Class 6) are Impaired under the Plan.

To calculate the probable distribution to holders of each impaired class of claims and interests if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtors' assets if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a sale of the Debtors' assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors and interest holders would be reduced by the claims of any secured creditors to the extent of the value of their collateral, by the costs and expenses of liquidation, and by other administrative expenses and costs of both the chapter 7 cases and the Chapter 11 Cases. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Debtors in the Chapter 11 Cases (such as compensation of attorneys, financial advisors, and accountants) that are allowed in the chapter 7 cases, litigation costs, and any claims arising from the operations of the Debtors during the pendency of the Chapter 11 Cases.

Once the Bankruptcy Court ascertains the recoveries in liquidation of secured creditors and priority claimants, if any, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under the plan, then the plan is not in the best interests of creditors and equity security holders.

Six Classes of Impaired Claims, 2010 Credit Facility Claims (Class 3A), 2019 RCF Claims (Class 3B), 2010 Bond Claims (Class 4A), 2012 Bond Claims (Class 4B), General Unsecured Claims (Class 5), and Abuse Claims (Class 6), are Impaired under the Plan. If the Debtors were liquidated under chapter 7 of the Bankruptcy Code, holders of General Unsecured Claims (Class 5) and Abuse Claims (Class 6) would receive lesser distributions than under the Plan, as explained in detail in the Liquidation analysis, to be attached to a subsequent amendment to this Disclosure Statement as **Exhibit B**.

Here, the Plan is in the best interests of claimants and interest holders and meets the requirements of section 1129(a)(7) of the Bankruptcy Code.

D. Feasibility

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet obligations under the Plan. The Debtors, with the assistance of their advisors, have prepared projections for the calendar years 2020 through [20__], including management's assumptions related thereto, to be attached to a subsequent amendment to this Disclosure Statement as **Exhibit C** (the "Financial Projections"). The Financial Projections assume that the Plan will be implemented in accordance with its stated terms. The Debtors are unaware of any circumstances as of the date of this Disclosure Statement that would require the re-forecasting of the Financial Projections due to a material change in the Debtors' prospects. As reflected in the Financial Projections, the Debtors anticipate that they will timely meet all of their collective obligations and will be financially viable after Confirmation of the Plan. Accordingly, the Debtors believe that Confirmation is not likely to be followed by liquidation or the need for further reorganization.

E. Acceptance by Impaired Class

The Bankruptcy Code requires, as a condition to confirmation, that each class of claims or interests that is impaired under a plan of reorganization, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. As stated above, the Voting Classes are Impaired Class and is comprised of the holders of Claims in Class 3A, Class 3B, Class 4A, Class 4B, Class 5, and Class 6. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as an affirmative vote of more than one-half in number of total allowed claims in such class that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims in such class that have voted. Thus, the Voting Classes described herein will have voted to accept the Plan only if one-half of the holders of Allowed Claims, as applicable, with at least two-thirds of the total dollar amount of the Allowed Claims, as applicable, vote on the Plan to accept.

F. Conditions Precedent to Confirmation of the Plan

Confirmation of the Plan shall not occur unless following conditions precedent have been satisfied:

1. the Confirmation Order shall be in form and substance acceptable to the Debtors;

2. The Confirmation Order shall approve and implement the Channeling Injunction set for in Section X.D of the Plan; and

3. The Plan Documents shall be in form and substance acceptable to the Debtors.

G. Conditions Precedent to the Effective Date

The Effective Date of the Plan shall not occur unless following conditions precedent have been satisfied or waived in accordance with Article IX of the Plan:

1. the Confirmation Order, in form and substance acceptable to the Debtors, shall have been entered by the Bankruptcy Court, shall have become a Final Order, and shall have been adopted, affirmed, issued or ratified by the District Court;

2. the Trust Agreement and the Trust Distribution Procedures shall have become effective in accordance with the terms of the Plan;

3. the Trust shall have been established and funded in accordance with the Plan;

4. the Debtors shall have obtained all authorizations, consents, certifications, approvals, rulings, opinions or other documents that are necessary to implement and effectuate the Plan;

5. all actions, documents, and agreements necessary to implement and effectuate the Plan shall have been effected or executed; and

6. the Debtors shall have filed a notice of occurrence of the Effective Date.

H. Waiver of Conditions Precedent to the Effective Date

Except for the conditions precedent set forth in Section VII.G of this Disclosure Statement, each of the conditions precedent to the occurrence of the Effective Date set forth above may be waived in whole or in part by the Debtors without notice to or leave or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan. The failure to satisfy any condition precedent to the to the Confirmation Date or satisfy or waive any condition precedent to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied.

I. Vacatur of Confirmation Order; Non-Occurrence of Effective Date

If the Confirmation Order is vacated or the Effective Date does not occur within 180 days after entry of the Confirmation Order (subject to extension by the Debtors in their sole discretion), the Plan shall be null and void in all respects and nothing contained in the Plan or this Disclosure Statement shall (1) constitute a waiver or release of any Causes of Action by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any holders of a Claim or Interest or any other Person; (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any holders, or any other Person in any respect; or (4) be used by the Debtors or any other Person as evidence (or in any other way) in any litigation, including with respect to the strengths and weaknesses of positions, arguments or claims of any of the parties to such litigation.

J. Alternatives to Confirmation and Consummation of the Plan

The Debtors have evaluated several alternatives to the Plan. After studying these alternatives, the Debtors have concluded that the Plan is the preferred approach to effectuating the Debtors' restructuring and maximizing the prospects of a continuation of their mission and value for all stakeholders and, therefore, is in the best interests of all constituencies. If the Plan is not confirmed, the Debtors' ability to continue operating as a going concern could be severely jeopardized. The realistic alternatives likely will be (1) the preparation and presentation of an alternative plan of reorganization, (2) an out-of-court restructuring involving a dismissal of the proceedings, or (3) a liquidation under chapter 7 of the Bankruptcy Code.

ARTICLE VIII. RISK FACTORS

The following provides a summary of various important considerations and other risk factors associated with the Plan; however, it is not exhaustive. There are risks, uncertainties, and other important factors that could cause the Debtors' actual performance or achievements to be materially different from those they may project, and the Debtors undertake no obligation to update any such statement.

A. Business-Related Risks

The Financial Projections are dependent upon the successful implementation of the Debtors' business plan and the validity of the other assumptions contained therein. These projections reflect numerous assumptions, including Confirmation and consummation of the Plan in accordance with its terms, the anticipated future performance of the Debtors, industry performance, certain assumptions with respect to competitors of the Debtors, general business and economic conditions, and other matters, many of which are beyond the control of the Debtors. In addition, unanticipated events and circumstances occurring subsequent to the preparation of the projections may affect the actual financial results of the Debtors. Although the Debtors believe that the projections are reasonably attainable, variations between the actual financial results and those projected may occur and be material.

B. Bankruptcy-Specific Considerations

1. General

Although the Debtors believe that the Chapter 11 Cases will be of short duration and will not be materially disruptive to the Debtors' mission, the Debtors cannot be certain that this will be the case. Although the Plan is designed to minimize the length of the Chapter 11 Cases, it is impossible to predict with certainty the amount of time that the Debtors may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed. Even if confirmed on a timely basis, bankruptcy proceedings could have a material adverse effect on the Debtors' business operations. A delay in the bankruptcy proceedings will also involve additional expense and may divert some of the attention of the Debtors' management away from operation of the organization.

2. Nonacceptance of the Plan—Confirmation by Nonconsensual "Cram-down"

The Plan provides that six Classes of Claims are Impaired. If any impaired Classes of Claims are deemed to reject the Plan, the Bankruptcy Court nevertheless may confirm the Plan at the Debtors' request pursuant to the "cram-down" provisions of the Bankruptcy Code if at least one impaired Class of Claims has accepted the Plan (with such acceptance being determined without including the acceptance of any "insider" in such Class) and, as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such impaired class.

Although the Debtors believe that the Plan would meet such tests, the Debtors cannot assure you that the Bankruptcy Court would reach the same conclusion.

3. Objections to the Plan's Classification or Amounts of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims or Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that parties in interest will not object to the classification or amounts of Claims and Interests under the Plan, or that the Bankruptcy Court will approve such classification or amounts.

4. The Conditions Precedent to Plan Confirmation and the Effective Date of the Plan May Not Occur

As more fully set forth in Article IX of the Plan, Plan Confirmation and the Effective Date are subject to a number of conditions precedent. If such conditions precedent are not satisfied or waived, Plan Confirmation, the Effective Date, or both will not occur.

5. Non-Confirmation or Delay of Confirmation of the Plan

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, findings by a bankruptcy court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims or equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court may determine that this Disclosure Statement and/or the solicitation procedures did not satisfy the requirements of the Bankruptcy Code or the Bankruptcy Rules or may decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes, or the Plan contains other terms disapproved of by the Bankruptcy Court. If the Debtors fail to achieve Confirmation, the Chapter 11 Cases would likely continue for a protracted period without indication of how or when the Chapter 11 Cases may be completed. Some of the risks that the Debtors face in a bankruptcy proceeding would become more acute in such a scenario, including certain risks that are beyond their control, such as deterioration or other changes in economic conditions, changes in the industry in which the Debtors operate, and potential revaluing of their assets due to chapter 11 proceedings.

Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court is not obligated to confirm the Plan as proposed. A dissenting Holder of a Claim or Interest against the Debtors could challenge the solicitation procedures as not being in compliance with the Bankruptcy Code, which could mean that the results of the Solicitation may be invalid. If the Bankruptcy Court determined that the solicitation procedures were appropriate and the results were valid, the Bankruptcy Court could still decline to confirm the Plan if the Bankruptcy Court found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, (a) the Debtors may not be able to successfully reorganize; (b) the distributions that holders of Claims or Interests ultimately would receive, if any, with respect to their Claims or Interests would be uncertain, and (c) there may be no assurance that the Debtors will be able to successfully develop, prosecute, confirm, and consummate an alternative plan that will be acceptable to the Bankruptcy Court and the holders of Claims or Interests.

6. Amendment of Plan Prior to Confirmation by the Debtors

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan or waive any conditions thereto if and to the extent necessary or desirable for Confirmation. The potential impact of any such amendment or waiver on holders of Claims and Interests cannot presently be foreseen but may include a change in the economic impact of the Plan on some or all of the proposed Classes or a change in the relative rights of such Classes.

7. Failure to Obtain Approval of Releases, Injunctions and Exculpation

As set forth in Section V.P of this Disclosure Statement, the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases that may otherwise be asserted against the Debtors, the Reorganized Debtors, the other Released Parties and their respective Related Parties, as applicable. The releases, injunctions, and exculpations (including, for the avoidance of doubt, the Channeling Injunction and the definitions of Released Parties and Exculpated Parties) provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain

parties may not be considered Released Parties or Exculpated Parties, and certain Released Parties or Exculpated Parties may withdraw their support for the Plan.

8. Plan Based on Assumptions

The Plan affects the capital structure and the structure and operation of the Debtors' organization and reflects assumptions and analyses based on the Debtors' experience and perception of historical trends, current conditions, and expected future developments, as well as other factors that the Debtors consider appropriate under the circumstances. Whether actual future results and developments will be consistent with the Debtors' expectations and assumptions depends on a number of factors, including the Debtors' ability to maintain the public's confidence in the Debtors' viability as a continuing entity and enterprise and to attract and retain sufficient interest in their organization and (c) ability to retain key employees. The failure of any of these factors could materially adversely affect the successful reorganization of the Debtors' business.

In addition, the Plan relies upon the Financial Projections, including with respect to revenues, EBIDA, debt service, and cash flow. Financial forecasts are necessarily speculative, and it is likely that one or more of the assumptions and estimates that are the basis of these financial forecasts will not be accurate. Consequently, there can be no assurance that the results or developments contemplated by any plan of reorganization implemented will occur or, even if they do occur, that they will have the anticipated effects on the Debtors and their subsidiaries or their businesses or operations. The failure of any such results or developments to materialize as anticipated could materially adversely affect the successful implementation of the Plan.

ARTICLE IX.
CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan and is for general information purposes only. This summary should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular holder of a Claim or Interest. This discussion does not purport to be a complete analysis or listing of all potential tax considerations.

This discussion is based on existing provisions of the Internal Revenue Code of 1986, as amended (the "Code"), existing and proposed Treasury Regulations promulgated thereunder, and current administrative rulings and court decisions. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect to the U.S. federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences of the Plan.

Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No ruling has been requested or obtained from the IRS with respect to any tax aspects of the Plan and no opinion of counsel has been sought or obtained with respect thereto. The discussion

below is not binding upon the IRS or any court. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein. No representations or assurances are being made to the holders of Claims or Interests with respect to the U.S. federal income tax consequences described herein.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

A. The Victims Compensation Trust

On the Confirmation Date, the Victims Compensation Trust shall be established in accordance with the Trust Documents. The Victims Compensation Trust is intended to qualify as a "qualified settlement fund" ("QSF") pursuant to Treasury Regulation section 1.468B-1. The Protected Parties are the "transferors" within the meaning of Treasury Regulation Section 1.468B-1(d)(1). The Victims Compensation Trustee shall be classified as the "administrator" within the meaning of Treasury Regulation Section 1.468B-2(k)(3). The Trust Documents, including the Trust Agreement, are incorporated herein by reference.

The primary tax consequences of the Victims Compensation Trust being characterized as a QSF are the following:

1. The Victims Compensation Trust must use a calendar taxable year and the accrual method of accounting.

2. If the Protected Parties fund the Victims Compensation Trust with appreciated property, the Protected Parties are deemed to sell the property to the Victims Compensation Trust. Accordingly, any gain or loss from the deemed sale must be reported by the Protected Parties.

3. The Victims Compensation Trust takes a fair market value basis in property contributed to it by the Protected Parties.

4. The Victims Compensation Trust's gross income less certain modifications is taxable at the highest federal tax rate applicable to trusts and estates. The Protected Parties' funding of the Victims Compensation Trust with Cash and other property is not reported by the Victims Compensation Trust as taxable income. However, earnings recognized from, for example, the short-term investment of the Victims Compensation Trust's funds will be subject to tax.

5. The Victims Compensation Trust may deduct from its gross income a limited number of administrative expenses; the Victims Compensation Trust is not entitled to deduct distributions paid to its beneficiaries.

6. The Victims Compensation Trust will have a separate taxpayer identification number and will be required to file annual tax returns (which are due on March 15, or later if an extension is granted under applicable law). The Victims Compensation Trust will also be required to comply with a number of other administrative tax rules including filing information returns (generally IRS Form 1099) when approved payments are made to claimants.

B. Holder of Class 3A, 3B, 4A, and 4B Claims

The holder of the Class 3A, 3B, 4A, and 4B Claims is strongly urged to consult its own tax advisors regarding the specific tax consequences of the transactions described herein and in the Plan.

C. Holders of Class 5 and Class 6 Claims

The federal income tax consequences to a holder of a Class 5 or Class 6 Claim receiving, or entitled to receive, a distribution in partial or total satisfaction of a Claim may depend on a number of factors, including the nature of the Claim, the claimants' method of accounting, and their own particular tax situation. Because each claimant's tax situation differs, claimants should consult their own tax advisors to determine how the Plan affects them for federal, state and local tax purposes, based on their particular tax situations.

Among other things, the federal income tax consequences of a distribution to a claimant may depend initially on the nature of the original transaction pursuant to which the Claim arose. For example, a distribution in repayment of the principal amount of a loan is generally not included in the claimant's gross income. A distribution to a holder of an Abuse Claim may not be taxable as it may be considered compensation for personal injuries. The federal income tax consequences of a distribution to a claimant may also depend on whether the item to which the distribution relates has previously been included in the claimant's gross income or has previously been subject to a loss or bad debt deduction. For example, if a distribution is made in satisfaction of a receivable acquired in the ordinary course of the claimant's trade or business, and the claimant had previously included the amount of such receivable distribution in his or her gross income under his or her method of accounting, and had not previously claimed a loss or bad debt deduction for that amount, the receipt of the distribution should not result in additional income to the claimant but may, as discussed below, result in a loss.

Conversely, if the claimant had previously claimed a loss or bad debt deduction with respect to the item previously included in income, the claimant generally would be required to include the amount of the distribution in income when received.

A claimant receiving a distribution in satisfaction of his or her Claim generally may recognize taxable income or loss measured by the difference between (i) the cash and the fair market value (if any) of the property received and (ii) its adjusted tax basis in the Claim. For this purpose, the adjusted tax basis may include amounts previously included in income (less any bad debt or loss deduction) with respect to that item. This income or loss may be ordinary income or loss if the distribution is in satisfaction of accounts or notes receivable acquired in the ordinary course of the claimant's trade or business for the performance of services or for the sale of goods

or merchandise. In addition, if a claimant had claimed an ordinary bad debt deduction for the worthlessness of his or her Claim in whole or in part in a prior taxable year, any income realized by the claimant as a result of receiving a distribution may be taxed as ordinary income to the extent of the ordinary deduction previously claimed. Generally, the income or loss will be capital gain or loss if the Claim is a capital asset in the claimant's hands

D. Holders that are Non-United States Persons

Holders of Claims that are not "United States persons" (within the meaning of Section 7701(a)(30) of the Code) generally will not be subject to U.S. federal income tax with respect to property (including Cash) received in exchange for such Claims, unless (i) such holder is engaged in a trade or business in the United States to which income, gain or loss from the exchange is "effectively connected" for U.S. federal income tax purposes, or (ii) if such holder is an individual, such holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

ARTICLE X.
CONCLUSION AND RECOMMENDATION

In the opinion of the Debtors, the Plan is preferable to all other available alternatives and provides for a larger distribution to the Debtors' creditors than would otherwise result from any other scenario. Any alternative to Confirmation of the Plan, moreover, could result in extensive delays and increased administrative expenses. Accordingly, the Debtors believe that the Plan provides the best available recovery to their stakeholders and should be confirmed.

Dated: February 18, 2020

Boy Scouts of America and Delaware BSA, LLC

_____

Steven P. McGowan
Secretary and General Counsel

EXHIBIT A
PLAN OF REORGANIZATION
(previously filed)

EXHIBIT B
LIQUIDATION ANALYSIS
(to be supplemented)

EXHIBIT C
FINANCIAL PROJECTIONS
(to be supplemented)

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. Docket No. 14**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order (this "Interim Order"), pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1, (i) authorizing the Debtors to (a) pay their outstanding Prepetition Employee Obligations and (b) maintain their existing Compensation and Benefits Programs, (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Debtors consent to the entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The Final Hearing on the Motion shall be held on March 24, 2020 at 10:30 a.m., prevailing Eastern Time. Any objections or responses to entry of a final order (the "Final Order") on the Motion shall be filed no later than 4:00 p.m., prevailing Eastern Time, on March 17, 2020 (the "Objection Deadline") and served on the following parties: (i) the Debtors, Boy Scouts of America, 1325 West Walnut Hill Lane, Irving, Texas 75038, Attn: Steven P. McGowan; (ii) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Jessica C.K. Boelter, and One South Dearborn, Chicago, Illinois 60603, Attn: Matthew E. Linder; (iii) proposed co-counsel to the Debtors, Morris, Nichols, Arsht

& Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Derek C. Abbott; (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder and Hannah M. McCollum; (v) counsel to the prepetition Future Claimants' Representative, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert S. Brady and Edwin J. Harron; (vi) counsel to JPMorgan Chase Bank National Association, Norton Rose Fulbright US LLP, 2200 Ross Avenue, Dallas, Texas 75201-7932, Attn: Louis R. Strubeck and Kristian W. Gluck; (vii) representatives of the prepetition Ad Hoc Committee of Local Councils, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Richard G. Mason and Joseph C. Celentino; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims, Pachulski, Stang, Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067, Attn: James I. Stang; (ix) counsel to the County Commission of Fayette County (West Virginia), Steptoe & Johnson PLLC, Chase Tower – 8th Floor, 707 Virginia Street East, Charleston, West Virginia 25301, Attn: John Stump; (x) counsel to any statutory committee appointed in these chapter 11 cases; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002.

3. The Debtors are authorized to (a) pay the Prepetition Employee Obligations (either directly or to third parties for payment or remittance, as applicable), provided that no payment shall be made on account of the Prepetition Employee Obligations in excess of the limits provided for by Bankruptcy Code sections 507(a)(4) or 507(a)(5), other than as provided herein, (b) maintain and continue to honor and pay, in their discretion, amounts with respect to the Debtors' Compensation and Benefits Programs as such were in effect as of the Petition Date and as such may be modified or supplemented from time to time in the ordinary course, and

(c) make all Withholdings, Payroll Taxes, and Deductions relating to the Compensation and Benefits Programs as required by applicable law, up to a maximum aggregate cap of $4,800,000 for all amounts authorized to be paid under this Interim Order. For the avoidance of doubt, the payment of Health Benefit Claims pursuant to the self-insured Medical and Dental Plans and any amounts owed under the Workers' Compensation Program shall be excluded from the cap.

4. The Debtors are authorized to continue to maintain their Compensation and Benefits Programs with respect to the BSA Employees, Retirees, Temporary Workers, and Independent Contractors, provided, that, pending entry of an order granting relief with respect to the Non-Insider Severance Program and other severance obligations, the Debtors shall not pay any such amounts that may become due and owing.

5. The automatic stay is modified, solely to the extent necessary, to authorize the Debtors to permit the BSA Employees to proceed with any valid claims they may have under the Workers' Compensation Program, provided that any recovery on account of such claims is limited solely to the proceeds under the Debtors' applicable insurance policies and proceeds from non-debtor sources.

6. Notwithstanding any other provision of this Interim Order, pending entry of a final order, nothing in this Interim Order shall authorize the Debtors to make any cash payment to or on behalf of any BSA Employee on account of wages and other compensation obligations in excess of the statutory caps set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, including cash payment of PTO obligations with respect to any terminated BSA Employees. For the avoidance of doubt, this Interim Order shall have no impact on the Debtors' ability to honor the BSA Employees' ordinary course use of PTO days in accordance with the

PTO policy, whether accrued prepetition or postpetition, nor shall it affect the Debtors' reimbursement of Health Benefit Claims to BSA Employees in excess of the statutory caps.

7. The Debtors are authorized to initiate the Wellness Program and to honor and pay any amounts that may come due, as such may be modified or supplemented from time to time in the ordinary course.

8. Nothing in the Motion or this Interim Order shall be deemed to authorize the payment of any amount in satisfaction of bonus or severance obligations to insiders subject to section 503(c) of the Bankruptcy Code.

9. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or transfers in respect of the payments authorized to be paid pursuant to this Interim Order that are dishonored or rejected.

10. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to

pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Interim Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

11. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claims held by, any party.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

13. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are waived by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: Mar. 19, 2020
Wilmington, Delaware

THE HON. LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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) (Joint Administration Requested) **Ref: Docket No. 13**

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, AND (C) MAINTAIN EXISTING BUSINESS FORMS; (II) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b) FOR CAUSE; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), pursuant to Bankruptcy Code sections 105(a), 345(b), 363(c)(1), 503 and 507, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing the Debtors to (a) continue to use their Cash Management System, including existing Bank Accounts and Purchase Card Program, (b) honor certain prepetition obligations related thereto, and (c) maintain their existing Business Forms; (ii) waiving the requirements of section 345(b) of the Bankruptcy Code for cause with respect to the deposit accounts at Unauthorized Depositories and the Investment Accounts; and (iii) granting related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Debtors consent to the entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The Final Hearing on the Motion shall be held on March 24, 2020 at 10:30 a.m., prevailing Eastern Time. Any objections or responses to entry of a final order (the "Final Order") on the Motion shall be filed no later than 4:00 p.m., prevailing Eastern Time, on March 17, 2020 (the "Objection Deadline"), and served on the following parties: (i) the Debtors, Boy Scouts of America, 1325 West Walnut Hill Lane, Irving, Texas 75038, Attn: Steven P.

McGowan; (ii) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Jessica C.K. Boelter, and One South Dearborn, Chicago, Illinois 60603, Attn: Matthew E. Linder; (iii) proposed co-counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Derek C. Abbott; (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder and Hannah M. McCollum; (v) counsel to the prepetition Future Claimants' Representative, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert S. Brady and Edwin J. Harron; (vi) counsel to JPMorgan Chase Bank, N.A., Norton Rose Fulbright US LLP, 2200 Ross Avenue, Dallas, Texas 75201-7932, Attn: Louis R. Strubeck and Kristian W. Gluck; (vii) representatives of the prepetition Ad Hoc Committee of Local Councils, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Richard G. Mason and Joseph C. Celentino; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims, Pachulski, Stang, Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067, Attn: James I. Stang; (ix) counsel to the County Commission of Fayette County (West Virginia), Steptoe & Johnson PLLC, Chase Tower – 8th Floor, 707 Virginia Street East, Charleston, West Virginia 25301, Attn: John Stump; (x) counsel to any statutory committee appointed in these chapter 11 cases; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002.

3. The Debtors are authorized pursuant to sections 105(a) and 363(c)(1) of the Bankruptcy Code, to continue operating the Cash Management System, including the Bank Accounts identified on the schedule attached hereto as **Exhibit 1**, substantially as depicted on the funds flow diagram attached hereto as **Exhibit 2**.

4. The Debtors are further authorized to: (i) continue to use, with the same account numbers, each of the Bank Accounts in existence as of the Petition Date, including each of the accounts identified on **Exhibit 1** attached hereto and need not comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Operating Guidelines, including, without limitation, the requirement to establish any segregated accounts for cash collateral and/or tax payments; (ii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (iii) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, without limitation, check, ACH transfer, wire transfer and other methods; (iv) pay the Prepetition Bank Fees, in addition to any other Bank Fees for prepetition transactions that are charged post-petition; (v) reimburse the Banks for any claims arising before, on or after the Petition Date in connection with customer checks deposited with the Banks that have been dishonored or returned as a result of insufficient funds; and (vi) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts and any related cash management, treasury and accounting services, and to otherwise perform their obligations under any and all documents and agreements governing the Bank Accounts and related cash management, treasury and accounting services.

5. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions.

6. Nothing in this Interim Order shall in any way alter or impair the Banks' rights pursuant to any existing deposit and account agreements between the Debtors and the Banks, including without limitation, any ability of the Banks to close the Bank Accounts pursuant to the terms of such deposit and account agreements, but subject (to the extent applicable) to the

provisions of the automatic stay of section 362 of the Bankruptcy Code, and such deposit and account agreements shall continue to govern the postpetition cash management relationship between the Debtors and the respective Bank, and all of the provisions of such agreements, including any termination and fee provisions thereof, shall remain in full force and effect, and the Debtors and the Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business, including the closing of Bank Accounts or the opening of new bank accounts, subject to the notice requirements of paragraph 9 of this Interim Order.

7. The Banks[3] are authorized, without the need for further order of this Court, to: (i) continue to maintain, service and administer the Bank Accounts of the Debtors as debtors in possession and provide related cash management, treasury and accounting services without interruption and in the ordinary course; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, wires, ACH transfers, credit card payments, other electronic transfers or other items presented, issued or drawn on the Bank Accounts (collectively, the "Disbursements"); and (iii) debit or charge back the Bank Accounts for all undisputed prepetition and post-petition Bank Fees; provided, however, that no Disbursements (excluding any electronic fund transfers that the Banks are obligated to settle) presented, issued or drawn on the Bank Accounts before the Petition Date shall be honored unless (i) authorized by order of this Court; (ii) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtors; and (iii) supported by sufficient available funds in the Bank Account in question.

8. Any unrestricted funds that are deposited into any Bank Account on or after the Petition Date (the "Postpetition Funds') shall be deemed segregated from any unrestricted funds

[3] The term "Banks," as used in this Interim Order, shall include, in addition to the bank with which the Debtors already maintain accounts, any other banks with which the Debtors open new accounts pursuant to the terms of this Interim Order.

in any of the Bank Accounts as of the Petition Date (the "Prepetition Funds"). The Postpetition Funds shall not be deemed "Collateral" (as defined in each respective Prepetition Loan Document) of the Prepetition Secured Parties (each as defined in the Interim Cash Collateral Order[4]), solely by virtue of being in the possession or control of the Prepetition Secured Parties. The Prepetition Secured Parties, however, reserve all rights to assert that some or all of the Prepetition Funds are Collateral of the Prepetition Secured Parties under the Prepetition Loan Documents, and all rights of the Debtors and any other parties in interest to contest any such assertions are similarly reserved.

9. In the course of providing cash management services to the Debtors, each of the Banks at which the Bank Accounts are maintained is authorized, without further order of the Court, to deduct the applicable Bank Fees from the appropriate accounts of the Debtors and to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items resulting from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred before, on, or after the Petition Date and regardless of whether the returned items relate to prepetition or post-petition transfers.

10. Subject to the terms hereof, the Banks are authorized to accept, honor, and rely upon all representations and directions of the Debtors with respect to whether any Disbursement should be honored pursuant to any order of this Court, whether or not such Disbursements are dated before, on, or after the Petition Date. No Bank shall be deemed in violation of this Interim Order or any other order of this Court or have any liability to any party for honoring any

[4] For purposes of this Interim Order, the term "Interim Cash Collateral Order" shall mean the *Interim Order (I) Authorizing the Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Party Pursuant to 11 U.S.C. §§ 105(A), 361, 362, 363, 503 and 507; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B); and (IV) Granting Related Relief.*

Disbursement (i) at the direction of the Debtors, (ii) in the good-faith belief that the Court has authorized such Disbursement to be honored or (iii) as a result of an innocent mistake. The Debtors shall notify each Bank for each Bank Account maintained at such Bank of any checks that are to be dishonored by such Bank, which checks may include those issued after the Petition Date as well as those issued prior to the Petition Date, and the Debtors direct the Bank to honor all other checks in accordance with the terms of this Interim Order.

11. The Debtors are authorized to implement any changes to the Cash Management System as they may deem necessary and appropriate in their discretion, in the ordinary course of business to the extent permitted by any financing or cash collateral order entered into in these chapter 11 cases, including to open any new bank accounts or close any Bank Accounts; provided, however, that the relief granted in this Interim Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and the Debtors shall give notice prior to 15 days of such action to the U.S. Trustee, JPM, and any statutory committees appointed in the chapter 11 cases; provided further that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement.

12. The Banks are authorized to (i) honor the Debtors' directions with respect to the opening of any additional bank account or the closing of any Bank Account and (ii) accept and hold the Debtors' funds in accordance with the Debtors' instructions; provided, however, that the Banks shall not have any liability to any party in connection with their reliance on such representations.

13. The requirements of section 345(b) of the Bankruptcy Code are hereby suspended for sixty (60) days solely to allow the Debtors to maintain (a) the Investment Accounts and (b) the fourteen (14) non-investment Bank Accounts at BB&T, CBIC, Charles Schwab, First Bank VI, InBank, Merrill Lynch, RBC, Scotiabank, and US Bank; provided that if the balance of any non-investment account at any one of those Banks exceeds $250,000, the Debtors shall sweep all funds in excess of that amount into one or more of the Debtors' Bank Accounts that is a signatory to a Uniform Depository Agreement in a form prescribed by the U.S. Trustee.

14. For Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Interim Order the Debtors shall (a) contact each Bank, (b) provide the Bank with each of the Debtors' employer identification numbers and (c) identify each of their Bank Accounts held at such Banks as being held by a "debtor in possession" in a bankruptcy case.

15. For Banks at which the Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall either (i) transfer funds to a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or (ii) use their good-faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

16. This Interim Order does not independently authorize (i) any intercompany lending, (ii) the payment of any intercompany receivables, or (iii) any other intercompany transfers.

17. The Debtors are authorized to continue the Purchase Card Program and to use, and to authorize their employees to use, subject to the terms and conditions of the Purchase Card Program existing as of the Petition Date, the cards issued pursuant to those Purchase Card Program (the "Purchase Cards") in the ordinary course of business, on a post-petition basis, and to pay any and all amounts incurred in the ordinary course of business and consistent with past practices in connection with the Purchase Cards that arose or may arise after the Petition Date, and to pay all amounts incurred in connection with all Purchase Card Program that arose on or prior to the Petition Date. All obligations arising from the prepetition and post-petition usage of Purchase Cards may be offset against the respective payments in the ordinary course of business without further order of this Court.

18. The Debtors are authorized to use their existing Business Forms substantially in the form existing immediately before the Petition Date, without reference to their status as "Debtors in Possession" until the Debtors' supply of existing Business Forms is exhausted; provided, however, that with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing such checks and letterhead with the designation "Debtor in Possession" and the corresponding number of the lead bankruptcy case on all such checks within 15 days of the date of entry of this Interim Order.

19. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

20. Within three business days from the date of entry of this Interim Order, the Debtors will serve a copy of this Interim Order to the Banks at which the Bank Accounts are maintained and will request that each Bank internally code each of the Bank Accounts as "debtor in possession" accounts.

21. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

22. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

23. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are waived by such notice.

24. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

25. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: Feb 20, 2020
Wilmington, Delaware

THE HON. LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

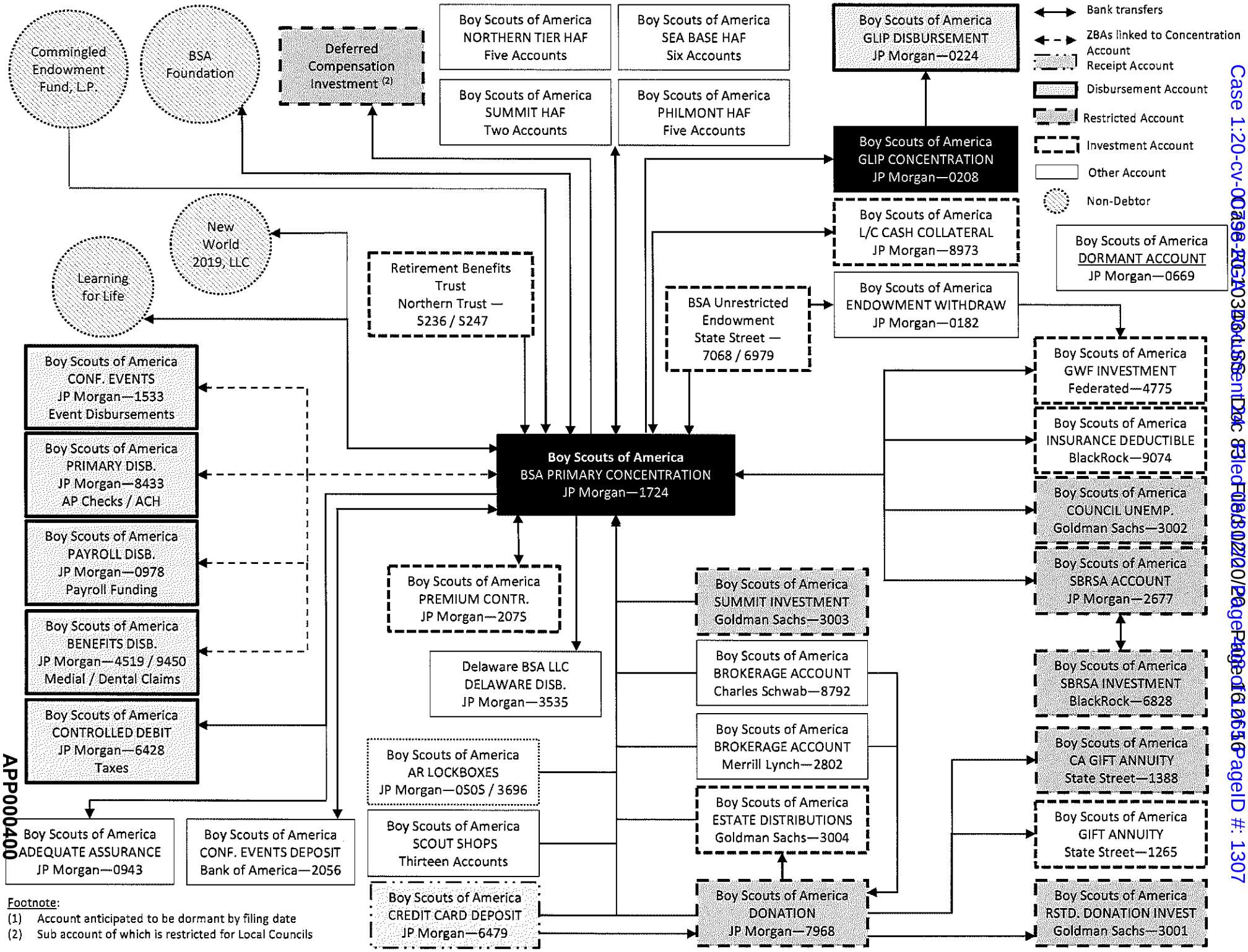
Bank Accounts

	Bank	Account No.	Account Description
1.	JPM	7968	Donations Account
2.	JPM	0669	Inactive Depository Account
3.	JPM	6428	Controlled Debit Account
4.	JPM	0943	Adequate Assurance Account
5.	JPM	1724	Primary Concentration Account
6.	JPM	1533	Conference Events Disbursement Account
7.	JPM	8433	Primary Disbursement Account
8.	JPM	0978	Payroll Account
9.	JPM	6479	Credit Card Depository Account
10.	JPM	8973	L/C Cash Collateral Account
11.	JPM	0182	Endowment Withdrawal Account
12.	Bank of America	4519	Health Benefits Disbursement Account
13.	JPM	9450	Health Benefits Disbursement Account
14.	BlackRock	9074	Insurance Deductible Investment Account
15.	Federated	4775	General Working Fund Investment Account
16.	Goldman Sachs	3001	Restricted Donations Investment Account
17.	Goldman Sachs	3002	Local Council Unemployment Investment Account
18.	JPM	2075	Premium Contribution Investment Account
19.	JPM	0208	GLIP Concentration Account
20.	JPM	0224	GLIP Disbursement Account
21.	Bank of America	5703	HAF Depository Account
22.	Bank of America	5716	HAF Disbursement Account
23.	Scotiabank	2418	HAF Operating Account
24.	CIBC	6370	HAF Operating Account
25.	First Bank VI	7272	HAF Depository Account
26.	First Bank VI	4153	HAF Disbursement Account
27.	Wells Fargo	1321	HAF Depository Account
28.	JPM	3711	HAF Depository Account
29.	RBC	1031	HAF Depository Account
30.	RBC	8741	HAF Disbursement Account
31.	JPM	5039	HAF Disbursement Account
32.	InBank	0538	HAF Depository Account
33.	JPM	2515	HAF Depository Account
34.	JPM	3869	HAF Disbursement Account
35.	InBank	0013	HAF Disbursement Account
36.	InBank	0013	HAF Disbursement Account
37.	JPM	2677	SBRSA Account
38.	JPM	2609	HAF Depository Account
39.	JPM	1889	HAF Disbursement Account
40.	BlackRock	6828	SBRSA Investment Account

	Bank	Account No.	Account Description
41.	Goldman Sachs	3003	Summit Investment Account
42.	Goldman Sachs	3004	Estate Distributions Investment Account
43.	JPM	1422	Merchandise Depository Account
44.	JPM	0828	Merchandise Depository Account
45.	Bank of America	2874	Merchandise Depository Account
46.	Fifth Third	2245	Merchandise Depository Account
47.	PNC	2908	Merchandise Depository Account
48.	Regions Bank	1445	Merchandise Depository Account
49.	TD Bank	1683	Merchandise Depository Account
50.	Wells Fargo	0908	Merchandise Depository Account
51.	BB&T	3719	Merchandise Depository Account
52.	USBank	4080	Merchandise Depository Account
53.	USBank	0658	Merchandise Depository Account
54.	Banco Popular	0627	Merchandise Depository Account
55.	Merrill Lynch	2802	Brokerage Account
56.	Charles Schwab	8792	Brokerage Account
57.	Northern Trust	5236	RBT Investment Account
58.	Northern Trust	5247	RBT Investment Account
59.	State Street	7068	Unrestricted Endowment Investment Account
60.	State Street	6979	Unrestricted Endowment Investment Account
61.	JPM	3535	Delaware General Account
62.	Fidelity	N/A	Deferred Compensation Investment Account
63.	State Street	1265	Gift Annuity Investment Account
64.	State Street	1388	Gift Annuity Investment Account
65.	Bank of America	7760	Merchandise Depository Account
66.	Bank of America	2056	Conference Events Depository Account

Exhibit 2

Funds Flow Diagram



Footnote:
(1) Account anticipated to be dormant by filing date
(2) Sub account of which is restricted for Local Councils

APP000400

Case 1:20-cv-00296-RGA Document 26-3 Filed 06/30/20 Page 16 of 16 PageID #: 1307

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. Docket No. 5**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTY PURSUANT TO 11 U.S.C. §§ 105(a), 361, 362, 363, 503 AND 507; (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b); AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), pursuant to sections 105(a), 361, 362, 363, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rules 2002-1, 4001-2 and 9013-1:

(a) authorizing the Debtors to continue to use Cash Collateral and all other Prepetition Collateral (each as defined below) in which any of the Prepetition Secured Parties (as defined below) have an interest in accordance with the terms and conditions of this Interim Order, and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral and the other Prepetition Collateral;

(b) authorizing the Debtors to provide adequate protection to the Prepetition Secured Parties to the extent of any diminution in value of their interest in the Prepetition

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Collateral, including Cash Collateral (each as defined below), under or in connection with the Prepetition Secured Agreements (as defined below);

(c) subject to certain challenge rights of certain parties in interest (subject to the limitations specified herein), approving certain stipulations by the Debtors with respect to (i) the Prepetition Secured Agreements; (ii) the Loan Documents (as defined in the Credit Agreements); (iii) the Bond Documents (as defined in the Bond Agreements); and (iv) the liens and security interests arising therefrom ((i)-(iv) are collectively defined as the "Prepetition Loan Documents");

(d) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein;

(e) authorizing the Debtors to (i) maintain and extend existing letters of credit under the 2019 RCF Agreement and 2010 RCF Agreement (each as defined below), and (ii) obtain new letters of credit to replace or backstop such existing letters of credit and to cash collateralize such new letters of credit; *provided*, *that*, for the avoidance of doubt, no such new letters of credit shall be issued under the 2019 RCF Agreement or the 2010 RCF Agreement;

(f) scheduling, pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2(c), a final hearing (the "Final Hearing"), to be held within thirty-five (35) days of the entry of this Interim Order to consider entry of the Final Order approving the relief granted herein on a final basis;

(g) waiving any applicable stay with respect to the effectiveness and enforceability of this Interim Order and, as later applicable, the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(h) granting related relief;

and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Debtors consent to the entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having

reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Interim Hearing"); and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Disposition. The relief requested in the Motion is granted on an interim basis in accordance with the terms of, and to the extent set forth in, this Interim Order. Any and all objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or resolved, and all reservations of rights, are hereby denied and overruled on the merits, except as may be set forth herein. This Interim Order shall become effective immediately upon its entry.

B. Debtors' Stipulations. In requesting use of their Cash Collateral and the other Prepetition Collateral, and in exchange for and as a material inducement to the Prepetition Secured Parties agreement to permit consensual use of use of their Cash Collateral and the other Prepetition Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in Paragraph 11 below (but subject to the limitations thereon contained herein), as follows (Paragraphs B(i) through B(xvi) are collectively defined as the "Debtors' Stipulations"):

(i) on August 11, 2010, Boy Scouts of America ("BSA") entered into that certain *Credit Agreement* (as amended, supplemented or otherwise modified as of the Petition Date, and together with all security, pledge and guaranty agreements and all other documentation

executed in connection with any of the foregoing, the "2010 RCF Agreement"), pursuant to which JPMorgan Chase Bank, National Association ("JPM"), as lender, made term loans to BSA in an aggregate amount of $25,000,000 and agreed to make revolving loans to BSA and issue letters of credit on behalf of BSA in an aggregate amount of up to $75,000,000;

(ii) on November 5, 2010, BSA and non-debtor Arrow WV, Inc. ("Arrow") entered into that certain *Bond Purchase and Loan Agreement* with The County Commission of Fayette County, West Virginia (the "Issuer") and JPM (as amended, supplemented or otherwise modified as of the Petition Date, the "2010 Bond Agreement") pursuant to which the Issuer issued The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond (Arrow WV Project), Series 2010A in an aggregate principal amount of $50,000,000 and Series 2010B in an aggregate principal amount of $50,000,000 (collectively, the "2010 Bonds"), the proceeds of which were loaned to BSA. The loans from the Issuer to BSA were evidenced by that certain Promissory Note - 2010A executed by BSA and payable to the order of the Issuer in the original principal amount of $50,000,000 and that certain Promissory Note - 2010B executed by BSA and payable to the order of the Issuer in the original principal amount of $50,000,000, which notes were pledged by the Issuer to secure the repayment of the 2010 Bonds. The Series 2010A Bonds and 2010A Note were paid off on November 5, 2015;

(iii) on March 9, 2012, BSA and Arrow entered into that certain *Bond Purchase and Loan Agreement* with the Issuer and JPM (as amended, supplemented or otherwise modified as of the Petition Date, the "2012 Bond Agreement", and together with the 2010 Bond Agreement, the "Bond Agreements") pursuant to which the Issuer issued The County Commission of Fayette County (West Virginia) Commercial Development Revenue Bond

(Arrow WV Project), Series 2012 in an aggregate principal amount not to exceed $175,000,000 (the "2012 Bonds", and together with the 2010 Bonds, the "Bonds"), the proceeds of which were loaned to BSA. The loans from the Issuer to BSA are evidenced by that certain Promissory Note - 2012 executed by BSA and payable to the order of the Issuer in the original principal amount of $175,000,000, which note was pledged by the Issuer to secure the repayment of the Bonds;

(iv) on March 21, 2019, BSA entered into that certain *Credit Agreement* (as amended, supplemented or otherwise modified as of the Petition Date, and together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, the "2019 RCF Agreement", and collectively with the 2010 RCF Agreement, the "Credit Agreements"),[3] pursuant to which JPM, as lender, agreed to make revolving loans to BSA and issue letters of credit on behalf of BSA in an aggregate amount of up to $71,500,000;[4]

(v) as of the Petition Date, the Debtors were liable to the Prepetition Secured Parties pursuant to the Prepetition Loan Documents for (a) the aggregate principal amount not less than (1) $61,542,720 in respect of letters of credit issued on behalf of BSA under the 2019 RCF Agreement, if such letters of credit are ultimately drawn; (2) $11,250,000 in respect of term loans made to BSA, $25,212,317 in respect of revolving loans made to BSA, and $44,299,743 in respect of letters of credit issued on behalf of BSA under the 2010 RCF Agreement, if such letters of credit are ultimately drawn; (3) $40,137,274 under the 2010 Bond Agreement; and (4) $145,662,101 under the 2012 Bond Agreement; and (b) accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or

[3] The Bond Agreements and the Credit Agreements are collectively referred to as the "Prepetition Secured Agreements".

[4] JPM, in its capacity as lender under the Credit Agreements and holder of the Bonds issued under the Bond Documents, is collectively referred to as the "Prepetition Secured Lender".

reimbursable under the Prepetition Loan Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the Prepetition Loan Documents or applicable law, whether arising before or after the Petition Date, including any "Obligations" (as defined in each respective Prepetition Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations under the Prepetition Loan Documents ((a) through (b) are collectively defined as the "Prepetition Obligations");

(vi) all of the Prepetition Obligations constitute the legal, valid, binding and unconditional obligations of the Debtors to the Prepetition Secured Parties, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(vii) no portion of the Prepetition Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or

description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition Obligations;

(viii) pursuant to and in connection with the Prepetition Loan Documents, each Debtor granted to JPM, in its capacity as collateral agent (the "Prepetition Agent", and collectively with the Prepetition Secured Lender, the "Prepetition Secured Parties"), for the benefit of the Prepetition Secured Parties, continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security interests in (the "Prepetition Liens") all of the "Collateral" (as defined in each respective Prepetition Loan Documents) (the "Prepetition Collateral"),[5] which Prepetition Liens (a) secure all of the Prepetition Obligations; (b) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (c) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (c) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to valid, perfected and unavoidable liens on or security interests in the Prepetition Collateral that are senior to or *pari passu* with the Prepetition Liens (a "Permitted Encumbrance");

[5] For the avoidance of doubt, the definition of "Prepetition Collateral" shall specifically exclude all (i) amounts payable in connection with any agreement by a donor, grantor or other Person to donate or otherwise contribute funds to a Debtor if the use of such funds to be donated is restricted by such Person or applicable state law to a purpose other than the Project (the "Restricted Amounts"), and (ii) Excluded Property. As used in this footnote, Person, Debtor, Project and Excluded Property have the same meaning ascribed to them in that certain Third Amended and Restated Security Agreement dated as of March 21, 2019 (the "Security Agreement"), by and among BSA and Arrow, as debtors, JPM, in its capacity as collateral agent, JPM, in its capacity as the lender under the Credit Agreements, and as holder under the Bond Agreements.

(ix) the Prepetition Secured Parties duly perfected the Prepetition Liens in the Prepetition Collateral by, among other things, filing financing statements, and, where necessary, possessing the relevant instruments, certificates, or other property;

(x) as of the Petition Date, other than as expressly permitted under the Prepetition Loan Documents, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens;

(xi) the Debtors have waived, discharged and released any right they may have to challenge the Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral, and to assert any offsets, set-offs, recoupments, defenses, claims, objections, challenges of any kind, causes of action and/or choses of action against the Prepetition Secured Parties, with respect to the Prepetition Obligations, the Prepetition Liens, or the Prepetition Collateral;

(xii) any payments made on account of the Prepetition Obligations before the Petition Date were (a) payments out of the Prepetition Collateral, and/or (b) made in the ordinary course of business and did not diminish any property otherwise available for distribution to unsecured creditors;

(xiii) all of the Debtors' cash as of the Petition Date, including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral (as defined below) and is Prepetition Collateral of the Prepetition Secured Parties; *provided*, *however*, the definitions of "Cash Collateral" and "Prepetition Collateral" shall specifically exclude all Restricted Amounts and Excluded Property (as defined in the Security Agreement);

(xiv) the Debtors admit, stipulate, acknowledge and agree that the Prepetition Secured Parties may credit bid the full amount of (or any portion of) the Prepetition Obligations;

(xv) none of the Prepetition Secured Parties constitutes a control person or insider of the Debtors by virtue of any of the actions taken by any of them in respect of or in connection with (a) making the decision to consent to the use of Cash Collateral; (b) extending other financial accommodations to the Debtors under this Interim Order; (c) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents; (d) administering the loans and financial accommodations extended under the Prepetition Loan Documents; (e) extending other financial accommodations to the Debtors under the Prepetition Loan Documents; and (f) making the decision to collect the indebtedness and obligations of the Debtors, the Prepetition Secured Parties shall not be considered to be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law; and

(xvi) the Prepetition Secured Parties are entitled, pursuant to sections 361, 362(c)(2), 363(e), 364(d)(l) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any diminution in the value of the Prepetition Collateral occurring from and after the Petition Date, in exchange for (a) the use of Cash Collateral, and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

C. Cash Collateral. For purposes of this Interim Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined in section 363 of the Bankruptcy Code, in or on which the Prepetition Secured Parties have a lien, security interest or other interest; *provided*, *however*, the definition of "Cash Collateral" shall specifically exclude all Restricted Amounts and Excluded Property (as defined in the Security Agreement).

D. Findings Regarding the Prepetition Secured Parties' Consent to Use of Cash Collateral. The Prepetition Secured Parties have consented to the adequate protection provided for in this Interim Order; *provided*, *however*, that the respective consents of the Prepetition Secured Parties, the use of the Prepetition Collateral (including Cash Collateral), and the sufficiency of the respective adequate protection provided for herein are expressly conditioned upon the entry of this Interim Order; *provided*, *further*, that such consents shall be of no further force and effect in the event this Interim Order is not entered (or is entered and subsequently vacated).

E. Immediate and Irreparable Harm. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules.

Based on the foregoing, the Motion, the First Day Declaration, and the record made before the Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is GRANTED, and the Debtors' use of Cash Collateral and other Prepetition Collateral on an interim basis is authorized, subject to the terms and conditions of this Interim Order.

2. Authorization.

(i) Any unrestricted funds that are deposited into any Deposit Account or Securities Account (each as defined in Article 9 of the Uniform Commercial Code) of the Debtors on or after the Petition Date (such new funds, the "Postpetition Funds") shall be deemed segregated from any unrestricted funds existing in any of the Debtors' Deposit Accounts or Securities Accounts as of the Petition Date (such existing funds, the "Prepetition Funds"). The

Postpetition Funds shall not be deemed the "Collateral" (as defined in each respective Prepetition Loan Document) of the Prepetition Secured Parties solely by virtue of being in the possession or control of the Prepetition Secured Parties. The Prepetition Secured Parties, however, reserve all rights to assert that some or all of the Postpetition Funds are "Collateral" of the Prepetition Secured Parties under the Prepetition Loan Documents; and

(ii) Unrestricted funds used by the Debtors from the Petition Date through the entry of the Final Order shall first be deemed to be made out of the Postpetition Funds that are not the Collateral of the Prepetition Secured Parties (the "Unencumbered Postpetition Funds"). If the Debtors use any of the Prepetition Funds or the Postpetition Funds that are the Collateral of the Prepetition Secured Parties, or are subsequently determined to be the Collateral of the Prepetition Secured Parties (the "Encumbered Postpetition Funds"), then the Prepetition Secured Parties shall be entitled to adequate protection, as provided for in Paragraph 4 of this Interim Order, to the extent of any diminution in value of the Prepetition Funds or the Encumbered Postpetition Funds.

(iii) The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order and compliance with the Budget (as defined below), to use Cash Collateral to the extent unencumbered funds are unavailable; provided that (a) the Prepetition Secured Parties are granted the adequate protection as hereinafter set forth and (b) except on the terms, conditions and limitations of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

(iv) The Debtors' authorization to use Cash Collateral hereunder shall terminate on March 27, 2020, or as otherwise ordered by the Court.

3. Budget. The Debtors and the Prepetition Secured Parties have agreed to an initial budget attached hereto as **Exhibit 1**, including a 13-week cash flow forecast setting forth all projected cash receipts and cash disbursements on a weekly basis (the "Budget"). The Agent shall have no obligation to permit the use of Cash Collateral, and the Debtors shall have no authority to use Cash Collateral, hereunder other than in accordance with the Budget, and as set forth in this Interim Order. The Prepetition Secured Parties (i) may assume the Debtors will comply with the Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Prepetition Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget.

4. Adequate Protection of Prepetition Secured Parties. Pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code (such diminution in value, the "Adequate Protection Amount"); *provided that* the avoidance of the Prepetition Secured Parties' interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Secured Parties' interests in Prepetition Collateral. As adequate protection for the Adequate Protection Amount, and solely to the extent of same, the Prepetition Secured Parties are hereby granted the following:

(i) *Adequate Protection Liens*. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual diminution (if any) in value of the Prepetition Collateral, including Cash Collateral, effective as of the Petition Date and perfected

without the need for execution by the Debtors or the recordation or other filing by the Prepetition Secured Parties of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Prepetition Agent of any Adequate Protection Collateral (as defined below), the Prepetition Agent is hereby granted, for the ratable benefit of the Prepetition Secured Lender, solely to the extent of any actual diminution in value, if any, of the Prepetition Collateral, as security for the payment of the Adequate Protection Amount, valid, binding, continuing, enforceable, fully perfected, first priority senior replacement liens on and security interests in (collectively, the "Adequate Protection Liens") any and all tangible and intangible pre- and postpetition property of the Debtors, whether existing before, on or after the Petition Date, together with any proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (collectively, the "Adequate Protection Collateral"), *provided*, *that* "Adequate Protection Collateral" shall specifically exclude all Restricted Amounts, Excluded Property (as defined in the Security Agreement) and proceeds of any claims or causes of action of the Debtors arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law avoidance actions under chapter 5 of the Bankruptcy Code. The Adequate Protection Liens shall be junior only to any Permitted Encumbrance. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral. The Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative

appointed in the Debtors' Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors' Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case").

(ii) *Adequate Protection Superpriority Claims*. The Adequate Protection Amount due to the Prepetition Agent shall constitute allowed superpriority administrative expense claims against the Debtors in the amount of any actual diminution (if any) in value of the Prepetition Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the "Adequate Protection Superpriority Claims"); *provided*, *however*, that, for the term of this Interim Order, such Adequate Protection Superpriority Claims shall be subordinate only to fees payable under 28 U.S.C. § 1930.

(iii) *Payment of Prepetition and Postpetition Interest*. The Debtors shall pay to the Prepetition Agent for the benefit of the Prepetition Secured Lender all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) at the non-default rates and consistent with the ordinary course interest payment dates set forth in each respective Prepetition Loan Document (the "Adequate Protection Interest Payments").

(iv) *Prepetition Agent Fees and Expenses*. As additional adequate protection, the Prepetition Agent shall receive from the Debtors, for the benefit of the Prepetition Secured Lender, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses payable to the Prepetition Secured Parties under the Prepetition Loan Documents, including, but not limited to, the reasonable and documented prepetition and postpetition fees and disbursements of legal counsel, financial advisors and other consultants (the "Adequate Protection Fees and Expenses", and together with the Adequate Protection Interest Payments, the "Adequate Protection Payments"). Payment of all such Adequate Protection Fees and Expenses shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors, the professionals for the Prepetition Secured Parties shall deliver a copy of their respective invoices to counsel for any official committee appointed in these cases pursuant to section 1102 of the Bankruptcy Code (a "Creditors' Committee") and the office of the United States Trustee (the "U.S. Trustee"). The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee, or the Creditors' Committee with respect to such invoices within ten (10) business days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

5. Reporting. Other than the requirement to provide an "Annual Audit" pursuant to section 5.01(a) of the Credit Agreements and section 6.1(a)(i) of the Bond Agreements, the Debtors shall comply with the reporting requirements set forth in the Prepetition Loan Documents, and the Debtors shall provide the following additional reporting to the Prepetition Secured Parties:

(i) on each Friday following entry of this Interim Order, a report showing the actual cash receipts and disbursements for the week ending the preceding Friday;

(ii) all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the Prepetition Secured Parties or their representatives and agents;

(iii) all such information that is afforded to the Creditors' Committee and/or the Creditors' Committee's respective legal or financial advisors (other than information subject to the confidentiality procedures to protect abuse victims as described in the *Debtors' Motion for Entry of an Order (I) Authorizing the Filing of a List of (A) Counsel Representing the Largest Numbers of Abuse Victims and (B) the Unsecured Creditors of the Debtors, (II) Authorizing Special Noticing and Confidentiality Procedures to Protect Abuse Victims, (III) Authorizing and Approving Procedures for Providing Notice of Commencement, and (IV) Granting Related Relief*); and

(iv) in addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Prepetition Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (a) permit representatives of the Prepetition Secured Parties to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors'

business premises and other properties, and (b) cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations and accounts with the representatives and agents of the Prepetition Secured Parties.

6. Cash Management. Subject to the Debtors' cash management order entered by the Court, the Debtors are authorized and directed to maintain their cash management system in a manner consistent with this Interim Order, and any order of this Court approving the maintenance of the Debtors' cash management system.

7. Requests for Further Adequate Protection. Nothing in this Interim Order shall be deemed to limit, abridge, waive or otherwise affect (a) any right of the Prepetition Secured Parties to request at any time that the Court provide different, additional or further adequate protection of their interests in the Prepetition Collateral (including Cash Collateral) or to seek different, additional, or further adequate protection in the event the Prepetition Secured Parties contend that the adequate protection provided herein is inadequate or (b) the ability of the Debtors or any other party in interest to oppose any such relief.

8. Perfection of Adequate Protection Liens.

(i) The Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the Adequate Protection Liens. Whether or not the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or

control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Interim Order), at the time and on the date of entry of this Interim Order or thereafter. Upon the reasonable request of any of the Prepetition Secured Parties, the Prepetition Secured Parties (at the Debtors' cost and expense) and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the Prepetition Secured Parties to further validate, perfect, preserve and enforce the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(ii) A certified copy of this Interim Order (or the notice of the filing hereof) may, in the discretion of the Prepetition Secured Parties, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the Prepetition Secured Parties to take all actions, as applicable, referenced in this Paragraph 8(ii) and Paragraph 8(i).

9. Limitation on Charging Expenses against Collateral. Nothing contained in this Interim Order shall be deemed a consent by the Prepetition Secured Parties to any charge, lien, assessment, or claim against the Prepetition Collateral, or the Adequate Protection Liens, or

otherwise. No action, inaction or acquiescence by the Prepetition Secured Parties shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the Prepetition Secured Parties, the Prepetition Obligations, or the Prepetition Collateral.

10. Effect of Debtors' Stipulations. Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Interim Order, including, without limitation, in Paragraph B of this Interim Order, shall be binding upon each of the Debtors under all circumstances and for all purposes upon entry of this Interim Order.

11. Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Interim Order, including, without limitation, in Paragraph B of this Interim Order, shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these cases (including a Creditors' Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such Creditors' Committee or any other party in interest has filed (subject to the limitations contained herein, including, *inter alia*, in this Paragraph) by no later than a date that is the later of (i) in the case of a party in interest other than any Committee, 75 days after entry of this Interim Order; (ii) in the case of a Creditors' Committee, 60 days after the filing of notice of appointment of the Creditors' Committee; (iii) with respect to any chapter 7 trustee appointed or elected for any of the Debtors, prior to the expiration of the periods set forth in subsections (i) and (ii) above, no later than the date that is the later of (a) fourteen (14) days after the appointment of such chapter 7 trustee or (b) the expiration of the time periods set forth in the foregoing subsections (i) and (ii) above; (iv) with respect to any Challenge Proceeding (as

defined below) against the Prepetition Secured Parties, any such later date agreed to in writing by the Prepetition Secured Parties in their sole discretion; or (v) any such later date ordered by the Court for cause shown after notice and an opportunity to be heard, provided that such order is entered before the expiration of any applicable period as set forth in clauses (i) through (iv) of this sentence (the "Challenge Period") a motion or other pleading requesting standing to file a contested matter, adversary proceeding or other action or "claim" (as defined in the Bankruptcy Code), (A) contesting, objecting or otherwise challenging the admissions, stipulations, findings or releases included in the Debtors' Stipulations and this Interim Order, (B) contesting, objecting or otherwise challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Obligations or the Prepetition Liens (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), (C) contesting, objecting or otherwise challenging the right of the Prepetition Secured Parties to credit bid, up to the full amount of the Prepetition Obligations, in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise, or (D) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) or any other claims, counterclaims or causes of action, objections, contests, defenses, setoffs, offsets or recoupments, whether arising at law or equity against the Prepetition Secured Parties or their respective subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and

assigns thereof, in each case solely in their respective capacities as such (collectively, the "Representatives"), and solely in their capacities as Representatives of the Prepetition Secured Parties, in connection with (1) the prepetition business relationship between or conduct of the Prepetition Secured Parties with the Debtors, (2) the actions or inactions of the Prepetition Secured Parties arising out of or related to the Prepetition Obligations or otherwise, including, without limitation, any claim against the Prepetition Secured Parties in the nature of an "equitable subordination," "lender liability," "deepening insolvency" or "control person" liability, or (3) matters related to the Prepetition Loan Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral ((A), (B), (C) and (D) collectively, a "Challenge Proceeding"); and (b) there is a final and non-appealable order in favor of the plaintiff in any such timely filed Challenge Proceeding.

12. If no such Challenge Proceeding is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then: (a) the Debtors' Stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order, shall be binding on all parties in interest, including, without limitation, any Creditors' Committee or any trustee appointed in these Chapter 11 Cases or any Successor Case; (b) the obligations of the Debtors under the Prepetition Loan Documents, including the Prepetition Obligations, shall constitute fully allowed secured claims within the meaning of Section 506 of the Bankruptcy Code not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in these Chapter 11 Cases and any Successor Case; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (d) the Prepetition

Obligations and the Prepetition Liens (including all payments made to or for the benefit of the Prepetition Secured Parties pursuant to, or otherwise authorized by, the Prepetition Loan Documents or this Interim Order or otherwise, whether made prior to, on, or after the Petition Date) shall not be subject to any other or further claim or challenge by any Creditors' Committee, any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party in interest acting or seeking to act on behalf of the Debtors' estates and any defenses, claims, causes of action, counterclaims and offsets by any Creditors' Committee, any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Parties and their Representatives arising out of or relating to the Prepetition Loan Documents shall be deemed forever waived, released, and barred.

13. If any such Challenge Proceeding is timely filed during the Challenge Period, (i) any claim or action that is not brought shall forever be barred, and (ii) each of the Debtors' Stipulations and each of the Debtors' other admissions and agreements contained in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order, shall nonetheless remain binding and preclusive on any Creditors' Committee and on any other person or entity, except to the extent that such stipulations, admissions, and agreements were successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Creditors' Committee or any non-statutory committees appointed or formed in these cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation,

Challenge Proceedings with respect to the Prepetition Loan Documents, the Prepetition Obligations, or the Prepetition Liens.

14. Restriction on Use of Cash Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, no Cash Collateral, Prepetition Collateral, proceeds, products, or offspring of any of the foregoing may be used to (except to the extent otherwise expressly agreed in writing by the Prepetition Agent in response to a written request from the Debtors specifying the proposed use) pay any claims for services rendered by any of the professionals retained by the Debtors, any creditor or party in interest, any committee (including any Creditors' Committee), any trustee appointed under these Chapter 11 Cases or any Successor Case, or any other person, party, or entity (or to pay any professional fees and disbursements in connection therewith) to take any position adverse to the Prepetition Secured Parties as determined by this Court consistent with the purpose and provision of the Bankruptcy Code.

15. Maintenance of Letters of Credit. Following entry of this Interim Order, the Debtors shall be authorized, but not directed, to (a) maintain and extend letters of credit issued under the Credit Agreements on an uninterrupted basis, in accordance with the practices and procedures in effect before the Petition Date and subject to the terms and conditions of the Credit Agreements, and to take all actions reasonably appropriate with respect thereto; *provided that*, in respect of any letter of credit in respect of which the Debtors are seeking to extend such letter of credit's term, the Debtors shall obtain the written consent of Prepetition Secured Parties in respect of such extension; and (b) obtain new letters of credit to replace or backstop such existing letters of credit and to cash collateralize such new letters of credit, and to take all actions reasonably appropriate with respect thereto; *provided*, *that*, for the avoidance of doubt, no such new letters of credit shall be issued under the Credit Agreements. If any existing letter of credit

under the Credit Agreements is drawn, any resulting obligation that is not paid by the Debtors shall constitute joint and several allowed administrative expense priority claims against the Debtors as provided for in sections 503(b) and 507(a)(2) of the Bankruptcy Code.

16. Limitation of Liability. Subject to entry of the Final Order, and solely in the Prepetition Secured Parties' capacity as a lender under the Prepetition Loan Documents, in determining to permit the use of Cash Collateral, making and administering the loans and financial accommodations extended under the Prepetition Loan Documents, extending other financial accommodations to the Debtors under this Interim Order and the Prepetition Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the Prepetition Loan Documents, as applicable, the Prepetition Secured Parties (in their capacity as such) or any successor of any of the foregoing shall not (a) be deemed to be in "control" of the operations of the Debtors or any of their affiliates; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors or any of their affiliates (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq*., as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or the Prepetition Loan Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Secured Parties, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any of their subsidiaries affiliates in the operation of their businesses or in connection with their restructuring efforts.

17. Insurance. The Debtors shall maintain insurance on the Prepetition Collateral in amounts, for the risks, and by the entities as required under the Prepetition Loan Documents.

18. Proofs of Claim. Neither the Prepetition Agent nor the Prepetition Secured Lender shall be required to file proofs of claim in any of these Chapter 11 Cases or a Successor Case for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Agent and the Prepetition Secured Lender upon approval of this Interim Order, and the Prepetition Agent and the Prepetition Secured Lender shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or a Successor Case to the contrary, the Prepetition Agent and the Prepetition Secured Lender are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or a Successor Case for any claim allowed herein.

19. Final Hearing. The Final Hearing on the Motion shall be held on March 24, 2020 at 10:30 a.m., prevailing Eastern Time. Any objections or responses to entry of a final order (the "Final Order") on the Motion shall be filed no later than 4:00 p.m., prevailing Eastern Time, on March 17, 2020 (the "Objection Deadline") and served on the following parties: (i) the Debtors, Boy Scouts of America, 1325 West Walnut Hill Lane, Irving, Texas 75038, Attn: Steven P. McGowan; (ii) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Jessica C.K. Boelter and Charles M. Persons, and One South Dearborn, Chicago, Illinois 60603, Attn: Matthew E. Linder; (iii) proposed co-counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box

1347, Wilmington, Delaware 19899-1347, Attn: Derek C. Abbott; (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder and Hannah M. McCollum; (v) counsel to the prepetition Future Claimants' Representative, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert S. Brady and Edwin J. Harron; (vi) counsel to JPMorgan Chase Bank, N.A., Norton Rose Fulbright US LLP, 2200 Ross Avenue, Dallas, Texas 75201-7932, Attn: Louis R. Strubeck and Kristian W. Gluck; (vii) representatives of the prepetition Ad Hoc Committee of Local Councils, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn: Richard G. Mason and Joseph C. Celentino; (viii) counsel to the prepetition ad hoc group of attorneys representing significant numbers of abuse victims, Pachulski, Stang, Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067, Attn: James I. Stang; (ix) counsel to the County Commission of Fayette County (West Virginia), Steptoe & Johnson PLLC, Chase Tower – 8th Floor, 707 Virginia Street East, Charleston, West Virginia 25301, Attn: John Stump; (x) counsel to any statutory committee appointed in these chapter 11 cases; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002.

20. Service of the Interim Order. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court and to the Creditors' Committee after the same has been appointed, or such Creditors' Committee's counsel, if the same shall have been appointed.

Dated: February 20th, 2020
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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) **Hearing Date: April 15, 2020 at 10:00 a.m. (ET)** **Objection Deadline: March 31, 2020 at 4:00 p.m. (ET)**

DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

The Boy Scouts of America (the "BSA") and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the "Debtors"), submit this application (this "Application"), pursuant to section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2014-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the Debtors to retain and employ Sidley Austin LLP ("Sidley") as attorneys for the Debtors, *nunc pro tunc* to February 18, 2020 (the "Petition Date"). In support of this Application, the Debtors submit the declaration of Jessica C. K. Boelter, a partner of Sidley, attached hereto as **Exhibit B** (the "Boelter Declaration"), and the declaration of Steven P. McGowan, Secretary and General

[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 West Walnut Hill Lane, Irving, Texas 75038.

Counsel of the BSA, attached hereto as **Exhibit C** (the "McGowan Declaration" and, together with the Boelter Declaration, the "Declarations"), each of which is incorporated herein by reference. In further support of this Application, the Debtors respectfully state as follows:

STATUS OF THE CASES AND JURISDICTION

1. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors continue to operate and maintain their non-profit organization and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 19, 2020, the Court entered an order [Docket No. 61] authorizing the joint administration and procedural consolidation of the chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

2. On March 5, 2020, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "UCC") and an official committee of tort claimants (the "Tort Claimants' Committee" and, together with the UCC, the "Committees") pursuant to section 1102 of the Bankruptcy Code [Docket Nos. 141 and 142]. No party has requested the appointment of a trustee or examiner in these chapter 11 cases.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.§ 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order or judgment by the Court in connection with this Application if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory and other bases for the relief requested in this Application are section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-2.

BACKGROUND OF THE DEBTORS

6. The BSA is a federally chartered non-profit corporation under title 36 of the United States Code. The BSA is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Founded in 1910 and chartered by an act of Congress in 1916, the BSA is one of the largest youth organizations in the United States and one of the largest Scouting organizations in the world, with approximately 2.2 million registered youth participants and approximately 800,000 adult volunteers. As a non-profit corporation, the BSA is required to adopt and carry out a charitable, religious, educational, or other philanthropic mission. The BSA's mission is to prepare young people for life by instilling in them the values of the Scout Oath and Law,[2] encouraging them to be trustworthy, kind, friendly and helpful, while also training youth in responsible citizenship, skills development and self-reliance through participation in a wide range of outdoor activities, educational programs, and, at older ages, career-oriented programs in partnership with community organizations. Delaware BSA, LLC is a non-profit limited liability company incorporated under the laws of Delaware and exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. BSA is the sole member of Delaware BSA, LLC.

[2] **Scout Oath**: "On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight." **Scout Law**: "A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent."

7. Additional information regarding the Debtors' non-profit operations, capital structure and the circumstances preceding the Petition Date may be found in the *Declaration of Brian Whittman in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] and the *Debtors' Informational Brief* [Docket No. 4].

RELIEF REQUESTED

8. By this Application, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to retain and employ Sidley as attorneys for the Debtors, *nunc pro tunc* to the Petition Date, pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-2.

SIDLEY'S QUALIFICATIONS

9. Sidley is a full-service law firm with a national and international presence. Sidley has more than 2,000 lawyers in twenty offices in the United States, Europe, Asia and Australia. Sidley has expertise in nearly every major substantive area of legal practice, and its clients include leading public companies and privately held businesses in a variety of industries and major nonprofit organizations. Sidley's restructuring practice is comprised of approximately sixty full-time attorneys, plus attorneys in numerous other principal areas of practice who have sub-specialties in restructuring-related issues.

10. Sidley is frequently retained to act as general restructuring counsel in complex chapter 11 cases, including in the following cases (among others): In re Legacy Reserves Inc., Case No. 19-33395 (MI) (Bankr. S.D. Tex. 2019); In re Total Finance Inv. Inc., Case No. 19-03734 (CAD) (Bankr. N.D. Ill. 2019); In re Maremont Corp., Case No. 19-10118 (KJC) (Bankr. D. Del. 2019); In re Mattress Firm, Inc., Case No. 18-12241 (CSS) (Bankr. D. Del. 2018); In re RM Holdco LLC, Case No. 18-11795 (MFW) (Bankr. D. Del. 2018); In re HCR ManorCare,

Inc., Case No. 18-10467 (KG) (Bankr. D. Del. 2018); In re Key Energy Servs., Inc., Case No. 16-12306 (BLS) (Bankr. D. Del. 2016); In re UCI Int'l, LLC, Case No. 16-11354 (MFW) (Bankr. D. Del. 2016); In re LDK Solar Sys., Inc., Case No. 14-12384 (PJW) (Bankr. D. Del. 2014); In re Yarway Corp., Case No. 13-11025 (BLS) (Bankr. D. Del. 2013); In re Rodeo Creek Gold Inc., Case No. 13-50301 (MKN) (Bankr. D. Nev. 2013); In re Lee Enters., Inc., Case No. 11-13918 (KG) (Bankr. D. Del. 2011); In re Dynegy Holdings, LLC, Case No. 11-38111 (CGM) (Bankr. S.D.N.Y. 2011); In re Neenah Enters., Inc., Case No. 10-10360 (MFW) (Bankr. D. Del. 2010); In re R.H. Donnelley Corp., Case No. 09-11833 (KG) (Bankr. D. Del. 2009); In re Pliant Corp., Case No. 09-10443 (MFW) (Bankr. D. Del. 2009); In re Smurfit-Stone Container Corp., Case No. 09-10235 (BLS) (Bankr. D. Del. 2009); In re Merisant Worldwide, Inc., Case No. 09-10059 (PJW) (Bankr. D. Del. 2009); and In re Tribune Co., Case No. 08-13141 (KJC) (Bankr. D. Del. 2008).

11. In addition to its extensive restructuring expertise, Sidley is uniquely qualified to represent the Debtors in these chapter 11 cases. Since October 2018, Sidley has been advising the BSA regarding various strategic options for reaching an equitable global resolution of abuse claims against the BSA, including restructuring alternatives. During this time, Sidley has become familiar with the Debtors' non-profit operations, financial affairs, abuse claims history, organizational structure and the potential legal issues that may arise in the context of these chapter 11 cases. In addition, Sidley had a leading role on behalf of the BSA in prepetition discussions with an ad hoc group of attorneys representing a significant number of abuse claimants, the prepetition future claimants' representative, certain of the BSA's insurers, the ad hoc committee of local councils, and other relevant stakeholders regarding a potential global resolution of abuse claims. The Debtors anticipate that each of these constituents will be actively

involved in these cases. Accordingly, the Debtors believe that Sidley is both well qualified and uniquely able to represent the Debtors in these chapter 11 cases in an efficient and expert manner. The Debtors could not replace Sidley without incurring significant costs in terms of the time and money that would be required to select and educate replacement counsel.

SCOPE OF SIDLEY'S PROPOSED SERVICES

12. It is proposed that Sidley be employed by the Debtors to render the following services, among others:

(a) provide legal advice with respect to the Debtors' powers and duties as debtors in possession in the continued operation of the Debtors' non-profit organization in a manner consistent with their charitable mission;

(b) take all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections, as necessary, to relief sought and claims filed against the Debtors' estates;

(c) prepare on behalf of the Debtors, as debtors in possession, all necessary motions, applications, answers, orders, reports and other papers in connection with the administration of the Debtors' estates;

(d) advise the Debtors concerning, and prepare responses to, applications, motions, objections, other pleadings, notices and other papers that may be filed by creditors and other parties in interest in these chapter 11 cases;

(e) attend meetings and negotiate with representatives of creditors and other parties in interest, attend court hearings, and advise the Debtors on the conduct of their chapter 11 cases;

(f) take all necessary actions in connection with a chapter 11 plan and disclosure statement for the Debtors, including the *Chapter 11 Plan of Reorganization for Boy Scouts of American and Delaware BSA, LLC* [Docket No. 20] and related *Disclosure Statement for the Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* [Docket No. 21], as each may be amended, supplemented or modified from time to time, and all related agreements and documents, and such further actions as may be required in connection with obtaining confirmation of a plan, the implementation of a chapter 11 plan, and the administration of the Debtors' estates;

(g) provide legal advice and perform legal services with respect to matters relating to corporate governance, the interpretation, application or amendment of the Debtors' organizational documents, material contracts, and matters involving the fiduciary duties of the Debtors and their officers, directors and managers; and

(h) perform all other necessary legal services in connection with the prosecution of these chapter 11 cases.

13. It is necessary for the Debtors to employ attorneys to render the foregoing professional services. Sidley has stated its desire and willingness to act in these cases and render the necessary professional services as attorneys for the Debtors, and the Debtors believe that the retention and employment of Sidley to provide the services described above is warranted.

NO DUPLICATION OF SERVICES

14. Concurrently herewith, the Debtors are filing an application to retain Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as bankruptcy co-counsel for the Debtors. Sidley and Morris Nichols have advised the Debtors that they will use reasonable efforts to avoid any duplication of services.

15. The Debtors also have filed or intend to file shortly, applications to employ (i) Alvarez & Marsal North America, LLC, as financial advisor, (ii) Omni Agent Solutions, as administrative agent, (iii) Ogletree, Deakins, Nash, Smoak & Stewart, P.C., as special litigation counsel, (iv) Haynes and Boone, LLP, as special insurance counsel, (v) KCIC, LLC, as insurance consultant, and (vi) Bates White LLC, as abuse claims consultant. The Debtors may also file further applications to employ additional professionals in these chapter 11 cases. Rather than resulting in any extra expense to the Debtors' estates, it is anticipated that the efficient coordination of efforts of the Debtors' attorneys and other professionals will promote the efficient prosecution and effective administration of these chapter 11 cases.

PROFESSIONAL COMPENSATION

16. Sidley intends to apply to the Court for allowance of compensation earned for professional services and reimbursement of expenses incurred in connection with these chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders of the Court. Sidley will also make a reasonable effort to comply with the requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective November 1, 2013 (the "U.S. Trustee Guidelines"), both in connection with this Application and any applications for compensation and reimbursement of expenses to be filed by Sidley in these chapter 11 cases.

17. Sidley will charge the Debtors for its legal services on an hourly basis at its ordinary and customary rates in effect on the date that such services are rendered and for reimbursement of all costs and expenses incurred by Sidley in connection with its representation of the Debtors. Sidley's billing rates for attorneys who may work on this matter currently range from $550 to $1,525 per hour for attorneys and from $250 to $470 for paraprofessionals. The following attorneys are presently expected to have primary responsibility for providing services to the Debtors (hourly billing rates noted in parentheses): Jessica C. K. Boelter ($1,275); Thomas A. Labuda ($1,275); Michael C. Andolina ($1,100); William A. Evanoff ($1,000); Matthew E. Linder ($955); Karim Basaria ($955); and Blair M. Warner ($885). The Debtors anticipate that additional Sidley attorneys and paraprofessionals will provide services to the Debtors as necessary.[3]

[3] Sidley does not anticipate using contract attorneys during these chapter 11 cases. Nevertheless, in the unlikely event that it becomes necessary to use contract attorneys, Sidley will not charge a markup to the Debtors with

18. Sidley's hourly rates are set at a level designed to fairly compensate Sidley for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. These hourly rates vary with the experience and seniority of each professional and are subject to periodic adjustments to reflect economic and other conditions, with the hourly rate charged being the hourly rate in effect on the date that the services are performed.[4]

19. Sidley represented the Debtors before the Petition Date using the hourly rates listed above. Such rates are consistent with the rates that Sidley charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case. Moreover, as described in the Boelter Declaration, Sidley's rate structure is appropriate and not significantly different from the rates that Sidley charges for other non-bankruptcy representations or the rates that other comparable counsel would charge to perform substantially similar services.

20. In addition to the hourly rates set forth above, Sidley customarily charges its clients for the variable costs and expenses incurred in connection with its services, including mail and express mail charges, special- and hand-delivery charges, photocopying charges, travel expenses, transcription costs, expenses for "working meals," computerized research costs, and charges and fees of outside vendors, consultants and service providers.

21. Sidley charged the Debtors $0.10 per page for standard duplication services prior to these chapter 11 cases and, consistent with Local Rule 2016-2(e), Sidley will charge no more

---

respect to fees billed by such attorneys. Moreover, any contract attorneys or non-attorneys who are employed by the Debtors in connection with work performed by Sidley will be subject to connections searches and disclosures in accordance with the applicable requirements of the Bankruptcy Code and Bankruptcy Rules.

[4] For example, like many of its peer law firms, Sidley increases the hourly billing rate of attorneys and paraprofessionals annually in the form of (a) step increases historically awarded in the ordinary course on the basis of advancing seniority and promotion and (b) periodic increases within each attorney's and paraprofessional's current level of seniority. The step increases do not constitute "rate increases" (as that term is used in the U.S. Trustee Guidelines).

than $0.10 per page for standard duplication services in these chapter 11 cases. Sidley does not charge its clients for incoming or outgoing facsimile transmissions.

22. The Debtors require knowledgeable counsel to render these critical professional services, and, as described in the McGowan Declaration, Sidley has substantial expertise and extensive historical knowledge of the factual and legal issues that the Debtors will need to address in these chapter 11 cases. Subject to the Court's approval of this Application, Sidley is willing to serve as attorneys for the Debtors and to perform the services described above.

COMPENSATION RECEIVED BY SIDLEY FROM THE DEBTORS

23. As set forth in the Boelter Declaration, during the twelve months immediately preceding the Petition Date, Sidley received payments and advances in the aggregate amount of approximately $8,294,711.68 for all services rendered on behalf of the Debtors and expenses incurred in connection with such services.

24. Prior to the Petition Date, Sidley held a retainer of $1.0 million, which retainer amount was ultimately increased to $2.0 million. During the course of Sidley's prepetition representation of the Debtors, Sidley submitted invoices to the Debtors, applied the retainer to the invoiced fees and expenses, and sought and received replenishment of the retainer by the Debtors. During the ninety days immediately preceding the Petition Date, Sidley received payments and advances in the aggregate amount of $4,486,710. After applying against the retainer certain fees and expenses earned and incurred but not reconciled or paid prior to the Petition Date, the balance of the retainer is approximately $125,237.79 as of the date hereof. Although certain additional fees and expenses may have been earned and incurred but not yet reconciled with the retainer held by Sidley, such amounts, if any, would in any event be less than the current balance of the retainer. The remainder of the retainer held by Sidley will be allocated to Sidley's postpetition fees and expenses after such postpetition fees and expenses are allowed

against the Debtors' estates, including pursuant to any interim compensation procedures approved by the Court.

25. In accordance with section 504 of the Bankruptcy Code, Sidley has neither shared nor agreed to share (a) any compensation or reimbursement it has received or may receive with another person, other than with the partners, associates and contract attorneys (if applicable) associated with Sidley, or (b) any compensation or reimbursement another person has received or may receive.

SIDLEY'S DISINTERESTEDNESS

26. As described in the Boelter Declaration, in connection with its proposed retention by the Debtors in these chapter 11 cases, Sidley searched its electronic database with respect to the Debtors and a list of potential parties in interest in these chapter 11 cases (collectively, the "Potential Parties in Interest"). The Potential Parties in Interest and the results of the search are set forth on **Schedule 1** and **Schedule 2** to the Boelter Declaration, respectively. To the best of the Debtors' knowledge, as disclosed in the Boelter Declaration, (a) Sidley is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates and (b) has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Boelter Declaration.

27. Given the large number of parties in interest in these chapter 11 cases and because the information on **Schedule 1** may have changed without Sidley's knowledge and may change during the pendency of the Debtors' chapter 11 cases, Sidley is not able conclusively to identify all relationships or potential relationships with all creditors or other parties in interest in these chapter 11 cases. If any new relevant facts or relationships are discovered or arise, Sidley will

use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

BASIS FOR RELIEF

28. The Debtors are requesting authority to retain and employ Sidley as their attorneys pursuant to section 327(a) of the Bankruptcy Code, which provides that a debtor, subject to court approval, may employ one or more attorneys "that do not hold or represent an interest adverse to the estate," and that are "disinterested persons." 11 U.S.C. § 327(a). A "disinterested person" is a person that (a) is not a creditor, an equity security holder, or an insider of the debtor; (b) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (c) does not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason. 11 U.S.C. § 101(14).

29. Bankruptcy Rule 2014(a) requires that a retention application state the following:

> [T]he specific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm]'s connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014. Additionally, Local Rule 2014-1 requires that an entity seeking to employ a professional under section 327 of the Bankruptcy Code file "a supporting affidavit or verified statement of the professional person and a proposed order for approval." Del. Bankr. L.R. 2014-1.

30. In general, subject to the requirements of sections 327(a) of the Bankruptcy Code, a debtor in possession is entitled to the counsel of its choosing. See, e.g., In re Congoleum Corp., 426 F.3d 675, 686 (3d Cir. 2005) ("[C]ourts must be cautious about infringing on the right of the debtor to retain counsel of its choice"); see also In re Vouzinas, 259 F.3d 103, 112 (2d Cir. 2001) ("Only in the rarest cases should the trustee be deprived of the privilege of selecting his own counsel . . . ."). Courts give "great deference" to the debtor in possession's choice of counsel. See In re Enron Corp., Case No. 01-16034, 2002 WL 32034346, at *5 (Bankr. S.D.N.Y. May 23, 2002); see also In re Huntco, Inc., 288 B.R. 229, 232 (Bankr. E.D. Mo. 2002) ("A bankruptcy court . . . should give the debtor in possession significant deference in its selection of counsel to represent it under § 327(a).").

31. The Debtors submit that for all of the reasons stated above and in the Declarations, the retention and employment of Sidley as attorneys for the Debtors is warranted. Sidley is a "disinterested person" as required by section 327(a) of the Bankruptcy Code, does not hold or represent an interest adverse to the Debtors' estates, and has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Boelter Declaration.

NOTICE

32. Notice of this Application will be provided to (i) the U.S. Trustee; (ii) proposed counsel to the UCC; (iii) proposed counsel to the Tort Claimants' Committee; (iv) counsel to the proposed Future Claimants' Representative; (v) counsel to the Ad Hoc Committee of Local Councils; (vi) counsel to JPMorgan Chase Bank National Association; (vii) the County Commission of Fayette County (West Virginia), as issuer of those certain Commercial Development Revenue Bonds (Arrow WV Project), Series 2010A, 2010B and 2012; and (viii)

any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief the Court may deem just and proper.

Dated: March 17, 2020
Wilmington, Delaware

Respectfully submitted,

/s/ Steven P. McGowan
Steven P. McGowan
Secretary and General Counsel

Boy Scouts of America and Delaware BSA, LLC

Exhibit B

Boelter Declaration

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)

DECLARATION OF JESSICA C. K. BOELTER IN SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

I, Jessica C. K. Boelter, being duly sworn, state the following under penalty of perjury:

1. I am a partner of the law firm Sidley Austin LLP ("Sidley") based in its office located at 787 Seventh Avenue, New York, New York 10019.

2. I submit this declaration (this "Declaration") on behalf of Sidley in support of the *Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession,* Nunc Pro Tunc *to the Petition Date* (the "Application")[2] and pursuant to Local Rule 2014-1. This Declaration also provides the disclosure of compensation required under section 329 of the Bankruptcy Code, Bankruptcy Rule 2016(b), and Local Rule 2016-1. Except as otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Application.

SIDLEY'S QUALIFICATIONS

3. Sidley is frequently retained to act as general restructuring counsel in complex chapter 11 cases, including in the following cases (among others): In re Legacy Reserves Inc., Case No. 19-33395 (MI) (Bankr. S.D. Tex. 2019); In re Total Finance Inv. Inc., Case No. 19-03734 (CAD) (Bankr. N.D. Ill. 2019); In re Maremont Corp., Case No. 19-10118 (KJC) (Bankr. D. Del. 2019); In re Mattress Firm, Inc., Case No. 18-12241 (CSS) (Bankr. D. Del. 2018); In re RM Holdco LLC, Case No. 18-11795 (MFW) (Bankr. D. Del. 2018); In re HCR ManorCare, Inc., Case No. 18-10467 (KG) (Bankr. D. Del. 2018); In re Key Energy Servs., Inc., Case No. 16-12306 (BLS) (Bankr. D. Del. 2016); In re UCI Int'l, LLC, Case No. 16-11354 (MFW) (Bankr. D. Del. 2016); In re LDK Solar Sys., Inc., Case No. 14-12384 (PJW) (Bankr. D. Del. 2014); In re Yarway Corp., Case No. 13-11025 (BLS) (Bankr. D. Del. 2013); In re Rodeo Creek Gold Inc., Case No. 13-50301 (MKN) (Bankr. D. Nev. 2013); In re Lee Enters., Inc., Case No. 11-13918 (KG) (Bankr. D. Del. 2011); In re Dynegy Holdings, LLC, Case No. 11-38111 (CGM) (Bankr. S.D.N.Y. 2011); In re Neenah Enters., Inc., Case No. 10-10360 (MFW) (Bankr. D. Del. 2010); In re R.H. Donnelley Corp., Case No. 09-11833 (KG) (Bankr. D. Del. 2009); In re Pliant Corp., Case No. 09-10443 (MFW) (Bankr. D. Del. 2009); In re Smurfit-Stone Container Corp., Case No. 09-10235 (BLS) (Bankr. D. Del. 2009); In re Merisant Worldwide, Inc., Case No. 09-10059 (PJW) (Bankr. D. Del. 2009); and In re Tribune Co., Case No. 08-13141 (KJC) (Bankr. D. Del. 2008).

4. Since October 2018, Sidley has been advising the BSA regarding various strategic options for reaching an equitable global resolution of abuse claims against the BSA, including restructuring alternatives. During this time, Sidley has become familiar with the Debtors' non-profit operations, financial affairs, abuse claims history, organizational structure, and the

potential legal issues that may arise in the context of these chapter 11 cases. In addition, Sidley had a leading role on behalf of the BSA in prepetition discussions with an ad hoc group of attorneys representing a significant number abuse claimants, the prepetition future claimants' representative, certain of the BSA's insurers, the ad hoc committee of local councils, and other relevant stakeholders regarding a potential global resolution of abuse claims.

PROFESSIONAL COMPENSATION

5. Sidley intends to apply to the Court for allowance of compensation for professional services and reimbursement of expenses incurred in connection with these chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders of the Court. Sidley will also make a reasonable effort to comply with the requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any applications for compensation and reimbursement of expenses to be filed by Sidley in these chapter 11 cases.

6. Sidley will charge the Debtors for its legal services on an hourly basis at its ordinary and customary rates in effect on the date that such services are rendered and for reimbursement of all costs and expenses incurred by Sidley in connection with its representation of the Debtors. Sidley's billing rates for attorneys who may work on this matter currently range from $550 to $1,525 per hour for attorneys and from $250 to $470 for paraprofessionals. The following attorneys are presently expected to have primary responsibility for providing services to the Debtors (hourly billing rates noted in parentheses): Jessica C. K. Boelter ($1,275); Thomas A. Labuda Jr. ($1,275); Michael C. Andolina ($1,100); William A. Evanoff ($1,000);

Matthew E. Linder ($955); Karim Basaria ($955); and Blair M. Warner ($885). Additional Sidley attorneys and paraprofessionals will provide services to the Debtors as necessary.[3]

7. Sidley's hourly rates are set at a level designed to fairly compensate Sidley for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. These hourly rates vary with the experience and seniority of the individuals assigned and are subject to periodic adjustments to reflect economic and other conditions, with the hourly rate charged being the hourly rate in effect on the date that the services are performed.[4]

8. Sidley represented the Debtors before the Petition Date using the hourly rates listed above. Such rates are consistent with the rates that Sidley charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case. Moreover, Sidley's rate structure is appropriate and not significantly different from the rates that Sidley charges for other non-bankruptcy representations or the rates other comparable counsel would charge to perform substantially similar services.

9. In addition to the hourly rates set forth above, Sidley customarily charges its clients for the variable costs and expenses incurred in connection with its services, including mail and express mail charges, special- and hand-delivery charges, photocopying charges, travel expenses, transcription costs, expenses for "working meals," computerized research costs, and charges and fees of outside vendors, consultants and service providers.

---

[3] Although Sidley does not anticipate using contract attorneys during these chapter 11 cases, in the unlikely event that it becomes necessary to use contract attorneys, Sidley will not charge a markup to the Debtors with respect to fees billed by such attorneys. Moreover, any contract attorneys or non-attorneys who are employed by the Debtors in connection with work performed by Sidley will be subject to connections searches and disclosures in accordance with the applicable requirements of the Bankruptcy Code and Bankruptcy Rules.

[4] For example, like many of its peer law firms, Sidley increases the hourly billing rate of attorneys and paraprofessionals annually in the form of (a) step increases historically awarded in the ordinary course on the basis of advancing seniority and promotion and (b) periodic increases within each attorney's and paraprofessional's current level of seniority. The step increases do not constitute "rate increases" (as that term is used in the U.S. Trustee Guidelines).

10. Sidley charged the Debtors $0.10 per page for standard duplication services prior to these chapter 11 cases and, consistent with Local Rule 2016-2(e), Sidley will charge no more than $0.10 per page for standard duplication services in these chapter 11 cases. Sidley does not charge its clients for incoming or outgoing facsimile transmissions.

NO DUPLICATION OF SERVICES

11. Concurrently with filing of the Application, the Debtors are filing an application to retain Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as their bankruptcy co-counsel. Sidley and Morris Nichols have advised the Debtors that they will use reasonable efforts to avoid any duplication of services.

12. The Debtors also have filed or intend to file shortly, applications to employ (i) Alvarez & Marsal North America, LLC, as financial advisor, (ii) Omni Agent Solutions, as administrative agent, (iii) Ogletree, Deakins, Nash, Smoak & Stewart, P.C., as special litigation counsel, (iv) Haynes and Boone, LLP, as special insurance counsel, (v) KCIC, LLC, as insurance consultant, and (vi) Bates White LLC, as abuse claims consultant. I understand that the Debtors may also file applications to employ additional professionals in these chapter 11 cases. Sidley intends to monitor carefully the efforts of these other professionals and to coordinate with such professionals to clearly delineate their respective duties in order to prevent duplication of effort or cost.

COMPENSATION RECEIVED BY SIDLEY FROM THE DEBTORS

13. During the twelve months immediately preceding the Petition Date, Sidley received payments and advances in the aggregate amount of approximately $8,294,711.68 for all services rendered on behalf of the Debtors and expenses incurred in connection with such services.

14. Prior to the Petition Date, Sidley held a retainer of $1.0 million, which retainer amount was ultimately increased to $2.0 million. During the course of Sidley's prepetition representation of the Debtors, Sidley submitted invoices to the Debtors, applied the retainer to the invoiced fees and expenses, and received replenishment of the retainer by the Debtors. During the ninety days immediately preceding the Petition Date, Sidley received the following payments and advances in the aggregate amount of $4,856,710:

Date	Amount
12/11/2019	$887,875.36
12/30/2019	$480,060.24
1/24/2020	$1,027,660.19
1/31/2020	$810,654.69
2/04/2020	$500,000.00
2/10/2020	$1,150,459.30

After applying against the retainer certain fees and expenses earned and incurred but not reconciled or paid prior to the Petition Date, the balance of the retainer is approximately $125,237.79 as of the date hereof. Although certain additional fees and expenses may have been earned and incurred but not yet reconciled with the retainer held by Sidley, such amounts, if any, would in any event be less than the current balance of the retainer. The remainder of the retainer held by Sidley will be allocated to Sidley's postpetition fees and expenses after such postpetition fees and expenses are allowed against the Debtors' estates, including pursuant to any interim compensation procedures approved by the Court.

15. In accordance with section 504 of the Bankruptcy Code, Sidley has neither shared nor agreed to share (a) any compensation or reimbursement it has received or may receive with another person, other than with the partners, associates and contract attorneys (if applicable) associated with Sidley, or (b) any compensation or reimbursement another person has received or may receive.

SIDLEY'S DISINTERESTEDNESS

16. In connection with its proposed retention by the Debtors in these chapter 11 cases, Sidley undertook to determine whether it had any connections that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors' estates. Specifically, Sidley obtained from the Debtors and their representatives the names of individuals and entities that may be parties in interest in these chapter 11 cases (collectively, the "Potential Parties in Interest"). The Potential Parties in Interest are listed on **Schedule 1** hereto.

17. Sidley has searched its electronic database for its connections to the Potential Parties in Interest to determine whether Sidley has been retained within the last three years to represent any of the Potential Parties in Interest (or their apparent affiliates, as the case may be). The following is a list of the categories that Sidley has searched:[5]

Schedule	Category
1(a)	Debtors
1(b)	Current and Recent Former Directors and Officers of the Debtors
1(c)	Non-Debtor Affiliates
1(d)	Selected Chartered Organizations
1(e)	Local Councils
1(f)	Secured Parties
1(g)	Banks
1(h)	Credit Card Processors
1(i)	Insurers

[5] Sidley's listing of a party on the schedules attached hereto is solely to illustrate Sidley's connections search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs on the schedules or has a claim against, or legal relationship with, the Debtors of the nature described in the schedules.

1(j)	Landlords
1(k)	Litigation Parties
1(l)	Professionals to be Retained by the Debtors
1(m)	Professionals Representing Certain Parties in Interest
1(n)	Ordinary Course Professionals
1(o)	Tort Claimants Committee
1(p)	Unsecured Creditors Committee
1(q)	Top 25 Plaintiffs' Law Firms Representing the Largest Number of Abuse Victims Asserting Claims Against the Debtors
1(r)	Top 30 General Unsecured Creditors of the Debtors (Non-Abuse Claims)
1(s)	Deferred Compensation and Restoration Plan Participants
1(t)	Significant Contract Counterparties
1(u)	Significant Customers
1(v)	Significant Donors
1(w)	Significant Vendors
1(x)	Significant Taxing Authorities
1(y)	Significant Utility Providers
1(z)	U.S. Trustee, Judges, and Court Contacts for the District of Delaware

18. The results of Sidley's searches of the Potential Parties in Interest are set forth on **Schedule 2**. Specifically, **Schedule 2** identifies all current and former representations within the last three years by Sidley of the Potential Parties in Interest (or their apparent affiliates, as the case may be).

19. Based on the searches conducted to date and described herein, to the best of my knowledge, neither Sidley nor any partner or associate thereof has any connection with the Office of the U.S. Trustee or any person employed in the Office of the U.S. Trustee, or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the District of Delaware other than normal professional connections that Sidley has developed as a result of its representations of various parties in interest in unrelated matters before the Court. Accordingly, the Debtors' retention and employment of Sidley is not prohibited by Bankruptcy Rule 5002.

I. *Specific Disclosures*

20. As set forth in this Declaration and in **Schedule 2**, Sidley represents or has represented in the past three years certain of the Potential Parties in Interest in matters unrelated to these chapter 11 cases. None of the representations disclosed herein are materially adverse to the interests of the Debtors or the Debtors' estates.

21. With the exception of the parties listed in this paragraph, Sidley's revenues for services rendered on behalf of each of the Potential Parties in Interest (or known affiliates) listed on **Schedule 2**, with respect to each such party and its known affiliates, total less than one percent of Sidley's revenue for the 2019 calendar year. The following parties that are Potential Parties in Interest or known affiliates of Potential Parties in Interest represented one percent or more of Sidley's annual revenue in 2019: JPMorgan Chase & Co.; Wells Fargo Bank, National Association; Bank of America N.A.; Goldman, Sachs & Company; and Apollo Capital Management. Sidley performed legal services for these clients and their known affiliates on a wide variety of matters unrelated to the Debtors, and none of these clients represented more than two percent of Sidley's annual revenue in 2019.

22. Affiliates of Chubb Limited, including Century Indemnity Company ("CIC"), are Potential Parties in Interest listed on **Schedule 1** as insurers of the Debtors. In addition, ESIS Inc., a Chubb affiliate, is a third party claims administrator utilized by the BSA and certain of its insurers. Sidley has in the past represented Chubb Limited and its affiliates on matters unrelated to the chapter 11 cases. Sidley previously represented Chubb affiliate CIC in certain reinsurance collection actions between CIC and its reinsurers. The underlying insurance claims for which CIC was seeking reimbursement from its reinsurers were claims under insurance policies CIC or its predecessors issued to the BSA; however, Sidley's prior representation of CIC in the matter

related solely to the reinsurance contracts between CIC and its reinsurers and did not relate to the underlying coverage provided by the policies issued by CIC to BSA. As such, this representation was unrelated to these chapter 11 cases. Sidley has formally withdrawn as counsel for CIC in the reinsurance collection actions and does not currently represent Chubb or any of its affiliates on any other matters. In an abundance of caution, Sidley has implemented a screen between the lawyers and paraprofessionals who worked on the reinsurance matters and the lawyers and paraprofessionals working on any matters on behalf of the Debtors.

23. Old Republic Insurance Company is a Potential Party in Interest listed on **Schedule 1** as an insurer to the Debtors. Sidley represents Old Republic Insurance Company and/or its affiliates ("Old Republic") in matters that are unrelated to the BSA or these chapter 11 cases. On February 25, 2019, the BSA and Old Republic executed a letter agreement addressing Sidley's representations of Old Republic and the BSA, pursuant to which (i) Sidley agreed that it will not act as counsel in any lawsuit, arbitration or mediation by the BSA against Old Republic related to the BSA's insurance agreements or policies with Old Republic, and (ii) Old Republic acknowledged that Sidley may be adverse to Old Republic in connection with matters between the BSA and its insurers, creditors, and or other parties in interest, consented to the representation by Sidley, and expressly waives any alleged conflict.

24. Sidley will not represent the Debtors in an adversary proceeding commenced against any current client of Sidley unless Sidley has an applicable waiver on file or first receives a waiver from such client allowing Sidley to commence such an action. To the extent that a waiver does not exist or is not obtained from such entity and it is necessary for the Debtors to commence an adversary proceeding against that entity, the Debtors will employ Morris Nichols or separate conflicts counsel to represent them in that particular matter. In addition, Sidley will

not represent any client on any matter adverse to the Debtors or their estates while retained as the Debtors' counsel in these chapter 11 cases.

25. To the best of my knowledge, upon reasonably inquiry, neither I nor any professional of the Sidley team that is providing services to the Debtors is a creditor of the Debtors or an active volunteer with the Debtors.

II. *Sidley Attorney and Employee Investments*

26. Sidley maintains five retirement plans (collectively, the "Plans") into which contributions are made by Sidley's partners and employees and/or by Sidley on their behalf. Sidley's Retirement Plans Committee (the "Retirement Plans Committee"), which is comprised of attorneys of Sidley, serves as the named fiduciary of the Plans, and partners and employees of Sidley perform other administrative functions for the Plans, at no cost to the Plans.

27. With respect to two of the Plans (collectively, the "Defined Contribution Plans") the Retirement Plans Committee selects investment vehicles (which include mutual funds and collective trusts[6]) based upon the advice and recommendations of an independent investment consultant retained by the Plans. Individual participants direct into which of those investment vehicles their respective accounts will be invested. Participants in the Defined Contribution Plans may also invest in the Firm-Directed Portfolio (defined below) or in a self-directed brokerage account, which can invest in mutual funds, ETFs or stocks traded on a U.S. exchange, bonds, and/or other fixed income investments, CDs, and money market funds.[7]

[6] A collective trust is a trust maintained by a bank or trust company, which is regulated, supervised and subject to periodic examination by a state or federal agency, for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations. See 29 C.F.R. § 2520.103-3(b). Such a trust is similar to a mutual fund but is not registered with the SEC, and it is only available to retirement plans. It can sometimes have lower fees than a mutual fund.

[7] Participants may not invest in currencies, short sales, private placements, commodities, precious metals, real estate, futures, margin accounts, collectibles or options.

28. The other three Plans are two defined benefit pension plans (the "Pension Plans") and a defined benefit cash balance pension plan (the "Cash Balance Plan" and, collectively with the Pension Plans, the "Defined Benefit Plans"). The Defined Benefit Plans invest primarily in an account known as the "Firm Directed Portfolio" under the Sidley Austin Master Pension Trust for which the Northern Trust Company is the trustee (the "Master Trust"), although the Cash Balance Plan also invests a portion of its assets in two separate fixed income mutual funds, a short-term U.S. Treasury fund and an intermediate term bond index fund. The Firm Directed Portfolio in turn invests in a combination of mutual funds, collective trusts, private equity limited partnerships, hedge funds, and separately managed accounts.[8] None of Sidley or the Defined Benefit Plan trustees or the named fiduciaries (i) are involved in the selection of individual stock investments, (ii) have any influence or ability to direct the independent investment managers, or (iii) have real-time access to information about individual investments.

29. Accordingly, for Sidley's Defined Contribution Plans, none of Sidley, the Defined Contribution Plans, or their trustees or named fiduciaries determine how to allocate contributions (that is done by Defined Contribution Plan participants) or determine in which individual securities a mutual fund or collective trust will invest (that is done by the manager of the fund or trust pursuant to its fiduciary duty).

30. For the Defined Benefit Plans, an independent investment consultant gives advice and makes recommendations to the Retirement Plans Committee regarding investment of the Defined Benefit Plans' pooled assets into mutual funds, collective trusts, limited partnerships, hedge funds, and separately managed accounts (together, the "Funds"). Investment decisions by

[8] The investments in the separately managed accounts are selected by independent investment management firms that are unaffiliated with both Sidley and the Defined Benefit Plans' trustee and named fiduciaries. The holdings of the separately managed accounts consist primarily of common stocks and are part of investment strategies that their managers execute for multiple parties across multiple accounts.

the managers of the Funds are not made by Sidley, the Defined Benefit Plans, or their trustees or named fiduciaries. Therefore, none of Sidley, the Plans, or their trustees or named fiduciaries direct the Funds to invest in any particular investment opportunity, nor do they know in what the Funds intend to invest in the future.[9] It is possible that hedge funds and other Funds may have invested, may be invested, or may in the future invest in debt or equity securities of parties in interest in these chapter 11 cases, other Sidley clients, or entities adverse to Sidley or its clients (or in loans, or other claims, or interests therein).

31. For details of the Plans' investments, please refer to the Plans' annual reports on Form 5500 filed with and available on the website of the U.S. Department of Labor, and the corresponding annual reports of the Master Trust.

32. From time to time, Sidley partners, counsel, associates, and staff, and/or members of the households of the foregoing, personally invest in mutual funds, retirement funds, private equity funds, venture capital funds, hedge funds, funds of funds, and other types of investment funds ("Investment Funds") through which such individuals indirectly acquire interests in debt and equity securities of many companies, one or more of which may be parties in interest in these chapter 11 cases, typically without Sidley's knowledge. Each such person generally owns substantially less than 1% of each such Investment Fund, does not manage or otherwise control such Investment Fund, and has no influence over the Investment Fund's decisions to buy, sell or vote any particular security. The Investment Funds are generally operated as blind pools, meaning that when such persons make an investment in an Investment Fund, they do not know what securities the Investment Fund will purchase or sell and have no control over such purchases or sales.

[9] Additionally, the identity of investments made by many of the Funds are either not shared with Sidley by the administrators of such Funds or are known only by certain partners of Sidley who are involved in the management of the Defined Benefit Plans.

33. From time to time, Sidley partners, senior counsel and senior management voluntarily choose to form an entity (a "Passive-Intermediary Entity") to invest in one or more Investment Funds, or in very limited instances, directly in private companies. Each such Passive-Intermediary Entity is comprised only of persons who are Sidley partners, senior counsel or senior management, or those retired from such positions (or trusts or investment vehicles formed by and for the benefit of such persons) at the time of the Passive-Intermediary Entity's formation, although some investors may later become former Sidley partners, senior counsel or senior management. Participation in any such Passive-Intermediary Entity is wholly voluntary and only a portion of eligible investors choose to participate. Sidley itself does not invest in any Passive-Intermediary Entity. Each Passive-Intermediary Entity generally owns substantially less than 1% of any underlying Investment Fund, does not manage or otherwise control such Investment Fund, and has no influence over the Investment Fund's decisions to buy, sell or vote any particular security. Each Investment Fund in which a Passive-Intermediary Entity invests is operated as a blind pool, so that the Passive Intermediary Entity does not know what securities the Investment Fund will purchase or sell and has no control over such purchases or sales. The Passive-Intermediary Entities commonly receive periodic statements and communications from their underlying Investment Funds. Sidley partners, senior counsel, senior management and others participating in the Passive-Intermediary Entity generally are not provided with the identity of any Investment Fund's underlying investments or the identity of the securities purchased, sold or held by the Investment Fund.[10]

[10] The Passive-Intermediary Entities do not regularly distribute to their investors (other than the small group of Sidley partners who are involved in the management of such Passive-Intermediary Entities) the list of investments made by the Investment Funds in which such Passive-Intermediary Entities are invested unless an investor requests the list. Therefore, the investments made by the Investment Funds in which the Passive-Intermediary Entities are invested are known, if at all, only by certain partners of Sidley who are involved in the management of the Passive-Intermediary Entities, and other investors in the Passive-Intermediary Entities who have affirmatively requested such information, some of whom may provide services to the Debtors in connection with these chapter 11 cases.

34. From time to time, Sidley partners, senior counsel, counsel, associates and staff, and/or members of the households of the foregoing, personally acquire debt or equity securities of a company, which may be (or become) a party in interest in these chapter 11 cases. Sidley has a long-standing policy prohibiting attorneys and employees from using material non-public information that may come to their attention in the course of their work, so that all Sidley attorneys and employees are barred from trading in securities with respect to which they possess material non-public information.

III. *Affirmative Statement of Disinterestedness*

35. To the best of my knowledge, based on the searches conducted to date and as described in detail on **Schedule 2**, (a) Sidley is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates and (b) has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in this Declaration.

36. Given the large number of parties in interest in these chapter 11 cases and because the information on **Schedule 1** may have changed without our knowledge and may change during the pendency of the Debtors' chapter 11 cases, we are not able conclusively to identify all relationships or potential relationships with all creditors or other parties in interest in these chapter 11 cases. If any new relevant facts or relationships are discovered or arise, Sidley will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

ATTORNEY STATEMENT PURSUANT TO THE U.S. TRUSTEE GUIDELINES

37. The following responses are provided in response to the questions set forth in Paragraph D.1 of the U.S. Trustee Guidelines:

a. Sidley did not agree to any variations from, or alternatives to, its standard or customary billing arrangements for this engagement.

b. The hourly rates of the Sidley professionals representing the Debtors are consistent with the rates that Sidley charges other chapter 11 clients, regardless of the geographic location of the chapter 11 case.

c. The billing rates and material financial terms of Sidley's prepetition engagement by the Debtors are as set forth in the Application. Such billing rates and material financial terms have not changed post-petition compared to services provided to the Debtors prepetition.

d. The Court has approved a budget on an interim basis for Sidley's engagement for the postpetition period, which budget is set forth in Exhibit 1 to the *Interim Order (I) Authorizing the Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Party Pursuant to 11 U.S.C. §§ 105(a), 361, 362, 363, 503 and 507; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief* [Docket No. 90].

[Remainder of Page Intentionally Left Blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 17, 2020
New York, New York

/s/ Jessica C. K. Boelter
Jessica C. K. Boelter
Partner
SIDLEY AUSTIN LLP

Schedule 1

Potential Parties in Interest

List of Schedules

Schedule	Category
1(a)	Debtors
1(b)	Current and Former Directors and Officers of the Debtors
1(c)	Non-Debtor Affiliates
1(d)	Selected Chartered Organizations
1(e)	Local Councils
1(f)	Secured Parties
1(g)	Banks
1(h)	Credit Card Processors
1(i)	Insurers
1(j)	Landlords
1(k)	Litigation Parties
1(l)	Professionals to be Retained by the Debtors
1(m)	Professionals Representing Certain Parties in Interest
1(n)	Ordinary Course Professionals
1(o)	Tort Claimants Committee
1(p)	Unsecured Creditors Committee
1(q)	Top 25 Plaintiffs' Law Firms Representing the Largest Number of Abuse Victims Asserting Claims Against the Debtors
1(r)	Top 30 General Unsecured Creditors of the Debtors (Non-Abuse Claims)
1(s)	Deferred Compensation and Restoration Plan Participants
1(t)	Significant Contract Counterparties
1(u)	Significant Customers
1(v)	Significant Donors
1(w)	Significant Vendors
1(x)	Significant Taxing Authorities
1(y)	Significant Utility Providers
1(z)	U.S. Trustee, Judges, and Court Contacts for the District of Delaware

Schedule 1(a)

Debtors

Boy Scouts of America
Delaware BSA, LLC

Schedule 1(b)

Current and Former Directors and Officers of the Debtors

Al Lambert
Alison K. Schuler
Arthur F. "Skip" Oppenheimer
Aubrey Harwell
Brad Haddock
Bradley D. Tilden
Bray B. Barnes
C. David Moody
Charles H. Smith
Charles W. Dahlquist
Craig Fenneman
D. Kent Clayburn
Dan Ownby
Daniel Cabela
David Biegler
David L. Steward
David M. Clark
David Rumbarger
David S. Alexander
Dennis H. Chookaszian
Devang Desai
Dominic Wolters
Doug Mitchell
Douglas H. Dittrick
Doyle Parrish
Drayton McLane Jr.
E. Gordon Gee
Ellie Morrison
Eric Schultz
Erin Eisner
Forrest Gertin
Francis McAllister
Frank D. Tsuru
Frank Ramirez
Fred Markham
Gary Crum
Gary E. Wendlandt
Glenn Adams
Hannah Carter
Hector A. "Tico" Perez
Howard Bulloch
J. Brett Harvey
Jack Furst
Jack Otto
James D. Rogers
James S. Turley
James S. Wilson
Janice Bryant Howroyd
Jeanette Prenger
Jeanne Arnold
Jeffrey R. Holland
Jennifer Hancock
Jim Ryffel
Joe Crafton
John C. Cushman
John Gottschalk
John Mosby
John R. Donnell Jr.
Jose Nino
Joseph P Landy
Joy Jones
Keith A. Clark
L.B. Eckelkamp Jr.
Lisa Argyros
Lyle Knight
Mark Logemann
Matthew K. Rose
Matthew Parsons
Michael Ashline
Michael E. Sears
Michael G. Hoffman
Michael Surbaugh
Nathan O. Rosenberg
Nevada "Al" Kent
Pamela Petterchak
Patrick Sterrett
Paul Raines
Philip M. Condit
Pratik Vaidya
Ralph de la Vega
Randall Stephenson
Ray Capp
Raymond Johns
Rex W. Tillerson
Rick Cronk
Robert H. Reynolds

Robert M. Gates
Roger C. Mosby
Ron Kirk
Ronald O. Coleman
Roy S. Roberts
Scott Christensen
Scott Sorrels
Scott W. Beckett
Stephen Owen
Steven E. Weekes
Steven Rendle
Tanya Acker
Thear Suzuki
Thomas C. Edwards
Thomas S. Monson
Thomas Yarboro
Wayne Perry
Wesley Coleman
Wesley J. Smith
William Rosner
William W. Stark Jr.

Schedule 1(c)

Non-Debtor Affiliates

Arrow WV, Inc.
Atikaki Youth Ventures Inc.
Atikokan Youth Ventures Inc.
BSA Asset Management, LLC
BSA Commingled Endowment Fund, LP
BSA Endowment Master Trust
Learning for Life
National Boy Scouts of America Foundation
NewWorld19, LLC
Texas BSA, LLC

Schedule 1(d)

Selected Chartered Organizations[1]

All Saints R.C. Church
Archdiocese of New York
Audubon Baptist Church
Beech Haven Baptist Church
Big Cross Elementary School
Bishop Turner High School
Calasanctius School of Buffalo
Canisius High School of Buffalo
Capuchin Franciscans
Capuchin Franciscans Custody of Star of The Sea
Capuchin Franciscans Province of St. Mary
Carmel of The Immaculate Concepcion
Cascade Charter Township
Church of The Holy Innocents
City of Bloomingdale
Corporation of the President of the Church of Jesus Christ of Latter-Day Saints
Country Farm Supply
Diocese of Brooklyn
Diocese of Buffalo
Discalced Carmelite Nuns (O.C.D.) A.K.A. Order of Discalced Carmelites
First Baptist Church of Athens
First Baptist Church of Danville D/B/A Boy Scout Troop 354
First Baptist Church of Gainesville
Glens Falls City School District
Greek Orthodox Archdiocese of America
Green Acres Baptist Church
Holy Family Church
Holy Family R.C. Church
House of Hope Presbyterian Church
Immaculate Conception R.C. Church
Louisville Metro Police Department, City of Louisville, Jefferson County / Louisville Consolidated Government
Mohawk District of The Northern New York Annual Conference of The Methodist Episcopal Church of New York
Monastery of Christ In The Desert
Our Lady of Lourdes Catholic School
Our Savior Lutheran Church
Queen of Peace R.C. Church
Reformation Lutheran Church
Regis High School
Roman Catholic Archbishop of Agana
Roman Catholic Archdiocese of New York, Archdiocese of New York
Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY (Formerly "Church of The Annunciation Of Rochester, New York"), a Religious Corporation
Sacred Heart - Espanola
Saint John The Baptist Church
School Sisters of Notre Dame Central Pacific Province, Inc.
School Sisters of Notre Dame, Region of Guam
Silver Springs Shores Presbyterian Church, Inc.
Society of Jesus, USA-Northeast Province A/K/A The Jesuits
St. Ambrose Church
St. Benedict Joseph Labre Church
St. Benedict Joseph Labre School
St. Brigid's R.C. Church
St. Catherine's Roman Catholic Church
St. Catherine's Roman Catholic Church School
St. Demetrios Greek Orthodox Church St. Francis of Assisi Roman Catholic Church
St. Francis Xavier Church
St. Helena Parish
St. John Gualbert R.C. Church
St. John Vianney R.C. Church
St. Josephats R.C. Church
St. Nicholas of Tolentine

[1] There are approximately 41,000 chartered organizations. This list only includes those charted organizations known by the Debtors to be implicated in abuse claims with the BSA.

St. Paul's R.C. Church
St. Pius V
St. Pius X Catholic Church of Rochester, Minnesota
St. Teresa Parish A/K/A Church of St. Teresa of The Infant Jesus
St. Teresa R.C. Church
The Blessed Trinity R.C. Church
The Diocese of Rochester (A/K/A "Roman Catholic Diocese of Rochester"), A Religious Corporation
The Foundation of The Roman Catholic Diocese of Buffalo N.Y., Inc.
The Pingry School
The Roman Catholic Diocese of Syracuse
The Roman Catholic Diocese of Syracuse, NY
The School Sisters Of Notre Dame, Milwaukee Province, Inc.
Town of Deerfield
Town of Trumbull
University Heights Presbyterian Church
USA Northeast Province of The Society of Jesus
Weedsport Central School District
Weedsport Central School District Board of Education

Schedule 1(e)

Local Councils

Boy Scouts of America Abraham Lincoln Council
Boy Scouts of America Alabama-Florida Council
Boy Scouts of America Alameda Council
Boy Scouts of America Alamo Area Council
Boy Scouts of America Allegheny Highlands Council
Boy Scouts of America Aloha Council
Boy Scouts of America Andrew Jackson Council
Boy Scouts of America Anthony Wayne Area Council
Boy Scouts of America Arbuckle Area Council
Boy Scouts of America Atlanta Area Council
Boy Scouts of America Baden-Powell Council
Boy Scouts of America Baltimore Area Council
Boy Scouts of America Bay Area Council
Boy Scouts of America Bay-Lakes Council
Boy Scouts of America Black Hills Area Council
Boy Scouts of America Black Swamp Area Council
Boy Scouts of America Black Warrior Council
Boy Scouts of America Blackhawk Area Council
Boy Scouts of America Blue Grass Council
Boy Scouts of America Blue Mountain Council
Boy Scouts of America Blue Ridge Council
Boy Scouts of America Blue Ridge Mountains Council
Boy Scouts of America Buckeye Council
Boy Scouts of America Buckskin Council
Boy Scouts of America Bucktail Council
Boy Scouts of America Buffalo Trace Council
Boy Scouts of America Buffalo Trail Council
Boy Scouts of America Caddo Area Council
Boy Scouts of America Calcasieu Area Council
Boy Scouts of America California Inland Empire Council
Boy Scouts of America Cape Cod And Islands Council
Boy Scouts of America Cape Fear Council
Boy Scouts of America Capitol Area Council
Boy Scouts of America Cascade Pacific Council
Boy Scouts of America Catalina Council
Boy Scouts of America Central Florida Council
Boy Scouts of America Central Georgia Council
Boy Scouts of America Central Minnesota Council
Boy Scouts of America Central North Carolina Council
Boy Scouts of America Chattahoochee Council
Boy Scouts of America Cherokee Area Council
Boy Scouts of America Chester County Council
Boy Scouts of America Chickasaw Council
Boy Scouts Of America Chief Cornplanter Council
Boy Scouts of America Chief Seattle Council
Boy Scouts of America Chippewa Valley Council
Boy Scouts of America Choctaw Area Council
Boy Scouts of America Cimarron Council
Boy Scouts of America Circle Ten Council
Boy Scouts of America Coastal Carolina Council

Boy Scouts of America Coastal Georgia Council
Boy Scouts of America Colonial Virginia Council
Boy Scouts of America Columbia-Montour Council
Boy Scouts of America Connecticut Rivers Council
Boy Scouts of America Connecticut Yankee Council
Boy Scouts of America Conquistador Council
Boy Scouts of America Cornhusker Council
Boy Scouts of America Coronado Area Council
Boy Scouts of America Cradle Of Liberty Council
Boy Scouts of America Crater Lake Council
Boy Scouts of America Crossroads Of America Council
Boy Scouts of America Dan Beard Council
Boy Scouts of America Daniel Boone Council
Boy Scouts of America Daniel Webster Council
Boy Scouts of America De Soto Area Council
Boy Scouts of America Del-Mar-Va Council
Boy Scouts of America Denver Area Council
Boy Scouts of America East Carolina Council
Boy Scouts of America East Texas Area Council
Boy Scouts of America Erie Shores Council
Boy Scouts of America Evangeline Area Council
Boy Scouts of America Far East Council
Boy Scouts of America Five Rivers Council
Boy Scouts of America Flint River Council
Boy Scouts of America French Creek Council
Boy Scouts of America Gamehaven Council
Boy Scouts of America Garden State Council
Boy Scouts of America Gateway Area Council
Boy Scouts of America Georgia-Carolina Council
Boy Scouts of America Glacier's Edge Council
Boy Scouts of America Golden Empire Council
Boy Scouts of America Golden Spread Council
Boy Scouts of America Grand Canyon Council
Boy Scouts of America Grand Columbia Council
Boy Scouts of America Grand Teton Council
Boy Scouts of America Great Alaska Council
Boy Scouts of America Great Rivers Council
Boy Scouts of America Great Salt Lake Council
Boy Scouts of America Great Smoky Mountain Council
Boy Scouts of America Great Southwest Council
Boy Scouts of America Great Trail Council
Boy Scouts of America Greater Alabama Council
Boy Scouts of America Greater Los Angeles Area Council
Boy Scouts of America Greater New York Council
Boy Scouts of America Greater Niagara Frontier Council
Boy Scouts of America Greater St. Louis Area Council
Boy Scouts of America Greater Tampa Bay Area Council
Boy Scouts of America Greater Wyoming Council
Boy Scouts of America Greater Yosemite Council
Boy Scouts of America Green Mountain Council
Boy Scouts of America Greenwich Council

Boy Scouts of America Gulf Coast Council
Boy Scouts of America Gulf Stream Council
Boy Scouts of America Hawk Mountain Council
Boy Scouts of America Hawkeye Area Council
Boy Scouts of America Heart Of America Council
Boy Scouts of America Heart Of New England Council
Boy Scouts of America Heart Of Virginia Council
Boy Scouts of America Hoosier Trails Council
Boy Scouts of America Housatonic Council
Boy Scouts of America Hudson Valley Council
Boy Scouts of America Illowa Council
Boy Scouts of America Indian Nations Council
Boy Scouts of America Indian Waters Council
Boy Scouts of America Inland Northwest Council
Boy Scouts of America Iroquois Trail Council
Boy Scouts of America Istrouma Area Council
Boy Scouts of America Jayhawk Area Council
Boy Scouts of America Jersey Shore Council
Boy Scouts of America Juniata Valley Council
Boy Scouts of America Katahdin Area Council
Boy Scouts of America La Salle Council
Boy Scouts of America Lake Erie Council
Boy Scouts of America Las Vegas Area Council
Boy Scouts of America Last Frontier Council
Boy Scouts of America Laurel Highlands Council
Boy Scouts of America Leatherstocking Council
Boy Scouts of America Lincoln Heritage Council
Boy Scouts of America Long Beach Area Council
Boy Scouts of America Longhorn Council
Boy Scouts of America Longhouse Council
Boy Scouts of America Longs Peak Council
Boy Scouts of America Los Padres Council
Boy Scouts of America Louisiana Purchase Council
Boy Scouts of America Marin Council
Boy Scouts of America Mason-Dixon Council
Boy Scouts of America Mayflower Council
Boy Scouts of America Mecklenburg County Council
Boy Scouts of America Miami Valley Council
Boy Scouts of America Michigan Crossroads Council
Boy Scouts of America Mid-America Council
Boy Scouts of America Middle Tennessee Council
Boy Scouts of America Mid-Iowa Council
Boy Scouts of America Midnight Sun Council
Boy Scouts of America Minsi Trails Council
Boy Scouts of America Mississippi Valley Council
Boy Scouts of America Mobile Area Council
Boy Scouts of America Monmouth Council
Boy Scouts of America Montana Council
Boy Scouts of America Moraine Trails Council
Boy Scouts of America Mount Baker Council
Boy Scouts of America Mount Diablo Silverado Council
Boy Scouts of America Mountaineer Area Council
Boy Scouts of America Muskingum Valley Council
Boy Scouts of America Narragansett Council

Boy Scouts of America National Capital Area Council
Boy Scouts of America Nevada Area Council
Boy Scouts of America New Birth Of Freedom Council
Boy Scouts of America North Florida Council
Boy Scouts of America Northeast Georgia Council
Boy Scouts of America Northeast Illinois Council
Boy Scouts of America Northeast Iowa Council
Boy Scouts of America Northeastern Pennsylvania Council
Boy Scouts of America Northern Lights Council
Boy Scouts of America Northern New Jersey Council
Boy Scouts of America Northern Star Council
Boy Scouts of America Northwest Georgia Council
Boy Scouts of America Northwest Texas Council
Boy Scouts of America Norwela Council
Boy Scouts of America Occoneechee Council
Boy Scouts of America Ohio River Valley Council
Boy Scouts of America Old Hickory Council
Boy Scouts of America Old North State Council
Boy Scouts of America Orange County Council
Boy Scouts of America Oregon Trail Council
Boy Scouts of America Ore-Ida Council
Boy Scouts of America Overland Trails Council
Boy Scouts of America Ozark Trails Council
Boy Scouts of America Pacific Harbors Council
Boy Scouts of America Pacific Skyline Council
Boy Scouts of America Palmetto Council
Boy Scouts of America Pathway To Adventure Council
Boy Scouts of America Patriots' Path Council
Boy Scouts of America Pee Dee Area Council
Boy Scouts of America Pennsylvania Dutch Council
Boy Scouts of America Piedmont Council
Boy Scouts of America Pikes Peak Council
Boy Scouts of America Pine Burr Area Council
Boy Scouts of America Pine Tree Council
Boy Scouts of America Pony Express Council
Boy Scouts of America Potawatomi Area Council
Boy Scouts of America Prairielands Council
Boy Scouts of America Puerto Rico Council
Boy Scouts of America Pushmataha Area Council
Boy Scouts of America Quapaw Area Council
Boy Scouts of America Quivira Council
Boy Scouts of America Rainbow Council
Boy Scouts of America Redwood Empire Council
Boy Scouts of America Rio Grande Council
Boy Scouts of America Rip Van Winkle Council
Boy Scouts of America Rocky Mountain Council
Boy Scouts of America Sagamore Council
Boy Scouts of America Sam Houston Area Council
Boy Scouts of America Samoset Council
Boy Scouts of America San Diego-Imperial Council
Boy Scouts of America San Francisco Bay Area Council
Boy Scouts of America Santa Fe Trail Council

Boy Scouts of America Seneca Waterways Council
Boy Scouts of America Sequoia Council
Boy Scouts of America Sequoyah Council
Boy Scouts of America Shenandoah Area Council
Boy Scouts of America Silicon Valley Monterey Bay Council
Boy Scouts of America Simon Kenton Council
Boy Scouts of America Sioux Council
Boy Scouts of America Snake River Council
Boy Scouts of America South Florida Council
Boy Scouts of America South Georgia Council
Boy Scouts of America South Plains Council
Boy Scouts of America South Texas Council
Boy Scouts of America Southeast Louisiana Council
Boy Scouts of America Southern Sierra Council
Boy Scouts of America Southwest Florida Council
Boy Scouts of America Spirit Of Adventure Council
Boy Scouts of America Stonewall Jackson Area Council
Boy Scouts of America Suffolk County Council
Boy Scouts of America Susquehanna Council
Boy Scouts of America Suwannee River Area Council
Boy Scouts of America Tecumseh Council
Boy Scouts of America Texas Southwest Council
Boy Scouts of America Texas Trails Council
Boy Scouts of America Theodore Roosevelt Council
Boy Scouts of America Three Fires Council
Boy Scouts of America Three Harbors Council
Boy Scouts of America Three Rivers Council
Boy Scouts of America Tidewater Council
Boy Scouts of America Transatlantic Council
Boy Scouts of America Trapper Trails Council
Boy Scouts of America Tukabatchee Area Council
Boy Scouts of America Tuscarora Council
Boy Scouts of America Twin Rivers Council
Boy Scouts of America Twin Valley Council
Boy Scouts of America Utah National Parks Council
Boy Scouts of America Ventura County Council
Boy Scouts of America Verdugo Hills Council
Boy Scouts of America Voyageurs Area Council
Boy Scouts of America W.D. Boyce Council
Boy Scouts of America Washington Crossing Council
Boy Scouts of America West Tennessee Area Council
Boy Scouts of America Westark Area Council
Boy Scouts of America Westchester-Putnam Council
Boy Scouts of America Western Los Angeles County Council
Boy Scouts of America Western Massachusetts Council
Boy Scouts of America Westmoreland-Fayette Council
Boy Scouts of America Winnebago Council
Boy Scouts of America Yocona Area Council
Boy Scouts of America Yucca Council

Schedule 1(f)

Secured Parties

AT&T Capital Services, Inc.
AT&T Corporation
Automation Tools, LLC
CIT Bank, N.A.
Datamax, Inc.
EverBank Commercial Finance, Inc.
Firebird Structures, LLC
Giant Bicycle, Inc.
HYG Financial Services, Inc.
ImageNet Consulting, LLC
Insight Investments, LLC
JPMorgan Chase Bank, N.A.
Kaufman Fire Protection Systems, Inc.
Key Equipment Finance
Konica Minolta Premier Finance
MB Financial Bank, N.A.
Raymond Leasing Corp
TCF Equipment Finance, Inc.
The Chase Manhattan Bank
The "Green Bar Bill" Hillcourt Foundation
The "Green Bar Bill" Hillcourt Foundation, C/O Winstead PC
TIAA Commercial Finance, Inc.
UniFi Equipment Finance, Inc.
Veristor Capital, LLC
Wells Fargo Financial Leasing, Inc.

Schedule 1(g)

Banks

Banco Popular
Bank of America
BB&T
Blackrock
Charles Schwab
CIBC - First Caribbean Bank
Federated Bank
Fidelity Investments
Fifth Third Bank
First Bank - Virgin Islands
First State Bank
Goldman Sachs
InBank
JPMorgan Chase Bank, N.A.
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Northern Trust Corporation
PNC Bank
RBC Bank
Regions Bank
Scotiabank
State Street Bank
TD Bank
US Bank
Wells Fargo & Company

Schedule 1(h)

Credit Card Processors

American Express
Authorize.net
Bank of America Merchant Services
Card Connect
Discover
Dynamic Payments
Global Payments Inc.
JPMorgan Chase Bank, N.A.
Mastercard
Moneris
Opticard
Paymentech, LLC
PayPal, Inc.
Shift4
Stripe (Shopify)
TSYS/Cayan
Valutec
Visa
Wells Fargo & Company
Wild Apricot

Schedule 1(i)

Insurers

Ace Insurance Group
Aetna Casualty and Surety Company
Agricultural Excess & Surplus Insurance Company
Agricultural Insurance Company
AIG
Allianz Global Corporate & Specialty SE
Allianz Global Risks US Insurance Company
Allianz Insurance Company
Allianz Societas Europaea
Allied World Assurance Co.
Allied World Assurance Company (U.S.), Inc.
Allied World Assurance Company, Ltd
Alterra Excess & Surplus Insurance Company
American Guarantee and Liability Insurance Company
American International Group, Inc.
American Re-Insurance Company
American Zurich Insurance Company
Arch Capital Group (U.S.)
Arch Insurance Company
Arch Reinsurance Ltd.
Argo Group International Holdings, Ltd
Argonaut Insurance Company
Argonaut Insurance Group
Arrowood Indemnity Company
Arrowpoint Capital Corp.
Aspen Insurance Holdings Limited
Ategrity Specialty
Ategrity Specialty Insurance Company
AXA Insurance Company
AXA XL
Axis Capital Holdings Limited
Axis Insurance Company
Axis Specialty Insurance Company
Axis Surplus Insurance Company
Beazley Insurance Company, Inc.
Berkley Insurance Company
Berkshire Hathaway Insurance Group
California Union Insurance Company
Catlin Underwriting Agencies Limited
Century Indemnity Company
Chubb Atlantic Indemnity Ltd.
Chubb Custom Insurance Company
Chubb Executive Risk
Chubb Group of Insurance Companies
Cincinnati Specialty Underwriters Insurance Company
Clarendon America Insurance Company
Clarendon National Insurance Company
CNA Insurance Companies
Colony Insurance Company
Columbia Casualty Company
Continental Insurance Company
Endurance American Insurance Company
Endurance American Specialty Insurance Company
Enstar Group Limited
Euclid Insurance Services, Inc.
Evanston Insurance Company
Everest National Insurance Company
Everest Re Group
Fairfax (US) Inc.
Fairfax Financial (USA) Group
Federal Insurance Company
Fireman's Fund Insurance Companies
First Specialty Insurance Corporation
First State Insurance Company
Gemini Insurance Company
General Star Indemnity Company
Great American
Great American Assurance Company
Great American E & S Insurance Company
Great American Property and Casualty Insurance Group
Gulf Insurance Company
Hallmark Specialty Insurance Company
Harbor Insurance Company
Hartford Accident and Indemnity Company
Houston Casualty Company
Indemnity Insurance Company of North America
Indian Harbor Insurance Company

Industrial Indemnity
Industrial Insurance Company of Hawaii
Insurance Company of North America
Insurance Company of the State of Pennsylvania (The)
International Insurance Company
Interstate Fire & Casualty Company
Landmark Insurance Company
Lexington Insurance Company
Liberty Insurance Underwriters, Inc.
Liberty Mutual Insurance Company
Liberty Surplus Insurance Corporation
Lloyd's of London
London Market
Markel American Insurance Company
Markel Corporation Group
Marsh & McLennan Companies
MHBT, a Marsh & McLennan Agency
Munich Re Group
Munich Reinsurance America, Inc.
National Casualty Company
National Surety Corporation
National Union Fire Insurance Company Of Pittsburgh, PA
Navigators Group, Inc.
Navigators Insurance Company
Navigators Specialty Insurance Company
Niagara Fire Insurance Company
Normandy Reinsurance Company Limited
Ohio Casualty Insurance Company (The)
Old Republic General Group
Old Republic Insurance Company
Old Republic Insurance Group
Pacific Employers Ins. Company
Pacific Indemnity Company
Property/Casualty Insurance Co. Of Hartford
RLI Professional Risk
Royal Indemnity Company
RSUI Group
R-T Specialty
Sompo - Endurance American Insurance Company
Sompo Holdings, Inc.
St. Paul Surplus Lines Insurance Company
Starr Indemnity & Liability Company
Starr Specialty
Steadfast Insurance Company
Swiss Re Group
Texas Pacific Indemnity Company
The Hartford Financial Services Group, Inc.
The Hartford Fire
The Hartford Insurance Group
The Hartford Steam Boiler Inspection And Insurance Company
The Travelers Companies, Inc.
Traders and Pacific Insurance Company
Travelers (Bermuda) Limited
Travelers Casualty and Surety Company
Travelers Indemnity Company
Twin City Fire Insurance Company
U.S. Fire Insurance Company
Universal Re-Insurance Company Limited
Utica Mutual Insurance Company
W. R. Berkley Corporation
W.R. Berkley Group
Westchester Fire Insurance Company
Westchester Surplus Lines Insurance Company
XL Catlin
XL Europe Limited
XL Insurance (Dublin) Ltd.
XL Insurance Company SE
Zurich Financial (USA) Group
Zurich Financial Services Group

Schedule 1(j)

Landlords

1040 Avenue of the Americas LLC
IRC Retail Centers

Schedule 1(k)

Litigation Parties[2]

90 Merrick LLC
[redacted] C/O Law Office of Anthony C. Perez
[redacted]
Aaron Moore
Aaron Yates
ABC Insurance Corporation
Adam Herrington
[redacted] C/O Ryder Law Firm
Aderion Adkisson
Adrian Senentz
[redacted] C/O Paul Mones
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Nixon, Vogelman, Slawsky & Simoneau PA
[redacted] C/O Lujan & Wolff, LLP
Alicia Lifrak
[redacted] /O Tremont, Sheldon, Robinson, Mahoney, P.C.
All Saints R.C. Church
Allegheny Highlands Council
Allen Hughes
Aloha Council Chamorro District
Alpine Scout Camp
[redacted] C/O Rubenstein & Rynecki
Andrea Watson
Andrew Aston
Andrew Bloom
Andrew Mannetta
Andrew McMorris
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
[redacted] C/O Marsh Law Firm
[redacted] C/O Andreozzi & Associates, P.C.
[redacted] C/O David Luna
[redacted] C/O Crew Janci LLP
Anita Gettleson
Anna Lee Ingram
[redacted] C/O Patrick Noaker
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
Antonia Michelson
Aramark Campus, LLC
Archbishop Christopher Pierre, Apostolic Nuncio of The Holy See For The United States
Archbishop Timothy Dolan, Archbishop of New York
Archdiocese of New York And Our Lady of Lourdes Catholic School

---

[2] The professionals seeking to be retained also ran the names of certain individual plaintiffs. In accordance with the *Interim Order (I) Authorizing the Debtors' to file (A) a Consolidated List of Counsel Representing the Largest Numbers of Abuse Victims and (B) a Consolidated List of Other Unsecured Creditors of the Debtors, (III) Authorizing and Approving Procedures for Providing Notice of Commencement, and (IV) Granting Related Relief* [Docket No. 66], in order to protect the identities of individual plaintiffs asserting abuse claims and individual plaintiffs who are minors, the Debtors have redacted such information from this list. The Debtors will provide an unredacted version of this list to the Court, the Office of the United States Trustee, and the Committees upon request.

[redacted] C/O Robins Kaplan LLP
[redacted] C/O Law Offices Of Anthony M. Demarco
Astral Energy, LLC
Atlanta Area Council, Inc.
Attorney(s) ABC and Accountant(S) XYZ
[redacted] C/O Lujan & Wolff, LLP
Austin Boley
[redacted] C/O James Dilbeck
[redacted] C/O Thomas Law Office, PLLC
Baden-Powell Council, Inc.
Baiting Hollow Scout Camp
Barbara Cowles
Beech Haven Baptist Church
[redacted] C/O Casey Devoti & Brockland
[redacted] C/O Berman O'Connor & Mann
Benjamin Cudeck
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Lujan & Wolff, LLP
Betty Boland, as the Administrator of The Estate of Ernest Boland
Big Cross Elementary School
Billie Jo Mojoinner
Bishop Turner High School
Blackhawk Area Council of Boy Scouts
[redacted] C/O Leisawitz Heller
Blue Ridge Mountains Council
Board of Trustees of The First Baptist Church of Gainesville, Inc.
[redacted] C/O Crew Janci LLP
Bobby C. Jones
Bowmansville Fire Co., Inc.
Boy Scout Troop #50 of Hattiesburg, Mississippi
Boy Scout Troop 163
Boy Scout Troop 204 Memphis - Chickasaw Council - Thunderbird District
Boy Scout Troop 95
Boy Scout Trust Fund
Boy Scouts 11 of America
Boy Scouts of America - Hiawatha Council
Boy Scouts of America Atlantic Area Council Inc.
Boy Scouts of America Atlantic Area Council No. 331
Boy Scouts of America Big Apple District
Boy Scouts of America Greater Los Angeles Area Council
Boy Scouts of America Pack 494
Boy Scouts of America Phoenix District Troop 49
Boy Scouts of America San Diego-Imperial Council
Boy Scouts of America Troop 1000 Inc.
Boy Scouts Troop #64
Boy Scouts Troop 460
Brad Ewell
[redacted] C/O Thomas Law Office, PLLC
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Bradley Schumann
Brandon Wood
Brazen Matson
[redacted] C/O Paul Mones
Brennan Johnston
Brentley Wells
[redacted] C/O Gallik, Bremer & Molloy, P.C.
Bretty Bybee
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
[redacted] C/O Bonina & Bonina, P.C.
Brian P. Wagner

[redacted] C/O David Yates, Thomas Juanso and Tad Thomas, Lindsay Cordes - Thomas Law Offices
Bronx Council
Brooklyn Chinese-American Association
Brooklyn Council
Bruce Desandre
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Goff Law Group
[redacted] C/O Robins Kaplan LLP
Buffalo Trail Council
Buffalo Trail Scout Ranch
Calasanctius School of Buffalo
Caleb Steinhoff
California Inland Empire Council
[redacted]
Camille Travis
Camp Aquehonga
Camp Big Timber
Canisius High School of Buffalo
Capuchin Franciscans
Capuchin Franciscans Custody of Star of The Sea
Capuchin Franciscans, Province of St. Mary
Carol Chacon
Carolyn Hemphill
Carrie Stafford
Carroll Township Police Department
Cascade Charter Township
Cascade Pacific Council
Casey Scott
Catholic Cemeteries of Roman Catholic Diocese of Buffalo, Inc.
Catholic Health of WNY and its subsidiaries
Cathy Ostrenga
Celeste Rone-Moss
[redacted] C/O Law Offices Of Tyler H. Fox
Charles Copeland
Charles Oglesby, Sr.
Charles Stauder
Charlie Bate
[redacted] C/O Lujan & Wolff, LLP
Chase Dansereau
Cherokee Area Council, Inc.
Chicago Area Council
Chickasaw Council
Chief of Police Jon Belmar
Chief Seattle Council
Chris Alvelo
[redacted] C/O Crew Janci LLP
Chris Larrabee
Chris McCullough
Christ The King Seminary Fund, Inc.
[redacted] C/O David Yates, Thomas Juanso and Tad Thomas, Lindsay Cordes - Thomas Law Offices
Christina Vovchuk
[redacted] C/O Michael G. Dowd
Christopher Finks
Christopher Larrabee
[redacted] C/O Silver Golub & Teitell LLP
Christopher Payne
Christopher Pelletier
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Christopher Vogel
[redacted] C/O Crew Janci LLP
Church of The Holy Innocents
Cincinnati Insurance Company
Circle Ten Council
Citizens' Hose Company No. 1 of Dillsburg Penna
City of Columbus
City of Louisville
City of Louisville-Jefferson County-Louisville Consolidated Government
[redacted] C/O Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins
Clark Martin
Claudius Douglas Mair-Worley
Clayton Historical Society
[redacted] C/O Law Offices of Mitchell Garabedian
Clifton Neyrey
CLK/HP 90 Merrick LLC
Clyde Noland

CMR A/S/O Cox Communication
[redacted]
Columbus School District
Complaint and Michigan Crossroads Council, Inc.
Connecticut Rivers Council
Connecticut Rivers Council Troops 258 & 302
Connecticut Yankee Council, Inc.
Connor Cudeck
[redacted] C/O Padberg, Corrigan & Appelbaum
Continental Tire The Americas, LLC
Cornelia Berrocal
Corporation of the President of the Church of Jesus Christ of Latter-Day Saints
Country Farm Supply
Cradle of Liberty Boy Scouts of America
[redacted] C/O Crew Janci LLP
Craig Bingham
[redacted] C/O Marsh Law Firm
[redacted] C/O Berman O'Connor & Mann
Ct Yankee Council
Cub Scout Pack 601
Curtis Flaherty
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
[redacted]
Dan McGill
Daniel Boone Council Inc.
Daniel Camerano
[redacted] C/O Hirshfield & Costanzo, P.C.
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Michael G. Dowd
[redacted] C/O Michael G. Dowd
[redacted] C/O Berman O'Connor & Mann
Daniel P. Sturtzel
Daniel Richardson
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Marsh Law Firm
Daniel Wagner
Daniel Webster Council Inc.
Darla Duarte
David A. Declue
[redacted] C/O Michael G. Dowd
[redacted] C/O Robins Kaplan LLP
David Dale
David G. Derrick
David Gomes
David H. Scharf
David K. Buterbaugh
[redacted] C/O Goff Law Group
David Lannes
David McDaniel
[redacted] C/O Michael G. Dowd
David Michelson
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
[redacted]
David Silva
[redacted] C/O Michael G. Dowd
[redacted] C/O Michael G. Dowd
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Riddle & Brantley
[redacted] C/O Michael G. Dowd
[redacted] C/O Lujan & Wolff, LLP
Debra Schwamberger
Dechaison White
Denis Lane
[redacted] C/O Paul Mones
Dillsburg Community Fair Association
Dillsburg Lions Club And Dillsburg Boy Scout Troop #38
Diocese of Brooklyn
Dolores Snyder
Donald C. Shriver
Donald Grande
Donald J. Hebert

[redacted] C/O Crew Janci LLP
[redacted] C/O Lujan & Wolff, LLP
Doug Stevenson
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Michael G. Dowd
Douglas Nail
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Crew Janci LLP
Dwight Cable
[redacted] C/O Van Zanten & Onik, LLC
[redacted] C/O Edmiston & Colton Law Firm
Eamonn Ferrante
East Meadow Youth Baseball & Softball Association
Ed Miller
Eddie Blue
Edgar Riecke
[redacted] C/O Michael G. Dowd
[redacted] C/O Simmons Hanly Conroy
[redacted] C/O John Tidwald Tidwald Law
Edward M. Bednarczyk
Edward Perriera
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Lujan & Wolff, LLP
Elijah Knight
Elliott Litz
Elwood Union Free School District
Emely Santos
[redacted] C/O Thomas C. Patton
Emma O'Connor
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Eric L. Young, Administrator of The Estate of Christopher Alvelo
Eric R. Park
Essex County Council of The Boy Scouts of America
Estate of Robert Whitelaw, Deceased
Ethan Fuller
Ethan Rapier
[redacted] C/O Lujan & Wolff, LLP
Evan Park Howell, Iii
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
Evergreen Area Council, Boy Scouts of America
Fabian Lopez
Fairfield County Council of Boy Scouts of America, Inc.
Fayetteville United Methodist Church
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
First Baptist Church of Athens
First Baptist Church of Danville D/B/A Boy Scout Troop 354
First Baptist Church of Gainesville
Five Rivers Council Inc.
Floodwood Mountain Scout Reservation Association, Inc.
Ford Motor Company
Francis (Skip) Toomey Ii
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Berman O'Connor & Mann
Frank Pedone
[redacted] C/O Lujan & Wolff, LLP
[redacted]

[redacted] C/O Michael G. Dowd
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
G.A.C.
[redacted] C/O Dreyer Boyajian
Gabriel Racine
Gage Wilson
Garden State Council
Gary Ackerman
Gary Carroll
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
Gary L Strain
Gary Langsdale
[redacted] C/O Hall Law, P.A.
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
George D. McClay
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
George J. Eberl
Geovanni McClain
[redacted] C/O Rubenstein & Rynecki
[redacted] C/O Lujan & Wolff, LLP
Glens Falls City School District
Gloria Garcia
Governor Clinton Council, Inc., Boy Scouts of America
Grace Gordon
Grand Canyon Council
Great Alaska Council
Great Salt Lake Council
Great Southwest Council
Greater Alabama Council
Greater New York City Councils
Greater Niagara Frontier Council
Greater Niagara Frontier Council #380 of The Boy Scouts of America
Greater St. Louis Area Council, Boy Scouts of America, Inc.
Greater Tampa Bay Area Council, Inc.
Greater Yosemite Council, Inc.
Greek Orthodox Archdiocese of America
Green Acres Baptist Church
Greenport Fire Department
Greg Day
[redacted] C/O Crew Janci LLP
Greg Ploski
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Michael G. Dowd
Guy Rollf
Guy Thomas Buker
Hacker Coverage Dispute
Harley Avenue Primary School
[redacted] C/O Robins Kaplan LLP
[redacted] C/O Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins
[redacted] C/O Riddle & Brantley
[redacted] C/O Gruel Mills Nims & Pylman PLLC
Hawk Mountain Council, Inc., Boy Scouts of America
Hawkeye Area Council, Boy Scouts of America, An Iowa Corporation
Heart of America Council
Heart of New England
Heart of Virginia Council, Inc., Boy Scouts of America
Heath Faucheux
Henry Reinsburrow
Holy Family Church
Holy See Instrumentalities

Holy See, State of Vatican City - The Vatican
House of Hope Presbyterian Church
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Crew Janci LLP
[redacted] C/O Lujan & Wolff, LLP
Hudson Valley Council
Hunter Iverson
[redacted]
Ian Simpson
[redacted] C/O Berman O'Connor & Mann
Immaculate Conception R.C. Church
Indian Waters Council Boy Scouts of America Inc.
Iroquois Trail Council Inc.
Irwindale Police Department
Istrouma Area Council
[redacted] C/O Marsh Law Firm
J.E. Mathis
[redacted] C/O Brautigam & Brautigam, LLP
[redacted] C/O Bradley L. Rice
Jack Rose
[redacted]
Jacob Nelson
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Green & Gillispie
[redacted] C/O Lujan & Wolff, LLP
James Gambrell King
[redacted] C/O Marsh Rickard & Bryan
[redacted] C/O Crew Janci LLP
James Kennedy
[redacted] C/O The Panitch Law Group, P.C.
[redacted] C/O Michael G. Dowd
[redacted] C/O Law Offices Of Mitchell Garabedian
James Potjunas
[redacted]
James Stillwell, Jr.
James T. Grace Jr.
[redacted] C/O Law Offices Of Mitchell Garabedian
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Jeff Anderson & Associates, PA
Jane Sutterlin
Janessa Miller
Jarred Pai
Jasiah Marshall
[redacted]
Jason Hofmann
[redacted] C/O Berman O'Connor & Mann
Jason R. Brockman
[redacted] C/O Merson Law
[redacted] C/O Merson Law
Jayshawn Brown
Jefferson County
Jefferson County / Louisville Consolidated Government
Jeffery Leonard And Individual
[redacted] C/O Green & Gillispie
[redacted] C/O Robins Kaplan LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Robins Kaplan LLP
Jersey Shore Council
Jesse Bessette
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
Jessie Tomeo
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Eisenberg Rothweiler, Winkler, Eisenberg & Jeck, P.C.

[redacted] C/O Marsh Law Firm
Joanne Nauheimer (Class Action)
Joanne Nauheimer (Individual)
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted]
Joel Shumway
John B. Lowell
John Cimral
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
John Gruber
[redacted] C/O Michael G. Dowd
[redacted]
John J. Beardsworth, Jr.
[redacted] C/O Davis Miles McGuire Gardner
John Jones
[redacted] C/O Lujan & Wolff, LLP
John Lund
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Okun, Oddo & Babat, P.C.
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Goff Law Group
John Richers
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Paul Mones
[redacted] C/O Michael G. Dowd
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Law Office of Patrick Sorsby
Jonathan Dunn
[redacted] C/O Andrew S. Janet
[redacted] C/O Andreozzi & Associates, P.C.
[redacted]
Joseph Alvarado
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Law Offices of Mitchell Garabedian
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lowey Dannenberg, P.C.
[redacted] C/O Berman O'Connor & Mann
Joseph F. Snyder
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
Joseph L. Snyder
[redacted] C/O Law Offices of Mitchell Garabedian
[redacted] C/O Soloff & Zervanos, P.C.
Joseph Porter and Gail Porter
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
Joseph Tetlow
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Michael S. Steinger
Joshua Goodwin
Joshua P. Christ
Joshua Simpson
Joshua White
Judy Crawford
Julie Hedrick
Julie Schmidt

[redacted] C/O Patrick Malone & Associates, P.C.
[redacted] C/O Hirshfield & Costanzo, P.C.
[redacted] C/O Clark, Hunt, Ahern & Embry
Kaden Lynch
Kalin Bart Talbott River Road Trust
Kalvin Marshall
Karin Larrabee
Karina Miller
[redacted] C/O David Yates, Thomas Juanso and Tad Thomas, Lindsay Cordes - Thomas Law Offices
Kathleen Hufford
Kathryn (Katie) Schulze
[redacted]
Keegan Day
[redacted] C/O Andreozzi & Associates, P.C.
[redacted] C/O Panish Shea & Boyle LLP
[redacted] C/O James, Vernon & Weeks, P.A.
Kellie Bogardus
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Kenneth Betts
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Crew Janci LLP
Kent L. Wallace
Kerrie Galvin (Obo Trevor Galvin)
[redacted] C/O Rubenstein & Rynecki
[redacted]
Keystone College
Kimberly Payne
Kincaid Tyas
Kireon D. Pleis
[redacted] C/O Berman O'Connor & Mann
[redacted]
[redacted] C/O Law Office of David Jaskowiak
[redacted] C/O Crew Janci LLP
Kristopher Bartee
Kyle Boell
[redacted] C/O John P. Connor
[redacted]
[redacted] C/O Law Office of Mark Gallagher
Landon Bassett
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Berman O'Connor & Mann
Las Vegas Area Council, Inc.
Laurie Buckelew
[redacted] C/O Green & Gillispie
Lawrence Svrcek
Leanna Stanley
Learning For Life Inc.
Leatherstocking Council
Lebanon Lions Club
Lee Shedroff
Leo Kelly
[redacted] C/O Lujan & Wolff, LLP
Lincoln Heritage Council
Linda Davis
Linda Fant
Linda Jensen
Lindsay Bishop
Lisa C. Crocus
Lloyd Bryant
[redacted] C/O Law Offices of Gregory J. Stacker, LLC
Logan Bogardus
Logan Larrabee
Logan Mackay
Longhouse Council
[redacted] C/O Robins Kaplan LLP
Louisville Metro Police Department
[redacted] C/O Berman O'Connor & Mann

Luke Bennett
[redacted] C/O Bonina & Bonina, P.C.
Madison Osborne
[redacted] C/O Lujan & Wolff, LLP
Malcolm Boykin
Malmaison District
Manhattan Council, Boy Scouts of America
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
Marc Anderson
Marco Romero
Marcus Kang
Marcus Mack
[redacted] /O Rebenack, Aronow, Mascolo, LLP
Marjorie Bewley
Marjorie Morris
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
Mark Helser and Jane Doe Helser
Mark Kern
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
Mark Tibbetts
Mark Tumeo
Mark Vincett
[redacted] C/O Lujan & Wolff, LLP
[redacted]
Mathew Zaiss
Matt Day
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Pashman Stein Walder Hayden, P.C.
[redacted] C/O Herman Law
Matthew Gelhausen
Matthew Inbody
Matthew McClay
Matthew S. Devore
Matthew Teixeira
Matthew Yakaboski
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
Max Moon
Maya Cann
Mayflower Council
[redacted] C/O Berman O'Connor & Mann
Megan Knoernschild
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
Micah Hattaway
[redacted] C/O Clark, Hunt, Ahern & Embry
[redacted] C/O Law Office of Anthony C. Perez
[redacted] C/O Michael G. Dowd
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
Michael Frys
[redacted] C/O Crew Janci LLP
[redacted] C/O Michael G. Dowd
Michael Kelsey
[redacted] C/O Hall & Monagle, LLC
Michael Maffetone
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Gallik, Bremer & Molloy, P.C.
[redacted] C/O Michael G. Dowd

[redacted] C/O Lujan & Wolff, LLP
Michael Rega
[redacted] C/O Crew Janci LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Janet, Janet & Suggs, LLC
Michael Sandifer
[redacted] C/O Marsh Law Firm
[redacted]
Michelle Delutri
Michigan Crossroads Council, Inc.
Mid-America Council
Middle Tennessee Council
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
Miles Woolsey
Monastery of Christ In The Desert
Monmouth Council
Monsignor Michael Harrington
Monsignor William Stanton
Montana Council
[redacted] C/O Michael G. Dowd
Mossy Ford, Inc.
Most Reverend Edward U. Kmiec
Most Reverend Henry J. Mansell
Most Reverend Richard J. Malone
[redacted] C/O Belluck & Fox, LLP
[redacted] C/O Crew Janci LLP
New York Greater Councils
Newport Sea Base - Orange County Council
Niagara Frontier Council, Boy Scouts of America
[redacted] C/O David Yates, Thomas Juanso
Nina Baldinucci
Nipmuck District of the Connecticut Rivers Council of The Boy Scouts of America
[redacted] /O Giancarlo R. Cellini
Nolan Henderson
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Clark, Hunt, Ahern & Embry
[redacted] C/O Michael G. Dowd
North Florida Council
Northeast Georgia Council, Inc.
Northeastern Pennsylvania Council
Northern New Jersey Council
Northern Star Council
[redacted] C/O Rubenstein & Rynecki
Old Republic Insurance Company, Inc.
Omega Pacific, Inc.
Orange County Council
Orange County Rowing Club
Oregon Trail Council, Inc.
[redacted] C/O Robins Kaplan LLP Our Savior Lutheran Church
C/O Roberts Fowler & Visosky Parker
[redacted]
Pat Currie
Pathway To Adventure Council Patricia Donehue
Patricia Gerber
Patrick A. Mancuso
[redacted] C/O The Law Office of Carmen L. Durso
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Gregory J. Cannata & Associates, LLP
Patriots' Path Council
[redacted] C/O Berman O'Connor & Mann
Paul Antosh
Paul Brandon Paris
[redacted] C/O Lujan & Wolff, LLP
Paul R. Thomson, Jr.
[redacted] C/O Berman O'Connor & Mann
Paul Scarola

[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Crew Janci LLP
Pauline Jenkins
[redacted] C/O Lujan & Wolff, LLP
Penn Mountains Council
Penny Nomura
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Law Office of Anthony C. Perez
[redacted] C/O Lujan & Wolff, LLP
Peter Rymut
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Crew Janci LLP
[redacted] C/O Michael G. Dowd
[redacted] C/O Paul Mones
Pierce Hull
Pine Burr Area Council, Inc.
Police Officer Annette Hoyt
Polly Root
Pope Francis
Progressive Casualty Insurance Company
Quapaw Area Council
Queen of Peace R.C. Church
Queens Council
R. Fleming Weaver, Jr.
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
Randolph "Randy" Nowak
[redacted] C/O John P. Connor
[redacted]
Raul Cadena
[redacted] C/O Marsh Law Firm
[redacted] C/O Crew Janci LLP
[redacted] C/O Michael G. Dowd
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
Reckson Operating Partnership, L.P
Red Mountain Asset Fund, LLC
Regina McCullough
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
Regis High School
Reid Comita
Reilly Nahill
Rev. Basil Ormsby, S.J.
Rev. David Bialakowski
Rev. Donald W. Becker
Rev. Florian Jasinski
Rev. Frederick Fingerle
Rev. Gerald Jasinski
Rev. John P. Hajduk
Rev. Joseph Persich, S.J.
Rev. Nelson Kinmartin
Rev. Norbert Orsolits
Rev. Ronald Sajak
Rev. Ronald Silverio
Rev. Theodore Podson
Rev. William White
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Crew Janci LLP
[redacted] C/O Michael G. Dowd
[redacted] C/O Berman O'Connor & Mann
[redacted]
Richard L. Lucero
[redacted]
Richard Lehr

[redacted] C/O Panish Shea & Boyle, LLP
Richard Mathews
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Marsh Law Firm
Richard Robbins
Richard Rognsvoog
[redacted] C/O Paul Mones
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
River Rivers Council, Boy Scouts of America
[redacted] C/O Crew Janci LLP
[redacted] C/O Michael G. Dowd
Robert Bulens
[redacted] C/O The Law Office of Carmen L. Durso
[redacted] C/O Berman O'Connor & Mann
Robert Hallum
Robert Jorgensen
[redacted] C/O Peabody, Stirling, Hale & Miller LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Robert Logan Talbott River Road Trust
[redacted] C/O Parker Waichman LLP
[redacted] C/O Marsh Law Firm
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
[redacted] C/O Marsh Law Firm
[redacted] C/O Crew Janci LLP
Robert Sutterlin
Robert Talbott, Inc
[redacted] C/O Lujan & Wolff, LLP
Roberts. Talbott Revocable Trust
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Crew Janci LLP
[redacted] C/O Berman O'Connor & Mann
Roman Catholic Archbishop
Roman Catholic Archbishop of Agana
Roman Catholic Archdiocese of New York, Archdiocese of New York
[redacted] C/O The Panitch Law Group, P.C.
Ronald Hegwood
[redacted] C/O Emery Celli Brinckerhoff & Abady LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Michael G. Dowd
Ronnie Mason
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Roberts Fowler & Visosky
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Berman O'Connor & Mann
Ruth Kvistad
[redacted] C/O Bonina & Bonina, P.C.
Sacred Heart - Espanola
Saint John The Baptist Church
[redacted] C/O Goff Law Group
Salvador Rivera
Sam Houston Area Council
Sam Houston Area Council Phoenix District

Samuel Christian Carelton
Samuel Roche
San Gabriel Valley Council
Sandy Potjunas
Sarah Case Talbott River Road Trust
SC Boy Scouts Council Inc.
School Sisters of Notre Dame Central Pacific Province, Inc.
School Sisters of Notre Dame, Region of Guam
[redacted] C/O Lafave, Wein & Frament, PLLC
[redacted] C/O Clark, Hunt, Ahern & Embry
[redacted] C/O Michael G. Dowd
[redacted]
Scott Michelson
[redacted] C/O Crew Janci LLP
Scout Troop 4200
Second Baptist Church
Seneca Waterways Council, Boy Scouts of America
Sequoia Council
Sergeant Konrad Wojciehowski
[redacted] C/O Berman O'Connor & Mann
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
Sharon Giovingo
Sharon Richardson
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
Shawn Pelletier
[redacted] C/O Simmons Hanly Conroy
Sheree Dodge
Sherrilynn Wood
Sherrye Howell
Shirley Williams
Silicon Valley Monterey Bay Council
Skylar Prestano
Sleepy Hollow Vineyards, L.P.
Society of Jesus, USA-Northeast Province
Southeast Louisiana Council
Southern California Scullers Club
Southern Shores Field Service Council
Southwest Bartholomew Volunteer Fire Department, Inc.
St. Benedict Joseph Labre Church
St. Benedict Joseph Labre School
St. Brigid R.C. Church
St. Catherine's Roman Catholic Church
St. Catherine's Roman Catholic Church School
St. Demetrios Greek Orthodox Church
St. Francis of Assisi Roman Catholic Church
St. Francis Xavier Church
St. Helena Parish
St. John Gualbert R.C. Church
St. John Vianney R.C. Church
St. Joseph Investment Fund, Inc.
St. Josephats R.C. Church
St. Paul's R.C. Church
St. Teresa R.C. Church
[redacted]
Stanley Bassett
[redacted] C/O Eisenberg Rothweiler, Winkler, Eisenberg & Jeck, P.C.
State of Wisconsin
Stephanie K. Jones
Stephanie Regalia
[redacted] C/O Crew Janci LLP
[redacted] C/O Law Offices of Mitchell Garabedian
[redacted] C/O Hart McLaughlin & Eldridge
Stephen White
Stephen Zanetti
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
[redacted] C/O The Panitch Law Group, P.C.
[redacted] C/O Crew Janci LLP
Steve Stenger

Steven Harris
Steven N. Brown
Strawbridge United Methodist Church
[redacted] C/O Michael G. Dowd
[redacted] C/O Michael G. Dowd
Suffolk County Council
Suffolk County Policy Department
[redacted] C/O Berman O'Connor & Mann
Susan Burk
Susan Reisinger
Susanna Otto
Susquenango Council
Sussex District Boy Scouts of America
T.B.C.P.C
T.B.S.O.A.I.
[redacted] C/O Herman Law
[redacted] C/O Lujan & Wolff, LLP
Tanner Bailey
Ten Mile River Scout Camps A/K/A Ten Mile River Scout Camps, Boy Scouts of America
[redacted] C/O Pfau Cochran Vertetis Amala PLLC
Terry A. Wright
[redacted] C/O Clark, Hunt, Ahern & Embry
Terry Zellers
Thad Alton
The Blessed Trinity R.C. Church
The Church of Jesus Christ of Latter Day Saints
The City of Irwindale
The County of Nassau
The Diocese of Rochester
The Estate of F.E. (Gene) Bobo
The Fidelis Care as a Trademark for the Centene Corporation
The Foundation of The Roman Catholic Diocese of Buffalo, N.Y., Inc.
The Hamlet of East Meadow
The Hartford Insurance Group
The National Boy Scouts of America Foundation
The Roman Catholic Diocese of Syracuse, NY
The School Sisters of Notre Dame Milwaukee Providence, Inc.
The Temple Congregation Adath Israel-B'rith Sholom Inc.
The Town of Hempstead
Theodore Roosevelt Council
Theresa Kennedy
Thomas Bogardu
[redacted] C/O Lujan & Wolff, LLP
Thomas Doering
Thomas Kiely
[redacted]
Thomas Lane
Thomas Larry
Thomas M. Thackeray
[redacted] C/O Michael G. Dowd
[redacted] C/O Gibson, McAskill & Crosby, LLP
Thomas Scott
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
[redacted]
Three Fires Council
Tidwald Law
Tiffany Riggs
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
[redacted] C/O Crew Janci LLP
[redacted] C/O Paul Mones
Timothy Black C/O Law & Moran, Attorneys at Law
Timothy Fedor
[redacted] C/O Berman O'Connor & Mann
Timothy Savage
[redacted] C/O Crew Janci LLP
Todd Puccio
Tom Hartmann
Tomas A. Camacho
Town of Deerfield
Town of Trumbull

Trapper Trails Council
[redacted] C/O Green & Gillispie
Travis Leppi
Trent Herlihy
Trevor B. Paulson
[redacted] C/O Crew Janci LLP
Troop #7354
Troop 141 BSA
Twin Rivers Council
Union United Methodist Church
United Services Automobile Association
Unitedhealthcare Insurance Company
USA Northeast Province of The Society of Jesus
[redacted] C/O Law Offices of Anthony M. Demarco
Valerie Mcgriff (Gawle)
Varteni Yerjanian
Vern Iverson
Vernon Wunnenberg
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
[redacted] C/O Lujan & Wolff, LLP
Victor Caps
[redacted] C/O David Luna
Vincent Liberto
[redacted] C/O Andrea E. Bonina
Virgil Sanders
Virginia Adkins
Walgreen Company
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
Washington Crossing Council
Wayne Farrar
[redacted] C/O Berman O'Connor & Mann
Weedsport Central School District
Westchester Putnam Council
Westlake Hills Presbyterian Church
[redacted] C/O Crew Janci LLP
[redacted] C/O Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
William Bewley
William Brannon
William Edward Bewley
[redacted] C/O Crew Janci LLP
[redacted] C/O Green & Gillispie
William Greenwald
William Hoke
[redacted] C/O Paul Mones
[redacted] C/O Crew Janci LLP
[redacted] C/O Robins Kaplan LLP
[redacted]
William Pugh
William Pugh Jr
William Rick Bailey
William Rish Jr
William Ruscoe
[redacted] C/O Crew Janci LLP
[redacted] C/O Rebenack, Aronow, Mascolo, LLP
William Short
[redacted] C/O Green & Gillispie
[redacted] C/O Parker Waichman LLP
[redacted]
[redacted] C/O Rubenstein & Rynecki
XYZ Corporation
XYZ Corporation 1-100
XYZ Entities 1-100
XYZ Insurance Corporation
Yucca Council
Zachary Babel
[redacted] C/O Clark, Hunt, Ahern & Embry
Zachary Schmidt
Zachary Spahr
Zorro Ragsdale

Schedule 1(l)

Professionals to be Retained by the Debtors

Alvarez & Marsal North America, LLC
Bates White LLC
Haynes & Boone, LLP
KCIC, LLC
Morris, Nichols, Arsht & Tunnell LLP
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Omni Agent Solutions
Sidley Austin LLP

Schedule 1(m)

Professionals Representing Certain Parties in Interest

AlixPartners LLP
Ankura Consulting Group, LLC
Berkeley Research Group, LLC
Kramer Levin Naftalis & Frankel LLP
Norton Rose Fulbright US, LLP
Pachulski Stang Ziehl & Jones
PJT Partners, Inc.
Wachtell, Lipton, Rosen & Katz
Young Conway Stargatt & Taylor, LLP

Schedule 1(n)

Ordinary Course Professionals

An, Tian, Zhang & Partners
Bassford Remele PA
BAX Advisors LLC
Bays Lung Rose Holma Attorneys at Law
Bond, Schoeneck & King PLLC
Boone Karlberg P.C.
Carolina Fridman Law Corporation
CCPIT Patent & Trademark Law Office
Christopher T Hurley & Associates P.C.
Civille & Tang PLLC
Clarke Silverglate P.A.
Connell Foley LLP
Cranfill Sumner & Hartzog LLP
Crotty & Schiltz LLC
Dentons US LLP
Foland, Wickens, Roper Hofer & Crawford, P.C.
Fox Rothschild LLP
Gerolamo Mcnulty Divis & Lewbart, P.C.
Grefe & Sidney, P.L.C.
Gruber Thomas & Co.
Harper & Pearson
Hawley Troxell Ennis & Hawley LLP
Hecht, Latham Spencer & Associates, Inc.
Heplerbroom LLC
Herman Law Firm P.A. Trust Account
Hinshaw & Culbertson LLP
Howard & Co., LLP
Hueston Hennigan
Keleher & McLeod PA, Attorneys at Law
Keller & Almassian, PLC
Kipp and Christian, P.C.
Kosnoff Fasy PLLC Trust Account
LCG Associates, Inc.
Lightfoot Franklin & White LLC
Locke Lord LLP
Mandell Menkes, LLC
Mark Gallagher Attorney
Markowitz Herbold PC
McAngus Goudelock & Courie
McGuire Woods LLP
McGuire, Craddock & Strother, P.C.
McLane Middleton, Prof. Assoc.
Mead & Hunt, Inc.
Melick Porter, LLP
Miller & Martin PLLC
Miller, Johnson, Snell & Cummiskey, P.L.C.
Milliman Inc.
Milliman USA Inc.
Mitchell Garabedian Attorney
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C
MNP LLP
Nicholas W Mulick PA
Nigro Karlin Segal & Feldstein
Park Dietz & Associates, Inc.
Perkins Coie
PricewaterhouseCoopers LLP
Quinn Emanuel Urquhart & Sullivan LLP
Ruhter & Reynolds, Inc.
Saul Ewing LLP
Scheper Kim & Harris, LLP
Sheehy Ware & Pappas PC
Sitlinger & Theiler
Steptoe & Johnson PLLC
Stich, Angell, Kreidler, Dodge & Unke, P.A.
Stillwell Midgley PLLC
Stites & Harbison PLLC
Taylor, Porter, Brooks & Phillips, L.L.P.
Texas Medical Legal Consultants
Thompson Coe & O'Meara LLP
Towers Watson Delaware, Inc.
Upshaw Williams Biggers
Vinson & Elkins LLP
White and Williams LLP
Whitney Smith Company Inc.
Wicker, Smith, O'Hara, McCoy, & Ford, PA
Wiggin & Dana LLP
Wilson Elser Moskowitz Edelman & Dicker LLP
Winston & Strawn LLP

Schedule 1(o)

Tort Claimants Committee

Christopher Desmond Haywood
Douglas A. Kennedy
John Humphrey
Jorge Tabon
Jorge Vega
Morgan Wade Paul
Richard Halvorson
Robb Lawson
Robert Grier

Schedule 1(p)

Unsecured Creditors Committee

Girl Scouts of the United States of America
Lion Brothers Company Inc.
Pearson Education, Inc.
Pension Benefit Guaranty Corporation
Roger A. Ohmstede

Schedule 1(q)

Top 25 Plaintiffs' Law Firms Representing the Largest Number of Abuse Victims Asserting Claims Against the Debtors

Andreozzi & Associates, P.C.
Ava Law Group, Inc.
Bondurant, Mixson & Elmore, LLP
Crew Janci LLP
Dumas Law Group, LLC (A/K/A Dumas & Vaughn Attorneys at Law)
Eisenberg Rothweiler, Winkler, Eisenberg & Jeck, P.C.
Green & Gillispie
Gregg, Hunt, Ahern & Embry Attorneys at Law
Hurley McKenna & Mertz, P.C.
Jeff Anderson & Associates, PA
Kosnoff Law
Law Offices of Mitchell Garabedian
Lindsay Hart, LLP
Lujan & Wolff, LLP
Marsh Law Firm
Merson Law
Michael G. Dowd
Paul Mones
Penn Law Group
Pfau Cochran Vertetis Amala PLLC
Rebenack, Aronow, Mascolo, LLP
Robins Kaplan LLP
Rubenstein & Rynecki
Sweeny Reich & Bolz, LLP
Thomas Law Office, PLLC

Schedule 1(r)

Top 30 General Unsecured Creditors of the Debtors (Non-Abuse Claims)[3]

American Engineers & Contractors
Anne Terry
Bradley Farmer
C. Michael Hoover Jr.
C. Wayne Brock
[redacted]
David J. Ross II
Donald McChesney
Gary Butler
Hugh Travis
Jeffrey Hunt
John Green
Judith Ratcliffe
Kathy Sue Stone
Kenneth L. Connelly
Michael Surbaugh
NCS Pearson, Inc.
[redacted]
Quad/Graphics, Inc.
Raymond L. Blackwell
Richard Lehr
Robert J. Mazzuca
Robert Tuggle
Roy L. Williams
Thomas H. Fitzgibbon
Thomas Harrington
Thomas Varnell

3 The professionals seeking to be retained also ran the names of certain individual plaintiffs. In accordance with the *Interim Order (I) Authorizing the Debtors' to file (A) a Consolidated List of Counsel Representing the Largest Numbers of Abuse Victims and (B) a Consolidated List of Other Unsecured Creditors of the Debtors, (III) Authorizing and Approving Procedures for Providing Notice of Commencement, and (IV) Granting Related Relief* [Docket No. 66], in order to protect the identities of individual plaintiffs asserting abuse claims and individual plaintiffs who are minors, the Debtors have redacted such information from this list. The Debtors will provide an unredacted version of this list to the Court, the Office of the United States Trustee, and the Committees upon request.

Schedule 1(s)

Deferred Compensation and Restoration Plan Participants

Alan Lambert
Alfred D Morin
John Andrews
Anne Terry
Bonnie H Bishop
Bradford C Allen
Bradley Farmer
C. Wayne Brock
C Michael Hoover Jr
C Wayne Brock
Pamela E. Carroll
Danny R. Clifton
John A. Coyle
David J Ross Ii
Donald McChesney
Douglas S Smith Jr
Erik L Nystrom
Erin Eisner
Frances Lynne Park
Frederick Wallace
Gary Butler
Jeffrie A. Herrmann
Mark Holtz
J Carey Keane
Jeffrey Hunt
John Green
John Mosby
Joseph S Coco
Judith Ratcliffe
Justin McCarthy
Kathy Sue Stone
Kendrick Miller
Kenneth L Connelly
Randall Kopsa
Albert Kugler
Lawrence F Potts
Lawrence L Otto
Mark Logemann
Robert J. Mazzuca
Michael Ashline
Michael Kaufman
Michael Surbaugh
Alfred D Morin
Patrick Sterrett
Ponciano Duran
John Primrose
Raymond L Blackwell
Richard J Mathews
Robert J Mazzuca
Robert Tuggle
Roger A Ohmstede
Ron Oats
Ronald K Hegwood
Roy L Williams
Steven P. McGowan
Michael Surbaugh
Thomas H Fitzgibbon
Thomas Harrington
Hugh Travis
Thomas Varnell
Harold Watson
Willie Iles Jr.

Schedule 1(t)

Significant Contract Counterparties

3096-3227 Quebec Inc/Groupe Access
501c Services
Accelogix LLC
Ace Adventure Resort Inc.
Adobe Systems Inc.
AdvantageCS
Adven Capital Group LLC
Adventures WV
Alert Logic Inc.
Amazon Web Services Inc.
American Audio Visual Inc.
American Electric Equipment Inc.
American Food & Vending Corp
AMS America Inc.
Arnica Software Corp
Arrow Capital Solutions Inc.
AT&T (5019)
AT&T Capital Services, Inc.
AT&T Mobility
Automatic Data Processing Inc.
Avalara Inc.
Ayers Construction
Ayoka LLC
Blackbaud Inc.
Brown & Bigelow, Inc.
Butch Whitten Construction
Buxton Company
CEC Facilities Group LLC
Certain Inc.
CircuiTree, LLC
Constellation NewEnergy, Inc.
Corra Technology Inc.
Datamax
Dci / Shires Inc.
Dci Shires
Dupont Hotel Project Owner LLC
Durham School Services, L.P.
First Advantage Lns
First Maintenance Company
Freeman Decorating Co
Gaylord National Resort And Convention Center
Gaylord Texan Resort And Convention Center
Glas
Golin Harris International Inc.
Grant Thornton
Groupe Access
High Towers Wood, Welding & Fabrication, Inc.
Hyatt Regency Atlanta, Inc.
Hyatt Regency Dallas
Hyatt Regency New Orleans
IBM
Iidon Inc.
ImageNet Consulting LLC
Infosys
Infosys Limited
Insight Investments LLC
JDA Software Inc.
Ksquare Solutions Inc.
Lumos Networks
Maitreyi Consultants Inc.
Manchester Grand Hyatt
Mark Monitor Inc.
Meetings By Design Inc.
MetLife
Mi9 Retail Na Corp
Microsoft Services
Mimeo.com Inc.
Montclair State University
Morneau Shepell Limited (formerly known as Mercer Inc.)
MuleSoft Inc.
MXD Group Inc.
Naturally Slim
Nelson Westerberg/Atlas Van Lines
NTT Com Security (US) Inc.
Oracle America Inc.
Perimeter International
Philadelphia Marriott Downtown
Raymond Leasing Corporation
RCG Global Services Inc.
Riskonnect Inc.
River Expeditions

Robot And Pencils
Rpe Outsourcing, LLC
S & Me Inc.
Shawn H Jackson
Sheraton Birmingham
Skillsoft Corporation
Southern Air, Inc.
Sovos Compliance LLC
Sun Life Assurance Company of Canada
Tech Plan Inc.
The Vitality Group LLC (TVG)
Thomas Hjellming
Town Sports International Holdings, Inc.
United Healthcare
Unum
Upp Technology
Upper Keys Marine Construction, LLC
Verifone
VSP
Wage Works
Weston Solutions Inc.
Yeti Coolers, LLC

Schedule 1(u)

Significant Customers

A-B Emblem
Classb
Flemington Dept. Store
Ramsey Outdoor Store
The Moritz Embroidery Works, Inc.

Schedule 1(v)

Significant Donors

Abigail Maddi
America's Charities
Anadarko Petroleum Corporation
Blake Family Trust
Dean Wm. Carr, Jr. Trust
Estate of Allen C. Weiss
Estate of Ingeborg M. Borre
Estate of Steven C. Schoger
Estate of Thomas Parissidi
Fowler Family Fund
Gorini & Gorini LLP
Greater Kansas City Community Foundation
H P Farrington Trust C/O Bank of America
H. P. Farrington - HPF Foundation RSDY
Insurance Auto Auction
James S. Turley
John C. Jadel
John D. Harkey
John D. Tickle
John E. Link
Krevsky, Silber & Bergen
Lonnie C. Poole
Murray Energy Corporation
Mutual of Omaha Insurance Company
Publishing Concepts, L.P.
R. Doyle Parrish
Robert Cruickshank
Stephen D. Bechtel, Jr. Foundation
Steven A. Antoline
Steven E. Zachow
The James Annenberg La Vea Charitable Foundation
The Walter R. Wormell Trust
Tilden Family Philanthropy Fund
Todd L. Johnson
Tridave, LLC

Schedule 1(w)

Significant Vendors

1-800-Pack-Rat
Ace / Esis
Ace Adventure Resort Inc.
Ace American Insurance Company
Adventure Medical/Tender Corp
Allied Rentals Inc.
American Airlines
American Outdoor Products
AR & JO & MH LLP
Aspen Corporation
Automotive Rentals Inc.
AVIO Consulting LLC
Barebones Systems
Barkley House Ii Inc.
BC Sales And Sourcing
Berman O'Connor & Mann
BHG Structured Settlements Inc.
Bison Designs LLC
Boxley Aggregates of West Virginia LLC
Boy Scouts GA Recon Acct
Boy Scouts of America Recon Clearance
BSA Florida Sea Base BPC
BSA Parents Inc.
Buzzshift Inc.
Cai Design Inc.
Calypso Water Sports & Charters, Inc.
Capital Printing Co
Capitol Business Equipment
CDW Direct, LLC
Chasan & Walton LLC
Coleman Co Inc.
Compass Group USA Inc.
Computer Digital Imaging Corporation
Council Unemployment
Covington & Burling LLP
Cramer Security & Investigations Inc.
Crest Craft Company
Crown Awards
Crystal Bay Corporation
David W McKeehan
Davis Polk & Wardwell LLP
Deprez Travel Bureau Inc.
Derby Worx Inc.
Diamond Brand Canvas Products
Eagles Nest Outfitters, Inc.
EAN Services LLC
Eco Structures Australia Pty LTD
Egroup Recognition
Eski Inc.
Facebook Inc.
FedEx
Fenwick & West LLP
Fidelity Retirement Services
Fiji Elevator Company
Forest Fitness LLC
FTI Consulting Inc.
G&G Outfitters Inc.
Gateway Press Inc.
General Datatech LP
Gerald Magar Jr
Gilbert LLP
Gillmann Services Inc.
Gregory M Skinner
GSI Outdoors Inc.
GSR LLC
Guinn Consulting LLC
Health Special Risk Inc.
Hike America
Hintz Targeted Marketing, LLC
Insigniam Performance LP
Jesse Scofield Productions LLC
Jurisprudent Deferral Solutions LLC
Kahoot Products Inc.
Klymit (Argon Technologies)
KT Brown Consulting LLC
Kuehne and Nagel
Labatt Food Service
Leatham Family LLC
Leatherman Tool Group Inc.
Lewis A Whitten
Liberty Mountain Sports LLC
Low Impact Excavators Inc.
Lowe's Companies, Inc.
Macro Integration Services Inc.
Magic Novelty Co Inc.
Marriott Business Services

Marriott International
Marsh & McLennan Agency LLC
McGovern & Company
Mercer
Mittera Group
Morris & Player PLLC
MTM Recognition Corp
Mutual of Omaha Structured
Myers Lawn Care Services
NCS Pearson Inc.
Nichols Kaster PLLP
Optum Health Bank
Oregon Freeze Dry Inc.
Orkin
Osprey Packs, Inc.
Out Island Sailing Adventures LLC
Pacific Life & Annuity Services Inc.
Paradies Gifts Inc.
Paramount Builders LLC
Paramount Headwear Inc.
Partnership Employment Dallas LLC
Peak Industries Inc.
Peiyork Intl Co Inc.
People 2.0 Global Inc.
Pray Publishing
Pro-Honor Design & Casting
Quad Graphics Inc.
Renegade Productions Inc.
Royle Printing Co
Ryder Last Mile Inc.
Saunders Staffing Inc.
Schwebel Goetz & Sieben PA
Shamrock Foods Company
Shutterstock Inc.
Silver Creek Leather Co
Silver Golub & Teitell LLP
Stamps.Com
Stange Company Inc.
State Board of Equalization
Strategic Orient Sourcing
Sunbelt Rentals
Supplyone Rockwell, Inc.
Symphonix Solutions Inc.
Syncb/Amazon
Sysco South Florida Inc.
Target Creative Group Inc.
Texas State Comptroller
The Duck Company
The McClellan Law Firm A/C Trust Fund
The Special Event Company
The Thrasher Group, Inc.
Thiel Law Office PLLC
Thorlo, Inc.
Tower Legal Staffing Inc.
Trainham Cattle Company
Transportation Management Services
True Digital Security Inc.
Ugly Mugz
Unblind Productions Inc.
US Foods, Inc.
USPS / Eps
Vandalia Bronze
Vigna Information System LLC
Vision Service Plan
Vista Outdoor Sales LLC
Wagner Equipment Company
Wealth-X LLC
White Wilderness Inc.
Wolverine World Wide Inc.
World Scout Bureau
World Scout Foundation
World Scout Shop LTD
Yadgarov & Associates PLLC
You Are Here LLC

Schedule 1(x)

Significant Taxing Authorities

Acadia Parish School Board
Alabama Attorney General's Office
Alabama Securities Commission
Arizona Corporation Commission
Arizona Dept. of Revenue
Arkansas Dept. of Finance
Ascension Parish Sales Tax Authority
Assumption Parish
Avoyelles Parish School Board
Beauregard Parish Sales Tax
Bossier City - Parish
Caddo Shreveport Sales
Calcasieu Parish School Board
California Department of Justice
Canada Revenue Agency
Capitol Corporate Services Inc.
Charleston County
City of Canon City
City of Chicago - Dept. Of Revenue
City of Colorado Springs
City of Craig Alaska
City of Davenport
City of Detroit
City of Grand Junction Finance
City of Greenwood Village
City of Gustavus
City of Johnson City
City of Knoxville
City of Kodiak
City of Lakewood
City of Loveland
City of Melbourne
City of Palmer
City of Pueblo
City of Seattle
City of Steamboat Springs
City of Tacoma
City of Thorne Bay
Collin County Tax Assessor Collector
Colorado Dept. of Revenue
Colorado Secretary of State
Commonwealth of Massachusetts
Commonwealth of Pennsylvania
Commonwealth of Puerto Rico
Commonwealth of Virginia
Concordia Parish School Board
Connecticut Public Charity Unit
DC Treasurer
Delaware Secretary of State
Denton County Tax Assessor Collector
Departamento De Finanzaz, Municipio Autonomo De Guaynabo
City of New Orleans, Department of Finance Bureau
Department of The Treasury, IRS
Desoto Parish Sales
East Feliciana Parish
False Alarm Reduction Unit, County of Fairfax (VA)
Florida Department of Revenue
Florida Department of State
Florida Dept. of Agri & Consumer Svcs
Forsyth County Tax Collector
Fred Sisk Knox County Trustee, County of Knox
Georgia Secretary of State
Grant Parish School Board
Harris County Sheriff's Office Alarm Detail
Iberia Parish School Board
Illinois Charity Bureau Fund
Illinois Department of Revenue
Iowa Dept. of Revenue And Finance
Jackson Parish Sales Tax Collection
Jefferson Davis Parish School
Jefferson Parish Sheriff's Office
Jefferson Parish Tax Collector
Kansas Department of Revenue
Kansas Secretary of State
Kentucky State Treasurer
Lafayette Parish School Board
Lafourche Parish School Board
Lincoln Parish
Livingston Parish School Board
Louisiana Dept. of Justice
Louisiana Dept. of Revenue And Taxation
Maine Revenue Services

Maricopa County Treasurer
Mass DOR (Dept. of Revenue)
Massachusetts Dept. of Revenue
Maryland Secretary of State
Michigan Dept. of Treasury
Minister of Finance - Manitoba
Minnesota Dept. of Revenue
Montana Secretary of State
Monterey County Tax Collector
Montgomery County
Morehouse Sales & Use Tax Commission
Minnesota Pollution Control Agency (MPCA)
MS Secretary of State
NC Department of Revenue
Nebraska Dept. of Revenue
Nevada Secretary of State
New Mexico Secretary of State
New Mexico Taxation & Revenue Dept.
New York Sales Tax Bureau
New York State Corporation Tax
New York State Dept. of Law
NJ Division of Consumer Affairs
NM Taxation & Revenue Dept.
North Carolina Secretary Of State
NV Stmt of Business Publication
Office of State Tax Commissioner, North Dakota
Office of The Attorney General, California, Registry of Charitable Trusts
Ohio Attorney General
Ohio Treasurer of State
Oklahoma Secretary of State
Oklahoma Tax Commission
Orange County Tax Collector
Oregon Dept. of Justice
Pa Dept. of Labor & Industry
Parish of East Baton Rouge
Parish of Iberville
Parish of St Bernard
Parish of Terrebonne
Plaquemines Parish
Puerto Rico Department of The Treasury
Rapides Parish
Sabine Parish
Sacramento County
Sales And Use Tax Office, St. John The Baptist Parish
SBC Tax Collector, County of San Bernardino
SD Secretary of State
Secretary of State - ND
Secretary of State of Rhode Island
Shelby County Trustee- David Lenor
South Carolina Department of Revenue
South Carolina Secretary of State
South Dakota Dept. of Revenue
St Charles Parish School Board
St James Parish School Board
St Landry Parish School Board
St Martin Parish School Board
St Mary Parish
St Tammany Parish Sheriff's DPT
State Board of Equalization, California
State of Alaska
State of Connecticut
State of Delaware
State of Georgia
State of Maine
State of Maryland
State of Minnesota
State of New Hampshire
State of NJ-Sales & Use Tax
State of Rhode Island Division/ Taxation
State of Rhode Island General Treasurer
State of Tennessee
State of Washington Dept. Of Revenue
State of Wyoming
State Tax Commission, Mississippi
State of Idaho Tax Commission
Tangipahoa Parish School System
Tarrant County Tax Assessor-Collector
Tax Collector Monroe County FL
Taxation & Revenue Department, Monroe, Louisiana
Taxation & Revenue Dept., Santa Fe, New Mexico
Tennessee Dept. of Revenue
Texas State Comptroller
The City of Cortez
Treasurer of Virginia
Treasurer State of Connecticut

Treasurer State of Ohio
Treasurer, City of Memphis
U.S. Department of Homeland Security,
Customs and Border Protection
Utah Department of Agriculture And Food
(UDAF)
Union Parish
United States Department of The Treasury
Utah Dept. of Commerce
VDH - Bedding, Commonwealth of Virginia
Vermillion Parish School Board
Vermont Department of Taxes
Vernon Parish School Board
Virgin Islands Bureau of Internal Revenue
Washington County Trustee
Washington Office of Insurance
Washington Parish
Washington Secretary of State
Webster Parish School Board
West Baton Rouge Parish
West Feliciana Parish School BD
West Virginia Division of Labor
West Virginia Secretary of State
West Virginia State Tax Dept.
WI Dept. of Financial Institutions
Winn Parish
Wisconsin Department of Revenue
WV Secretary of State

Schedule 1(y)

Significant Utility Providers

AAF Hauling Inc.
Advanced Disposal
Allstream Business Us Inc.
Amerigas
Appalachian Power
Aspen Waste Systems, Inc.
AT&T
AT&T - Opus
AT&T Mobility
AT&T Wireless
Cablevision Systems Corporation
CenterPoint Energy
CenturyLink
City of Charlotte
City of Irving - Utility Billing
City of Irving - Municipal Services Bill
City of Mount Hope - Sewer
City of Mount Hope - Water
Claro Puerto Rico
Consolidated Communications
County of Colfax
Crosier's Sanitary Service Inc.
Dakota Electric Association
Direct Communications Rockland
Direct Energy Business, Inc.
Duke Energy
EarthLink (Windstream)
EarthLink Business
Eversource
Ferrellgas
Florida Keys Aqueduct Authority
Florida Keys Electric Cooperative
Frontier Communications
Getronics Pomeroy IT Solutions
Granite Telecommunications
Keys Energy Services
Kit Carson Electric Cooperative
Lake Country Power
Level 3 Communications LLC
Lumos Networks
Lumos Networks DBA Segra
Mountaineer Gas Company
National Grid
Northern New Mexico Gas
Oak Hill Garbage Disposal Inc.
Pacific Centrex (Datavo LLC)
Piedmont Natural Gas Company
Plyler Paper Stock Co Inc.
Raleigh County Solid Waste
Republic Services, Inc.
Shentel
Sierra Communications, Inc.
Springer Electric Cooperative, Inc.
Time Warner Cable
Tri-County Electric Cooperative Inc.
Trophy Club Muds
Verizon Wireless
Village of Cimarron
Waste Connections, Inc.
Waste Management
Waste Management - Blaine MN
Waste Management Florida
Waste Management- Ft Worth Hauling
Waste Management Lewisville Hauling
Waste Management of Denver
Waste Management of Michigan Inc.
West Virginia American Water
West Virginia American Water Co
White Oak Public Service District
Windstream Communications Inc.
Wow! Business
Xcel Energy
Zia Natural Gas Company

Schedule 1(z)

U.S. Trustee, Judges, and Court Contacts for the District of Delaware

Agarwal, Robert
Hon. Ashley M. Chan
Benjamin Hackman
Hon. Brendan L. Shannon
Brian Cavello
Cacia Batts
Catherine Farrell
Cheryl Szymanski
Christine Green
Hon. Christopher S. Sontchi
Claire Brady
Danielle Gadson
David Buchbinder
David Villagrana
Diane Giordano
Dion Wynn
Donna Grottini
Edith A. Serrano
Hannah M. McCollum
Holly Dice
James R. O'Malley
Jane Leamy
Janet Moore
Jeffrey Heck
Jill Walker
Hon. John T Dorsey
Juliet Sarkessian
Hon. Karen B. Owens
Karen Starr
Karen Strupczewski
Hon. Kevin Gross
Laura Haney
Lauren Attix
Laurie Capp
Hon. Laurie Selber Silverstein
Linda Casey
Linda Richenderfer
Lora Johnson
Marquietta Lopez
Hon. Mary F. Walrath
Michael Panacio
Nancy Hunt
Rachel Bello
Rachel Werkheiser
Ramona Vinson
Richard Schepacarter
Shakima L. Dortch
Sherry Scaruzzí
T. Patrick Tinker
Timothy J. Fox Jr.
Una O'Boyle

Schedule 2

Results of the Connections Search

(a) Circumstances in which Sidley has represented clients other than the Debtors in matters involving the Debtors:

Sidley formerly represented Century Indemnity Company ("CIC") in certain reinsurance collection actions between CIC and its reinsurers. The underlying insurance claims for which CIC was seeking reimbursement from its reinsurers were claims under insurance policies CIC or its predecessors issued to Debtor Boy Scouts of America; however, Sidley's former representation of CIC in the matter related solely to the reinsurance contracts between CIC and its reinsurers and did not relate to the underlying coverage provided by the policies issued by CIC to BSA. Sidley has formally withdrawn as counsel for CIC in the reinsurance collection actions.

Sidley advised CONSOL Energy Inc. in connection with a contract for the naming rights of a pedestrian bridge located on the Summit Bechtel Family National Scout Reserve. This matter did not directly involve the Debtors, and concluded in May 2019.

(b) Representations by Sidley of Current and Former Directors and Officers of the Debtors:[1]

Active Unrelated Representations	Former Unrelated Representations
John C. Cushman Tanya Acker	None.

(c) Representations by Sidley of Non-Debtor Affiliates:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(d) Representations by Sidley of Selected Chartered Organizations:

Active Unrelated Representations	Former Unrelated Representations
Sidley represents an affiliate of or entity closely associated with: Archdiocese of New York Corporation of the President of the Church of Jesus Christ of Latter-Day Saints Diocese of Brooklyn Queen of Peace R.C. Church Roman Catholic Archdiocese of New York,	None.

[1] This Schedule 2(b) lists Sidley's representations of current or former directors and officers of the Debtors in their individual capacities. Current and former directors and officers listed in Schedule 1(b) may have connections to or affiliations with other parties that Sidley represents or has represented in the past three years in matters unrelated to the Debtors or these chapter 11 cases.

Archdiocese of New York	

(e) Representations by Sidley of Local Councils:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(f) Representations by Sidley of Secured Parties:

Active Unrelated Representations	Former Unrelated Representations
AT&T Capital Services, Inc. AT&T Corp CIT Bank, N.A. JPMorgan Chase Bank, N.A. Key Equipment Finance The Chase Manhattan Bank TIAA Commercial Finance, Inc. Wells Fargo Financial Leasing, Inc. <u>Sidley represents a subsidiary or affiliate of</u>: Datamax, Inc. EverBank Commercial Finance, Inc. Insight Investments, LLC MB Financial Bank, N.A.	<u>Sidley represented a subsidiary or affiliate of:</u> Konica Minolta Premier Finance TCF Equipment Finance, Inc.

(g) Representations by Sidley of Banks:

Active Unrelated Representations	Former Unrelated Representations
Bank of America BB&T Blackrock Charles Schwab CIBC - First Caribbean Bank Fidelity Investments Fifth Third Bank Goldman Sachs JPMorgan Chase Merrill Lynch, Pierce, Fenner & Smith, Inc. Northern Trust Corporation RBC Bank Regions Bank Scotiabank State Street Bank	None.

Active Unrelated Representations	Former Unrelated Representations
TD Bank US Bank Wells Fargo & Company <u>Sidley represents a subsidiary or affiliate of</u>: Banco Popular PNC Bank	

(h) Representations by Sidley of Credit Card Processors:

Active Unrelated Representations	Former Unrelated Representations
Bank of America Merchant Services JPMorgan Chase Bank, N.A. PayPal, Inc. Wells Fargo <u>Sidley represents a subsidiary or affiliate of:</u> Discover Global Payments Inc. Mastercard Moneris Paymentech, LLC Stripe (Shopify)	<u>Sidley represented a subsidiary or affiliate of:</u> TSYS/Cayan

(i) Representations by Sidley of Insurers:

Active Unrelated Representations	Former Unrelated Representations
AIG Argo Group International Holdings, Ltd Arrowood Indemnity Company Aspen Insurance Holdings Limited Axis Capital Holdings Limited CNA Insurance Companies Continental Insurance Company Liberty Mutual Insurance Company Lloyd's of London Markel Corporation Group Munich Re Group Navigators Group, Inc. Swiss Re Group The Hartford Financial Services Group, Inc. Utica Mutual Insurance Company	Century Indemnity Company Pacific Employers Ins. Company <u>Sidley represented a subsidiary or affiliate of:</u> American Guarantee and Liability Insurance Company American Zurich Insurance Company California Union Insurance Company Chubb Atlantic Indemnity Ltd. Chubb Custom Insurance Company Chubb Executive Risk Chubb Group of Insurance Companies Enstar Group Limited Fairfax (US) Inc. Fairfax Financial (USA) Group

Active Unrelated Representations	Former Unrelated Representations
W. R. Berkley Corporation <u>Sidley represents a subsidiary or affiliate of:</u> Ace Insurance Group Aetna Casualty and Surety Company Allianz Global Corporate & Specialty SE Allianz Global Risks US Insurance Company Allianz Insurance Company Allianz Societas Europaea Arch Capital Group (U.S.) Arch Insurance Company Arch Reinsurance Ltd. Argonaut Insurance Company Argonaut Insurance Group Arrowpoint Capital Corp. AXA Insurance Company AXA XL Axis Insurance Company Axis Specialty Insurance Company Axis Surplus Insurance Company Berkley Insurance Company Berkshire Hathaway Insurance Group Colony Insurance Company Columbia Casualty Company First State Insurance Company General Star Indemnity Company Great American Great American Assurance Company Great American E & S Insurance Company Great American Property and Casualty Insurance Group Harbor Insurance Company Hartford Accident and Indemnity Company Indemnity Insurance Company of North America Insurance Company of North America Insurance Company of the State of Pennsylvania (The) Landmark Insurance Company London Market Lexington Insurance Company Markel American Insurance Company MHBT, a Marsh & McLennan Agency Munich Reinsurance America, Inc.	Federal Insurance Company Fireman's Fund Insurance Companies Interstate Fire & Casualty Company Liberty Insurance Underwriters, Inc. Liberty Surplus Insurance Corporation National Surety Corporation Texas Pacific Indemnity Company Zurich Financial (USA) Group Zurich Financial Services Group

Active Unrelated Representations	Former Unrelated Representations
National Union Fire Insurance Company Of Pittsburgh, PA Navigators Insurance Company Navigators Specialty Insurance Company Niagara Fire Insurance Company Old Republic General Group Old Republic Insurance Company Old Republic Insurance Group Ohio Casualty Insurance Company (The) Property/Casualty Insurance Co. of Hartford RLI Professional Risk The Hartford Fire The Hartford Insurance Group The Hartford Steam Boiler Inspection And Insurance Company Twin City Fire Insurance Company Westchester Fire Insurance Company Westchester Surplus Lines Insurance Company W.R. Berkley Group	

(j) Representations by Sidley of Landlords:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(k) Representations by Sidley of Litigation Parties:

Active Unrelated Representations	Former Unrelated Representations
Ford Motor Company United Services Automobile Association Walgreen Company <u>Sidley represents a subsidiary or affiliate of</u>: Archdiocese of New York and Our Lady of Lourdes Catholic School Corporation of the President of the Church of Jesus Christ of Latter-Day Saints Diocese of Brooklyn The Hartford Insurance Group Old Republic Insurance Company Queen of Peace R.C. Church Roman Catholic Archdiocese of New York,	None.

Active Unrelated Representations	Former Unrelated Representations
Archdiocese of New York The Church of Jesus Christ of Latter Day Saints The Fidelis Care as a Trademark for the Centene Corporation Unitedhealthcare Insurance Company	

(l) Representations by Sidley of Professionals to be Retained by the Debtors:

Active Unrelated Representations	Former Unrelated Representations
Alvarez & Marsal North America, LLC	None.

(m) Representations by Sidley of Professionals Representing Certain Parties in Interest:

Active Unrelated Representations	Former Unrelated Representations
Ankura Consulting Group LLC Norton Rose Fulbright US LLP <u>Sidley represents a subsidiary or affiliate of:</u> PJT Partners, Inc.	PJT Partners, Inc.

(n) Representations by Sidley of Ordinary Course Professionals:

Active Unrelated Representations	Former Unrelated Representations
<u>Sidley represents a subsidiary or affiliate of:</u> Hinshaw & Culbertson, LLP Millman, Inc. Millman USA, Inc. Towers Watson Delaware, Inc.	None.

(o) Representations by Sidley of Tort Claimants Committee:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(p) Representations by Sidley of Unsecured Creditors Committee:

Active Unrelated Representations	Former Unrelated Representations
AlixPartners LLP Sidley represents two local councils affiliated with the Girl Scouts of the United States of America	Sidley represented a local council affiliated with the Girl Scouts of the United States of America.

(q) Representations by Sidley of Top 25 Plaintiffs' Law Firms Representing the Largest Number of Abuse Victims Asserting Claims Against the Debtors:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(r) Representations by Sidley of Top 30 General Unsecured Creditors of the Debtors (Non-Abuse Claims):

Active Unrelated Representations	Former Unrelated Representations
Quad/Graphics, Inc.	None.

(s) Representations by Sidley of Deferred Compensation and Restoration Plan Participants:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(t) Representations by Sidley of Significant Contract Counterparties:

Active Unrelated Representations	Former Unrelated Representations
Adobe Systems, Inc. Amazon Web Services AMS America, Inc. AT&T Inc. AT&T Capital Services, Inc. AT&T Mobility LLC Automatic Data Processing, Inc. Blackbaud, Inc. Constellation Newenergy, Inc. Grant Thornton LLP Insight Investments LLC	Buxton Company Infosys Ltd.

Active Unrelated Representations	Former Unrelated Representations
Metlife, Inc. Microsoft Services Oracle America, Inc. Sun Life Assurance Company of Canada UnitedHealth Group, Inc. Unum Group Yeti Coolers, LLC <u>Sidley represents a subsidiary or affiliate of:</u> AMS America, Inc. Automatic Data Processing, Inc. Constellation Newenergy, Inc. GLAS Grant Thornton, LLP Hyatt Regency Atlanta, Inc. Hyatt Regency Dallas Hyatt Regency New Orleans Towers Watson Delaware, Inc. Wage Works	

(u) Representations by Sidley of Significant Customers:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

(v) Representations by Sidley of Significant Donors:

Active Unrelated Representations	Former Unrelated Representations
Anadarko Petroleum Corporation Mutual of Omaha Insurance Company	None.

(w) Representations by Sidley of Significant Vendors:

Active Unrelated Representations	Former Unrelated Representations
Adobe Systems, Inc. Amazon Web Services American Airlines, Inc. AT&T, Inc. AT&T Mobility LLC Automotive Rentals, Inc.	Ace American Insurance Company Infosys Ltd. Pacific Life & Annuity Services, Inc. Sysco South Florida, Inc. <u>Sidley represented a subsidiary or affiliate of:</u>

Active Unrelated Representations	Former Unrelated Representations
Blackbaud, Inc. Chase Paymentech Facebook, Inc. Fedex Corp. Fidelity Retirement Services FTI Consulting, Inc. Granite Telecommunications, LLC Insight Investments, LLC Marriott International, Inc. Mercer, LLC Metlife, Inc. Microsoft Corporation Mutual of Omaha Insurance Company Northern Trust Corporation Oracle America, Inc. Pricewaterhouse Coopers LLP Quad/Graphics, Inc. Shutterstock, Inc. Stamps.com Inc. SyncB/Amazon UnitedHealth Group Inc. Unum Life Insurance Company of America U.S. Foods, Inc. <u>Sidley represents a subsidiary or affiliate of:</u> Ace American Insurance Company Adventure Medical/Tender Corp. Appalachian Power CDW Direct, LLC Hyatt Regency Dallas Marriott Business Services Marsh & McLennan Agency LLC Optum Health Bank, Inc. Orkin, Inc. Towers Watson Delaware, Inc.	Lowes Companies, Inc.

(x) Representations by Sidley of Significant Taxing Authorities:

Active Unrelated Representations	Former Unrelated Representations
<u>Sidley represents a governmental unit or authority connected to:</u> Commonwealth of Massachusetts Department of Revenue	<u>Sidley represented a governmental unit or authority connected to:</u> Commonwealth of Virginia Fairfax County, Virginia

District of Columbia Treasurer Florida Department of State Florida Dept. of Agriculture and Consumer Services South Carolina Department of Revenue South Carolina Secretary of State	Orange County Tax Collector

(y) Representations by Sidley of Significant Utility Providers:

Active Unrelated Representations	Former Unrelated Representations
AT&T, Inc. AT&T – Opus AT&T Mobility LLC AT&T Wireless CenturyLink, Inc. Duke Energy Granite Telecommunications, LLC Time Warner Cable <u>Sidley represents a subsidiary or affiliate of:</u> Appalachian Power	Claro Puerto Rico Key Energy Services Inc. Waste Management, Inc. Xcel Energy Inc. <u>Sidley represented a subsidiary or affiliate of:</u> Verizon Wireless

(z) Representations by Sidley of U.S. Trustee, Judges, and Court Contacts for the District of Delaware:

Active Unrelated Representations	Former Unrelated Representations
None.	None.

[Remainder of Page Intentionally Left Blank]

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1]	Case No. 20-10343 (LSS)
Debtors.	(Jointly Administered)

CENTURY INDEMNITY COMPANY'S[2] LIMITED OBJECTION TO THE OFFICIAL TORT CLAIMANTS' COMMITTEE'S MOTION FOR AN ORDER CLARIFYING THE REQUIREMENTS TO PROVIDE ACCESS TO CONFIDENTIAL OR PRIVILEGED INFORMATION [DKT. NO. 332]

Century submits this limited objection to the Official Tort Claimants' Committee's ("TCC") Motion (the "Motion") as a precaution to prevent documents subject to a shared privilege from being disclosed to the TCC and BSA's adversaries in the tort system.

The TCC's Motion states, "the Tort Claimants' Committee expects the Debtors and other parties to provide Confidential Information." Motion at ¶ 8. "Confidential Information" is defined to include non-public documents, agreements, projections, reports, and interpretations "concerning . . . ***claims against the Debtors' estates***, and the relationship of the Debtors to non-debtor entities such as the Local Councils." This Confidential Information that the TCC seeks

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company ("Century").

from Debtors regarding claims against the Debtors' estates presumptively contains Privileged Information[3] about BSA's underlying defense of claims asserted by the TCC.

The TCC's Motion further states that "[t]he Debtors, the Tort Claimants' Committee, and the Unsecured Creditors Committee are currently negotiating the terms of a form of Protective Order intended to govern the treatment of Confidential Information." Motion at n. 3. While counsel for Century requested a copy of the draft Protective Order from BSA, we have not received anything to date and have not been involved in the negotiations on the referenced protective order.

Century objects to any protective order that permits the disclosure to the TCC (or other Parties outside a shared privilege) of Privileged Information related to the defense of the tort claims asserted against BSA. Absent a protective order clearly limiting the TCC's access to these privileged documents, BSA's defense in the tort system will be jeopardized. Any protective order should contain provisions preventing the sharing of BSA's and Century's Privileged Information. To protect BSA's Estate and any insurers' contributions to the Estate, Century seeks to be involved in the negotiation of the protective order, requests a copy of the draft protective order, and requests that the TCC clarify the documents that it expects to receive from BSA and from the BSA's Local Councils.

We highlight that the TCC requests protection against the disclosure of its privileged information while seeking similar Privileged Information from BSA. Century responds with an

[3] Privileged Information is defined here to include (i) attorney work product,(ii) attorney-client communications among BSA, Century, BSA's other insurers, and underlying defense counsel, (iii) documents containing the mental impressions of underlying defense counsel, BSA's Counsel, or insurer counsel in defense of BSA and/or BSA's related entities, and (iv) joint defense communications, among other communications and/or documents.

equivalent request to prevent the defense of BSA's claims in the tort system from being disclosed to BSA's adversaries. This Court has addressed the disclosure of privileged documents in *In re Imerys*. We seek to preempt this disclosure here.

WHEREFORE, Century respectfully seeks to be heard on the following requests: (i) Century must be included in all negotiations on a protective order, (ii) Century requests a copy of the draft protective order being negotiated with the TCC, (iii) the TCC must not be allowed to gain access to Privileged Information regarding the defense of the underlying claims against BSA, and (iv) neither BSA nor its Local Councils or related non-Debtor entities may disclose Privileged Information about the underlying defense of tort claims.

Dated: April 8, 2020

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 pending*)
Janine Panchok-Berry (*pro hac vice pending*)
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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1]	)	Case No. 20-10343 (LSS)
Debtors.	)	(Jointly Administered)

DECLARATION OF CHARLES SLANINA

I, Charles Slanina, pursuant to 28 U.S.C. § 1746(2), under penalty of perjury, hereby declare as follows

I. BACKGROUND AND QUALIFICATIONS

1. I am a practicing attorney in Wilmington, Delaware and a partner with the law firm of Finger & Slanina, LLC. My practice is focused on professional responsibility and ethics. I represent clients in Delaware disciplinary matters, and issue advisory and expert opinions on professional responsibility and ethics issues. I have been a member in good standing of the Bar of the State of Delaware since 1980. I am also admitted to the District Court of Delaware, Third Circuit and U.S. Supreme Court. I was Chief Disciplinary Counsel for the Delaware Supreme Court from 1989 to 1993. Since 1993, my practice has focused on professional responsibility matters and disciplinary defense. I am a member of the Association of Professional Responsibility Lawyers of the American Bar Association. I have been a frequent lecturer on professional responsibility and ethics issues for approximately 25 years, and I have been the author of a monthly ethics column in The Journal of the Delaware State Bar Association (formerly In Re:) since 1993. I have also served as an adjunct professor of law at the Delaware Law School of Widener University, teaching professional responsibility and law firm management. I am currently a

member of the Delaware Supreme Court Rules Revision Committee, and I am a past President of the Rodney Inn of the American Inns of Court.

2. I have provided expert opinions and expert testimony at trial and by deposition in at least nine previous cases in the State and Federal courts in Delaware and the Commonwealth of Pennsylvania. These cases include the following: I n the United States District Court for the District of New Jersey, *Kenneth Neary v. Robert R Williams, Esquire,* C.A. No. l-11-CV-2613; In the United States Court for the District of Delaware, *U.S. v. Thomas P. Gordon, Sherry L. Freebery, and Janet K Smith,* No. CR.A. 04-63-KAJ; In the Chancery Court of the State of Delaware, *New Castle Shopping, LLC v. Penn Mart Discount Liquors, Ltd., et al.,* C.A. No. 4257-VCL; In the United States District Court for the District of Delaware, *Dara M Gelof v. George V. Smith, Esquire and Smith O'Donnell Feinberg & Berl LLP,* C.A. No. 1: 11-cv-00483 LPS; The Superior Court of New Castle County, State of Delaware, *Thomas Bairdv. Frank R. Owczarek, MD. and Eye Care of Delaware, LLC,* C.A. No. NI I C-09-241 RRC; In the Supreme Court of the State of New York, *New Media Holding Company, LLC v. Konstantin Kagalovsky, IOTA LP, et al.,* Case No. 09603742/09; In the Superior Court of the State of Delaware, *Gatz Properties LLC, et al. v. Blank Rome LLP, et al.,* C.A. No. N13C-02-089 EMD; United States District Court of Delaware, *Ladendorfv. Weik, Nitsche, Dougherty,* C.A. No. 1: 17-CV-00289 (CFC); In the Court of Chancery, *Weik, Nitsche & Dougherty, LLC v. Pratcher and Krayer,* C.A. No. 2018-0803-MTZ.

3. In forming the below opinion, I interviewed Joshua R. Schwartz, Managing Counsel and Director of Reinsurance Litigation for Chubb Group, and reviewed the Declaration of Joshua R. Schwartz.

II. SUMMARY OF OPINION

4. The facts in this instance support disqualification. Sidley Austin has an attorney-client relationship with Century. That relationship is imputed to all other members of the firm for the purposes of imputation of conflicts. In the course of Sidley Austin's representation of Century in the reinsurance matters, information, and issues relating to BSA coverage by Century was an issue.

5. Without timely disclosure, screening or a written waiver, Sidley Austin violated its duty of loyalty to Century by undertaking a bankruptcy on behalf of one of Century's insureds while simultaneously working on reinsurance matters involving the same insurance policies at issue in the bankruptcy. That bankruptcy representation will be adverse to Century and will implicate information obtained by Sidley Austin in the reinsurance arbitration matters handled by Sidley Austin on behalf of Century.

III. ANALYSIS

6. Based on my review of the declaration of Mr. Schwartz and my discussion with him and others employed or working with Chubb in connection with this matter, I have concluded that Sidley Austin has a prohibited concurrent conflict of interest pursuant to Rule 1.7 of the ABA Model Rules, and the remedies for the conflict proposed by Sidley Austin do not shield the firm from disqualification in the BSA bankruptcy matter.

7. Rule 1.7 prohibits concurrent conflicts of interest, stating:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

8. Based on the facts I was provided, Sidley Austin was representing Century (and continued to do so) at the same time that Sidley Austin undertook the representation of BSA. This represents a concurrent conflict of interest as prohibited by Rule 1.7(a)(l), since the interests of Century and BSA in the bankruptcy are directly adverse.

9. RPC 1.7(a)(l) forbids a lawyer from representing a client if that representation will be adverse to another client. RPC 1.7(a)(1) is grounded in the notion that an attorney must provide complete and undivided loyalty to the client. Consequently, "a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even where the matters are wholly unrelated." ABA Model Rules 1.7, cmt. 6 (5th ed. 2003) (emphasis added). To establish an ethical violation under RPC 1.7(a)(l), "one does not have to prove prejudicial impact, negative result, or an exchange of confidential information ... It is the interests of the client with which the rule is concerned, not the result obtained." *In re Cendant Corp. Securities Lit.*, 124 F.Supp.2d at 243 (internal quotations omitted).

10. In the bankruptcy representation, the evidence indicates that at the time that Sidley Austin took on the representation of BSA it was already engaged as counsel by the Century companies. It is also apparent that the representation that Sidley Austin took on for BSA was adverse to the interests of its Century clients as Sidley Austin took on the role of designing a plan of reorganization for impacting the rights of insurers including setting trust distribution procedures and values for paying claims without insurer consent. These facts, together with the fact that

Century never granted consent to this engagement, set out a prima facie case for violation of RPC 1.7(a)(l) requiring withdrawal of counsel.

11. In addition, there is a significant risk that Sidley Austin's representation of Century will be or was materially limited by the firm's responsibilities to BSA. Sidley Austin's duties to BSA to maintain the confidentiality of the planned bankruptcy filing prevented it from disclosing the planned filing and a host of related issues to its other client, Century, creating a divided loyalty.

12. This divided loyalty was further exacerbated to the extent that Sidley Austin engaged in discussions with the tort claimants, Scott Gilbert, Jim Patton, and their other representatives concerning BSA's insurance and means for accessing that insurance as part of its bankruptcy work.

13. No exception exists to permit the concurrent representation despite the conflict. Rule 1.7(b) provides that a lawyer can represent a client, not assuming a concurrent conflict of interest, if:

> (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

14. As already noted, Sidley Austin is unable to meet these exceptions to the concurrent conflict ban. Sidley's representation of BSA in the bankruptcy matter will involve an assertion of a claim by one client, BSA, against another client, Century, and the drafting and negotiation of a

plan of reorganization that impacts the rights of Century. Century declined to provide consent to this conflicting concurrent representation.

15. Sidley Austin has attempted to excuse this prohibited concurrent conflict of interest by claiming that Sidley Austin's representation of Century in the reinsurance arbitrations is somehow unrelated to its representation by Sidley Austin because some or all of the lawyers working on the bankruptcy litigation engagement are located in another city. This assertion ignores the application of Model Rule 1.10, which clearly imputes any conflict of interest to all members of the firm. Rule 1.10(a) states:

> While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9.

16. Sidley Austin has impermissibly attempted to place itself within an exception to the Rule 1.10 imputation by claiming that its wrongful termination of Century in the reinsurance arbitrations creates a Rule 1.9 "former client" situation.

17. A wrongful termination of an attorney-client relationship is prohibited. Rule 1.16(d) requires that:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

18. It has been represented to me that one or more of the reinsurance arbitrations are at critical stages and that Sidley Austin's untimely withdrawal would prejudice the interests of Century in those arbitrations.

19. In addition, the ABA Annotated Model Rules notes that the Hot-Potato gambit of terminating a client to cure a concurrent client conflict and to permit the representation of a more lucrative client has been roundly condemned. *See, e.g., Snapping Shoals Elec. Membership Corp. v. RLI Ins. Corp.*, No. 1:05 CV 1714-GET, 2006 WL 1877078 (N.D. Ga. July 5, 2006) "Lawyer may not evade ethical responsibilities by choosing to jettison a client whose continuing representation becomes awkward" (quoting *Harrison v. Fisons Corp.*, 819 F. Supp. 1039, 1041 (N.D. Fla. 1993)); *Pioneer-Standard Elecs., Inc. v. Cap Gemini Am., Inc.*, No. 1 :01 CV 2185, 2002 WL 553460 (N.D. Ohio Mar. 11, 2002) (Refusing to recognize firm's attempt to convert existing client into former client by dropping it when asked to represent new client in suit filed by existing client, "for purposes of determining the status of an attorney-client relationship within the context of adverse representation, courts will not honor an attorney's unilateral termination of the relationship"); *Santacroce v. Neff*, 134 F. Supp. 2d 366 (D.N.J. 2001) (disqualifying firm from representing estate against palimony claims of testator's live-in lover, when firm represented in business disputes; lawyer may not drop one client like "hot potato" to avoid conflict with a more remunerative client; collecting cases); *Universal City Studios, Inc. v. Reimerdes*, 98 F. Supp. 2d 449 (S.D.N.Y. 2000) (Lawyer cannot avoid disqualification due to conflict of interest merely by firing disfavored client in order to transform continuing relationship into former-client relationship).

20. I also conclude that the firm's efforts to avoid a Rule 1.7 concurrent conflict of interest as imputed to all members of Sidley Austin by Rule 1.10 were ineffective. The Professional Conduct Rules recognize the use of screens to avoid imputed conflicts when attorneys change firms or under certain circumstances where there is a "thrust-upon" conflict, but there is no such provision in Rule 1.7 for the use of screens to cure concurrent conflict of interests.

21. By attempting to terminate Mr. Sneed's (and Sidley Austin's) attorney-client relationship with Century, the firm seeks to extricate itself from the prohibited Rule 1.7 concurrent conflict of interest. If the firm is permitted to violate its duty of loyalty to Century, Century would become a former client as that term is used in Rule 1.9, which states in pertinent part:

> A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

22. By virtue of the wrongful discharge of Century in the reinsurance arbitrations, Sidley Austin is attempting to deem Century to be a "former client" and to argue that the BSA bankruptcy is not the same or substantially related matter as Sidley's representation of Chubb in the reinsurance arbitrations.

23. This stratagem does not change Sidley Austin's obligations to Century. The prohibitions imposed by the current-client provisions of RPC 1.7(a)(1) apply whenever an attorney represents two clients with adverse interests at the same time, even if the representation of one of the clients ceases prior to the time the challenge is raised. Sidley Austin cannot recast Century as a "former client" in order to benefit from their wrongful termination of Century as a client. Nothing in the Bankruptcy Code supersedes or replaces this notion under the applicable state ethics rules. *See* 1 Collier on Bankruptcy, §8.02 [2] (15th ed. 2002) ("These state [ethics] rules are not preempted by federal bankruptcy law under the Supremacy Clause of the Constitution."); *see also id.*, at ¶8.01 [1] ("Ethical rules are often considered more necessary and applicable in bankruptcy cases."); *id.* at ¶8.03[1] ("Conflict of interest rules are more strictly applied in the bankruptcy context than in other areas of the law, at least insofar as they relate to professionals retained by the estate."). In addition, any reliance by Sidley Austin on Rule 1.9 is inapt.

24. Based on the facts that I was provided, BSA's interests are materially adverse to the interests of Century, and Century has declined to provide informed consent, confirmed in writing. Rule 1.9 further provides:

> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
>
> > (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

25. Based on the facts that I was provided, information obtained by Mr. Sneed in the course of handling Century's reinsurance arbitrations would be at risk of exposure in Sidley Austin's representation of BSA in the bankruptcy. Knowledge of that information is imputed to all members of Sidley Austin, and no situation permitting the use of screens to prevent dissemination of that information are present here.

26. I respectfully reserve the right to amend, modify or supplement this Declaration in response to, or as a result of, the filing of any submission in connection with this case or any discovery being conducted in connection therewith.

Dated: April 9, 2020

Respectfully submitted,

Charles Slanina

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)

AMENDED DECLARATION OF JANINE PANCHOK-BERRY IN SUPPORT OF CENTURY'S OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

I, **JANINE PANCHOK-BERRY**, declare as follows:

1. I am an associate at the firm O'Melveny & Myers LLP ("OMM"). I submit this declaration based on my personal knowledge of the proceedings in *In re Boy Scouts of America and Delaware BSA, LCC*, and review of the pleadings and documents listed below.

2. I have reviewed the description of Sidley Austin LLP's Insurance and Financial Services Group from Sidley's website. A true and correct copy of that description page is attached as Exhibit A. The website shows that representing insurers is an important part of Sidley's law practice, and that many insurance companies are regular clients:

> Our Insurance and Financial Services group has nearly four decades of experience and a team of 85 lawyers devoted exclusively to providing a full range of transactional, regulatory and dispute resolution services to the industry. . . . Regular clients of our group include many of the largest insurance and reinsurance companies, brokers, banks, investment banking firms and regulatory agencies for which we provide regulatory, corporate, securities, mergers and acquisitions, securitization, derivatives, tax, reinsurance dispute resolution, class action defense, and other legal services.

3. I have reviewed a copy of the Complaint for Declaratory Relief in *Nat'l Surety Corp. v. Boy Scouts of Am.*, No. 2017-CH-14975 (Ill. Cir. Ct., Chancery Div. filed Nov. 9, 2017). A true and correct copy of that document is attached as Exhibit B. The complaint lists several insurers who it is plead issued liability policies to the Boy Scouts.

4. I have reviewed a copy of the Plaintiffs' Original Petition in *Boy Scouts of Am. v. The Hartford Accident and Indemnity Co.*, No. DC-18-07313 (Tex. Dist. Ct. filed June 5, 2018). A true and correct copy of that document is attached as Exhibit C. The complaint lists several insurers who it is plead issued liability policies to the Boy Scouts.

5. I have reviewed a copy of the Plaintiffs' First Amended Petition & Request for Disclosure in *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018) filed on April 5, 2019. A true and correct copy of that document is attached as Exhibit D. The complaint lists several insurers who it is pled issued liability policies to the Boy Scouts.

6. Based on the information contained in the pleadings attached to this declaration as Exhibits B, C, and D, and the representations made in the Declaration of Jessica C. K. Boelter (Exhibit B to the Boy Scouts' Application), I compiled a chart demonstrating the overlap between the insurers listed in Boelter's declaration and those in the pleadings filed in insurance coverage actions involving the Boy Scouts. That document is attached as Exhibit E.

7. I have reviewed Plaintiffs' First Set of Requests for Production to Defendants Insurance Company of North America and Century Indemnity Company served in *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018) served on December 27, 2018. A true and correct copy of that document is attached as Exhibit F. In that document, the Boy Scouts of America sought reinsurance communications from Century:

> All Documents or Communications between Century and the Reinsurers of the Subject Insurance Policies involving the Sexual Abuse Claims, including but not limited to any submissions in connection with arbitration referenced in Civil Action No. 18-12041 in the United States District Court for the District of Massachusetts, and any submissions in the aforementioned civil action.
>
> . . .
>
> All Documents and Communications between [Insurance Company of North America, Century Indemnity Company, and/or any and related entity] and any Reinsurer(s) relating to: (a) Plaintiffs; (b) the Subject Insurance Policies; (c) the Sexual Abuse Claims; or (d) Plaintiffs' claims for insurance coverage under the Subject Insurance Policies (whether or not regarding the Sexual Abuse Claims).

8. I have reviewed Plaintiffs' First Set of Interrogatories to Defendants Insurance Company of North America and Century Indemnity Company served in *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018). A true and correct copy of that document is attached as Exhibit G. In those interrogatories, the Boy Scouts call for Century to:

> Identify all litigation involving Century and the Reinsurers of the Subject Insurance Policies involving the Sexual Abuse Claims, including but not limited to (1) the arbitration between Century and the Reinsurers, and (2) Civil Action No. 18-12041 in the United States District Court for the District of Massachusetts.
>
> Identify all communications with the Reinsurers regarding the Sexual Abuse Claims between 2008 - present.

I declare under pain and penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: April 14, 2020

Respectfully Submitted,

By: */s/ Janine Panchok-Berry*

JANINE PANCHOK-BERRY

EXHIBIT A

SIDLEY

SERVICES

Insurance and Financial Services

Sidley has built a dedicated, international team of lawyers with intimate knowledge of and appreciation for the insurance and reinsurance industry, and its unique issues and challenges. Our Insurance and Financial Services group has nearly four decades of experience and a team of 85 lawyers devoted exclusively to providing a full range of transactional, regulatory and dispute resolution services to the industry. Recognized as a leading insurance law firm by *Trading Risk, Reactions, Chambers USA* and *U.S. News – Best Lawyers®*, among others, Sidley offers clients a comprehensive understanding of the principles, customs and practices unique to the industry.

While many of the transactions we handle on behalf of insurance clients involve sophisticated capital markets structures, our advice is grounded in our intimate knowledge of insurance industry regulation. Sidley litigators also serve the insurance industry, representing clients in reinsurance or retrocessional claims, consumer class actions, complex coverage cases, multi-jurisdictional direct claims, and white collar criminal defense and investigations.

Named Insurance "Law Firm of the Year" for 2018 at the *Reactions* North America Awards for the Second Consecutive Year

Examples of experience that demonstrate Sidley's depth and breadth in the insurance industry include representation of:

- Apollo Global Management in its $2.6 billion acquisition of publicly traded Aspen Insurance Holdings.
- Cigna Corporation in the insurance and healthcare regulatory matters associated with its acquisition of publicly traded Express Scripts Holding Company for approximately $67 billion.
- Athene Holding in its $1.24 billion initial public offering.
- Japanese insurer Zenkyoren on the transfer of a combined $2.375 billion of earthquake risk through the Nakama Re series of catastrophe bonds (2014-2018).
- Validus Reinsurance in its successful challenge (the first ever) to the Internal Revenue Service's "cascading excise tax" theory, in which the D.C. District Court ruled that the U.S. federal excise tax does not apply to retrocession contracts between foreign reinsurers.

Regular clients of our group include many of the largest insurance and reinsurance companies, brokers, banks, investment banking firms and regulatory agencies for which we provide regulatory, corporate, securities, mergers and acquisitions, securitization, derivatives, tax, reinsurance dispute resolution, class action defense, and other legal services.

Sidley lawyers have extensive experience in a wide range of domestic and international insurance and reinsurance transactions. We handle traditional corporate and financing transactions such as mergers, acquisitions, divestitures, joint ventures, reorganizations and restructurings, debt and equity financings, and complex investments. Our lawyers also structure and execute highly innovative transactions such as redundant life reserve (XXX and AXXX) and embedded value securitizations; natural catastrophe and catastrophic mortality-linked bonds, derivatives and sidecars; and the securitization of funding agreements, life and annuity contracts, and other insurance products.

With regard to dispute resolution, Sidley offers one of the few practices in the country dedicated to defending the insurance industry against the expanding array of class action claims, including retained asset accounts, vanishing premium, annuity interest crediting, modal premium, industrial life, premium GAP, annuity elder care, 401(k) "revenue sharing", burial insurance, juvenile smoking, annuity elder care suitability, and credit insurance refunds. We also represent insurers, brokers and company executives in responding to investigations, insurance department inquiries and enforcement actions, congressional hearings, and other governmental inquiries.

Sidley lawyers have extensive knowledge and experience in nearly all aspects of insurance regulation, as well as the impact of statutory accounting and rating implications on the insurance industry. We provide advice on a broad range of insurance regulatory issues such as the production of insurance, market conduct compliance, regulation of insurance intermediaries (producers, third party administrators, managing general agents and reinsurance brokers), holding company regulation, credit for reinsurance requirements, invested asset regulation, overall solvency standards, risk-based and other capital requirements, and the regulation of captive insurers.

CONTACTS

Mark B. Blocker
Partner
mblocker@sidley.com
+1 312 853 6097

Ellen M. Dunn
Partner
edunn@sidley.com
+1 212 839 8540

Michael P. Goldman
Partner
mgoldman@sidley.com
+1 312 853 4665

Jonathan L. Freedman
Partner
jfreedman@sidley.com
+1 212 839 6782

Jonathan J. Kelly
Partner
jjkelly@sidley.com
+1 212 839 5835

Martin Membery
Partner
mmembery@sidley.com
+44 20 7360 3614

Michael J. Pinsel
Partner
mpinsel@sidley.com
+1 312 853 7103

Perry J. Shwachman
Partner
pshwachman@sidley.com
+1 312 853 7061

William M. Sneed
Partner
wsneed@sidley.com
+1 312 853 7899

Amanda M. Todd
Partner
atodd@sidley.com
+1 312 853 7572

Attorney Advertising - Sidley Austin LLP, One South Dearborn, Chicago, IL 60603. + 1 312 853 7000. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at www.sidley.com/disclaimer. Prior results do not guarantee a similar outcome. ©2017 Sidley Austin LLP.

EXHIBIT B

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
CALENDAR: 04
PAGE 1 of 16
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NATIONAL SURETY CORPORATION,)
)
Plaintiff,)
)
v.)
)
BOY SCOUTS OF AMERICA; CHICAGO)
AREA COUNCIL, INC. BOY SCOUTS OF) No. _____
AMERICA; CHICAGO AREA COUNCIL,)
BOY SCOUTS OF AMERICA, INC.;)
ALLIANZ INSURANCE COMPANY n/k/a)
ALLIANZ GLOBAL RISKS US INSURANCE)
COMPANY; INSURANCE COMPANY OF)
NORTH AMERICA; TRAVELERS)
CASUALTY AND SURETY COMPANY,)
INC. f/n/a AETNA CASUALTY & SURETY)
COMPANY; FIRST STATE INSURANCE)
COMPANY; TWIN CITY FIRE INSURANCE)
CO.; DANIELSON NATIONAL INSURANCE)
COMPANY f/n/a MISSION NATIONAL)
INSURANCE COMPANY; LANDMARK)
INSURANCE COMPANY; COLUMBIA)
CASUALTY COMPANY; INTERNATIONAL)
INSURANCE GROUP, INC.; ARROWOOD)
INDEMNITY COMPANY f/n/a ROYAL)
INDEMNITY COMPANY; FEDERAL)
INSURANCE COMPANY; UNITED STATES)
FIRE INSURANCE COMPANY, INC.; UTICA)
MUTUAL INSURANCE COMPANY;)
NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA; PACIFIC)
EMPLOYERS INSURANCE COMPANY;)
HARBOR INSURANCE COMPANY; ST.)
PAUL FIRE AND MARINE INSURANCE)
COMPANY; CHUBB CUSTOM INSURANCE)
COMPANY; ST. PAUL SURPLUS LINES)
INSURANCE COMPANY; LEXINGTON)
INSURANCE COMPANY; JOHN DOE)
INSURERS 1-50; JOHN DOE; JOHN DOE 2;)
JOHN DOE 3; JOHN DOE 4; JOHN DOE 5;)
JOHN DOE 6; JOHN DOE 7; JOHN DOE 8;)
JOHN DOE 9; JOHN DOE 10; JOHN DOE 11;)
JOHN DOE 12; JOHN DOE 13; JOHN DOE)

14; JOHN DOE 15; JOHN DOE 16; JOHN DOE 17; AND JOHN DOE 18,)
)
)

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff National Surety Corporation ("National Surety") alleges the following:

INTRODUCTION AND SUMMARY

1. National Surety issued excess liability policies to Defendant Boy Scouts of America for the policy periods January 1, 1983 to January 1, 1984, and January 1, 1984 to January 1, 1985. Defendants Chicago Area Council, Inc. Boy Scouts of America and Chicago Area Council, Boy Scouts of America, Inc. (collectively, "Chicago Area Council") are additional named insureds under the policies. Boy Scouts of America and Chicago Area Council assert rights under National Surety's policies and are referred to, together, herein as the "Insured."

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 2 of 16

2. The Insured has been sued by individuals alleging that the Insured intentionally permitted, failed to prevent, and concealed alleged sexual abuse by scout leader Thomas Hacker ("Hacker"), in the lawsuit styled *John Doe et al. v. Thomas Hacker et al.*, pending in the Circuit Court of Cook County, Illinois, Law Division, originally as Case No. 2012-L-013569, and since assigned the new Case No. 2017-L-007900 (the "Underlying Lawsuits").

3. The sexual abuse in the Underlying Lawsuits is alleged to have occurred between 1980 and 1988 with respect to a scout troop located in Burbank, Illinois.

4. Boy Scouts of America is alleged to have intentionally concealed information relating to the widespread problem of sexual abuse by scout leaders since as early as 1919.

5. National Surety brings this action to obtain declaratory relief on coverage issues related to its excess liability policies with respect to the Underlying Lawsuits. National Surety seeks a declaration that no coverage exists under its policies with respect to the Underlying

Lawsuits, and that National Surety owes no duty to defend, pay defense costs, or indemnify the Insured, and for other relief outlined herein.

6. The Insured has demanded payment from National Surety on the policies. On information and belief, the Insured disagrees with National Surety regarding coverage interpretations on these issues.

7. For this reason, National Surety requests coverage interpretations by this Court in a declaratory judgment action.

PARTIES

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 3 of 16

8. Plaintiff National Surety is a corporation organized under the laws of the State of Delaware with its principal place of business and statutory home office in Illinois. It is now and was at all times relevant to this Complaint licensed or authorized to issue insurance policies in the State of Illinois.

9. On information and belief, Defendant Boy Scouts of America is a congressionally chartered corporation authorized to do business in Illinois. Boy Scouts of America asserts rights under policies issued by National Surety and other Insurer Defendants in this action.

10. On information and belief, Defendant Chicago Area Council is a not-for-profit corporation organized under the laws of the State of Illinois with its principal place of business in Chicago, Illinois. Chicago Area Council asserts rights under policies issued by National Surety and other Insurer Defendants in this action.

11. On information and belief, a number of other liability insurers issued policies to the Insured during the 1980 to 1988 time period. These insurers are listed below.

12. On information and belief, Allianz Insurance Company, now known as Allianz Global Risks US Insurance Company ("Allianz"), is a corporation organized under the laws of

the State of Illinois with its principal place of business in Chicago, Illinois. On information and belief, Allianz issued a liability policy to the Insured covering the time period January 1, 1980 to January 1, 1981.

13. On information and belief, Defendant Insurance Company of North America ("INA") is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. On information and belief, INA issued liability policies to the Insured covering the time period January 1, 1980 to March 1, 1988.

14. On information and belief, Travelers Casualty and Surety Company, Inc. (f/n/a Aetna Casualty & Surety Company) ("Travelers") is a corporation organized under the laws of the State of Connecticut with its principal place of business in Hartford, Connecticut. On information and belief, Travelers issued a liability policy to the Insured covering the time period January 1, 1980 to January 1, 1981.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 4 of 16

15. On information and belief, Transit Casualty Insurance Co. ("Transit") was a corporation organized under the laws of the State of Missouri with its principal place of business in Los Angeles, California. On information and belief, Transit was declared insolvent and the subsequent receivership has been closed. Accordingly, Transit is not named as a party herein.

16. On information and belief, First State Insurance Company ("First State") is a corporation organized under the laws of the State of Connecticut with its principal place of business in Hartford, Connecticut. On information and belief, First State issued a liability policy to the Insured covering the time period January 1, 1981 to January 1, 1983.

17. On information and belief, Twin City Fire Insurance Co. ("TC Fire") is a corporation organized under the laws of the State of Indiana with its principal place of business

in Hartford, Connecticut. On information and belief, TC Fire issued a liability policy to the Insured covering the time period January 1, 1982 to January 1, 1983.

18. On information and belief, Danielson National Insurance Company (f/n/a Mission National Insurance Company) ("Danielson") is a corporation organized under the laws of the State of California with its principal place of business in San Diego, California. On information and belief, Danielson issued a liability policy to the Insured covering the time period January 1, 1984 to January 1, 1985.

19. On information and belief, Landmark Insurance Company ("Landmark") was a corporation organized under the laws of the State of California with its principal place of business in Boston, Massachusetts. On information and belief, Landmark has merged with National Union Fire Insurance Company of Pittsburgh, PA, the latter being the surviving entity. On information and belief, Landmark issued a liability policy to the Insured covering the time period January 1, 1985 to March 1, 1986.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 5 of 16

20. On information and belief, Columbia Casualty Company ("Columbia") is a corporation organized under the laws of the State of Illinois with its principal place of business in Chicago, Illinois. On information and belief, Columbia issued a liability policy to the Insured covering the time period January 1, 1985 to March 1, 1986.

21. On information and belief, Highlands Insurance Company ("Highlands") was a corporation organized under the laws of the State of Texas with its principal place of business in Lawrenceville, New Jersey. On information and belief, Highlands is currently in receivership. Accordingly, it is not named as a party herein.

22. On information and belief, International Insurance Group, Inc. ("IIG"), is a corporation organized under the laws of the State of Delaware. On information and belief, IIG

issued a liability policy to the Insured covering the time period January 1, 1985 to March 1, 1986.

23. On information and belief, Arrowood Indemnity Company (f/n/a Royal Indemnity Company) ("Arrowood") is a corporation organized under the laws of the State of Delaware with its principal place of business in Charlotte, North Carolina. On information and belief, Arrowood issued a liability policy to the Insured covering the time period January 1, 1985 to March 1, 1986.

24. On information and belief, Federal Insurance Company ("Federal") is a corporation organized under the laws of the State of Pennsylvania. On information and belief, Federal issued a liability policy to the Insured covering the time period January 1, 1985 to March 1, 1986.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 6 of 16

25. On information and belief, United States Fire Insurance Company, Inc. ("U.S. Fire") is a corporation organized under the laws of the State of Delaware with its principal place of business in Morristown, New Jersey. On information and belief, U.S. Fire issued liability policies to the Insured covering the time period March 1, 1986 to March 1, 1987 and March 1, 1987 to March 1, 1988.

26. On information and belief, Utica Mutual Insurance Company ("Utica") is a corporation organized under the laws of the State of New York with its principal place of business in New Hartford, New York. On information and belief, Utica issued a liability policy to the Insured covering the time period March 1, 1986 to March 1, 1987.

27. On information and belief, National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in New York, New York. On information and belief,

National Union issued liability policies to the Insured covering the time periods March 1, 1986 to March 1, 1987, June 3, 1986 to March 1, 1987, and March 1, 1987 to March 1, 1988.

28. On information and belief, Pacific Employers Insurance Company ("Pacific Employers") is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. On information and belief, Pacific Employers issued a liability policy to the Insured covering the time period March 1, 1986 to March 1, 1987.

29. On information and belief, Harbor Insurance Company ("Harbor") is a corporation organized under the laws of the State of Oklahoma with its principal place of business in Tulsa, Oklahoma. On information and belief, Harbor issued a liability policy to the Insured covering the time period May 20, 1986 to March 1, 1987.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 7 of 16

30. On information and belief, St. Paul Fire and Marine Insurance Company ("St. Paul Fire") is a corporation organized under the laws of the State of Minnesota with its principal place of business in St. Paul, Minnesota. On information and belief, St. Paul Fire issued a liability policy to the Insured covering the time period May 28, 1986 to March 1, 1987.

31. On information and belief, Chubb Custom Insurance Company ("Chubb") is a corporation organized under the laws of the State of Delaware with its principal place of business in Warren, New Jersey. On information and belief, Chubb issued a liability policy to the Insured covering the time period June 3, 1986 to March 1, 1987.

32. On information and belief, St. Paul Surplus Lines Insurance Company ("St. Paul Surplus") is a corporation organized under the laws of State of Delaware with its principal place of business in St. Paul, Minnesota. On information and belief, St. Paul Surplus issued a liability policy to the Insured covering the time period March 1, 1987 to March 1, 1988.

33. On information and belief, Lexington Insurance Company ("Lexington") is a corporation organized under the laws of the State of Delaware with its principal place of business in Boston, Massachusetts. On information and belief, Lexington issued a liability policy to the Insured covering the time period March 1, 1987 to March 1, 1988.

34. Defendants John Doe Insurers 1-50 are insurers, unknown by name to Plaintiff at this time, that issued liability insurance policies to the Insured. Plaintiff names these John Doe Insurers insofar as they may be alleged to be necessary parties, for the purpose of binding them to the relief sought herein. Plaintiff will dismiss this action as to any John Doe Insurer that is not necessary to the relief sought herein.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 8 of 16

35. The declarations National Surety seeks in this case may impact the coverage obligations of the Insured's liability insurers other than National Surety. For this reason, National Surety has joined to this action the Insured's other liability insurers for the years in which the sexual abuse is alleged to have occurred, 1980 to 1988.

36. Defendants John Doe – John Doe 18 are plaintiffs in the Underlying Lawsuits. On information and belief, John Doe – John Doe 18 are domiciled in the State of Illinois. Defendants John Doe – John Doe 18 are joined to bind them to the judgment in this case.

JURISDICTION AND VENUE

37. The Court has personal jurisdiction over defendants pursuant to 735 ILCS 5/2-209 because they are domiciled and/or licensed to do business and/or are doing business in the State of Illinois. In addition, the Court has personal jurisdiction over the out-of-state insurer defendants pursuant to 735 ILCS 5/2-209 because each such defendant is or was transacting business in the State of Illinois within the time periods relevant to the causes of action stated herein and contracted to insure persons, property, or risks located in the State of Illinois.

38. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 to 103 because it is a county in which multiple defendants are "doing business." Further, Plaintiff's causes of action arise out of events that occurred in Cook County with respect to a Boy Scout troop located in Cook County, and the Underlying Lawsuits are all filed in the Circuit Court of Cook County, Law Division.

NATIONAL SURETY POLICIES

39. National Surety issued to Boy Scouts of America a Blanket Excess Liability Policy, No. XLX1484309, in effect for the policy period January 1, 1983 to January 1, 1984 (hereinafter, the "1983-1984 Policy"). A copy of the 1983-1984 Policy is attached hereto as **Exhibit A**.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 9 of 16

40. National Surety issued to Boy Scouts of America a Blanket Excess Liability Policy, No. XLX1484392, in effect for the policy period January 1, 1984 to January 1, 1985 (hereinafter, the "1984-1985 Policy"). A copy of the 1984-1985 Policy is attached hereto as **Exhibit B**. Together, the 1983-1984 Policy and the 1984-1985 Policy are referred to herein as the "National Surety Policies."

41. The National Surety Policies are "follow form" excess policies that incorporate, with certain listed exceptions, the terms, conditions, and exclusions of underlying policies issued by INA to Boy Scouts of America for the 1983-1984 and 1984-1985 years, respectively.

42. Subject to the stated limits of liability, terms, conditions, and exclusions, the National Surety Policies provide indemnity coverage for "occurrence[s]" which take place during the policy period. An "occurrence" is defined in pertinent part as an "accident . . . which results in Personal Injury . . . neither expected nor intended from the standpoint of the insured."

43. The National Surety Policies do not provide for a duty to defend, but defense costs may be reimbursable if incurred with the consent of National Surety, but only in the proportion that the Insured and National Surety are responsible for the loss.

UNDERLYING LAWSUITS ALLEGATIONS

44. John Doe – John Doe 18 assert claims against the Insured in the Underlying Lawsuits arising out of the alleged sexual abuse of John Doe – John Doe 18 by Thomas Hacker ("Hacker"). A copy of the Third Amended Complaint in the Underlying Lawsuits is attached hereto as **Exhibit C**.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 10 of 16

45. John Doe – John Doe 18 allege that the Insured knew of Hacker's predatory tendencies, and of the widespread problem of sexual abuse by scout masters, prior to Hacker's alleged abuse of John Doe – John Doe 18. (Third Amended Complaint pp. 12-35.)

46. John Doe – John Doe 18 allege that, despite this knowledge, the Insured, through various acts and omissions, permitted, failed to take steps to prevent, and concealed Hacker's alleged sexual abuse of John Doe – John Doe 18. (Third Amended Complaint pp. 35-499.)

47. By way of summary, John Doe – John Doe 18 allege as follows:

(a) "Since approximately 1919, BOY SCOUTS OF AMERICA has maintained a group of files known variously as the red files, perversion files, or ineligible volunteer files (IV Files)." (Third Amended Complaint p. 27, ¶ 6.)

(b) "The IV Files . . . document multiple instances of child molesters volunteering with scouting, molesting a child, being reported to BSA, but then re-gaining entry into scouting." (Third Amended Complaint p. 20, ¶ 72.)

(c) "BSA's 'Ineligible Volunteer Files' contained a file for Mr. Hacker opened in 1970, yet he was able and permitted by BSA to register with the Chicago Area Council in

the 1980s and was able to participate in Scouting." (Third Amended Complaint p. 36, ¶ 124.)

(d) "BSA knew or should have known that its 'ineligible volunteers' system of keeping track of pedophiles infiltrating its ranks and attempting to eliminate them did not function as it was intended, was flawed, and in many cases ineffective. . . . BSA did nothing to educate or inform Scouts and their parents of the enormity of the pedophile problem, nor did BSA take action to correct its screening and/or education system." (Third Amended Complaint p. 36, ¶ 125.)

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 11 of 16

(e) "Instead of addressing the problem by informing parents and scouts of the issue, or by implementing safety programs to prevent abuse, BSA instead concealed the problem by employing a public relations department to combat negative stories about sexual abuse in Scouting." (Third Amended Complaint pp. 23-24, ¶ 101.)

(f) "After the BOY SCOUTS OF AMERICA learned that Thomas Hacker molested Chicago Area Council scouts, the BOY SCOUTS OF AMERICA concealed the fact, in the 1970s, it had previously identified Hacker as a child molester and/or abuser but still allowed him to register with the Chicago Area Council." (Third Amended Complaint pp. 43-44, ¶ 151.)

48. John Doe – John Doe 18 seek punitive damages against the Insured as a result of the Insured's alleged intentional conduct and fraudulent concealment. (Third Amended Complaint pp. 23-26.)

FIRST CAUSE OF ACTION

Declaration That No Coverage Exists Under National Surety's Policies, And That National Surety Has No Duty To Indemnify The Insured, Because The Insured's Alleged Conduct Is Not An "Accident."

49. National Surety incorporates by reference in this First Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

50. An "occurrence" covered under National Surety's Policies is defined to require an "accident."

51. The Underlying Lawsuits allege that the Insured knew that Hacker was a predator, and of the widespread problem of sexual abuse by scout masters, and, despite this knowledge, permitted, failed to take steps to prevent, and concealed Hacker's sexual abuse of John Doe – John Doe 18.

52. The alleged conduct of the Insured in the Underlying Lawsuits does not constitute an "accident."

53. Accordingly, no coverage exists for the Underlying Lawsuits under National Surety's Policies, and National Surety owes no duty to indemnify the Insured.

WHEREFORE, Plaintiff prays for a declaration that no coverage exists under National Surety's Policies, and that National Surety owes no duty to indemnify the Insured, because the Insured's alleged conduct is not an accident.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 12 of 16

SECOND CAUSE OF ACTION

Declaration That No Coverage Exists Under National Surety's Policies, And That National Surety Has No Duty To Indemnify The Insured, Because The Insured's Alleged Conduct Was Expected Or Intended.

54. National Surety incorporates by reference in this Second Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

55. An "occurrence" covered under National Surety's Policies does not include acts that are expected or intended from the standpoint of the insured.

56. The Underlying Lawsuits allege that the Insured knew that Hacker was a predator, and of the widespread problem of sexual abuse by scout masters, and, despite this knowledge, permitted, failed to take steps to prevent, and concealed Hacker's alleged sexual abuse of John Doe – John Doe 18.

57. The alleged conduct of the Insured in the Underlying Lawsuits was expected or intended.

58. Accordingly, no coverage exists for the Underlying Lawsuits under National Surety's Policies, and National Surety owes no duty to indemnify the Insured.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 13 of 16

WHEREFORE, Plaintiff prays for a declaration that no coverage exists under National Surety's Policies, and that National Surety owes no duty indemnify the Insured, because the Insured's alleged conduct was expected or intended.

THIRD CAUSE OF ACTION

Declaration That No Coverage Exists Under National Surety's Policies For Punitive Damages, And That National Surety Has No Duty To Indemnify The Insured With Respect To Punitive Damages.

59. National Surety incorporates by reference in this Third Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

60. The Underlying Lawsuits seek punitive damages for the Insured's conduct.

61. Punitive damages are not insurable.

62. Accordingly, no coverage exists for punitive damages sought in the Underlying Lawsuits, and National Surety owes no duty to indemnify the Insured with respect to punitive damages.

WHEREFORE, Plaintiff prays for a declaration that no coverage exists under National Surety's Policies for punitive damages, and that National Surety owes no duty to indemnify the Insured with respect to punitive damages.

FOURTH CAUSE OF ACTION

Declaration That Coverage Is Not Available For Underlying Lawsuits In Which Personal Injury Does Not Take Place During The Policy Period.

63. National Surety incorporates by reference in this Fourth Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

64. The National Surety Policies require – for there to be coverage – that Personal Injury occur during the applicable policy period. There is, accordingly, no coverage under National Surety's Policies for Personal Injury which takes place outside of the applicable policy periods.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 14 of 16

WHEREFORE, Plaintiff prays for a declaration that no coverage exists for the Underlying Lawsuits in which there is no personal injury during the policy period, and that National Surety has no duty to indemnify the Insured with respect to the Underlying Lawsuits in which there is no personal injury during the policy periods.

FIFTH CAUSE OF ACTION

Declaration That National Surety Has No Duty To Provide Coverage Or Indemnify The Insured Until Underlying Insurance Is Exhausted.

65. National Surety incorporates by reference in this Fifth Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

66. The National Surety Policies are excess policies that respond only when underlying insurance is exhausted.

67. On information and belief, underlying insurance is not exhausted.

68. On information and belief, certain of the Insured's other insurers are insolvent, and National Surety's policies would not respond until payments are made exhausting such underlying policies.

WHEREFORE, Plaintiff prays for a declaration that it has no duty to provide coverage or indemnify the Insured unless and until underlying insurance is exhausted.

SIXTH CAUSE OF ACTION

Declaration That National Surety Has No Duty To Defend Or Reimburse Defense Costs.

69. National Surety incorporates by reference in this Sixth Cause of Action all allegations in this Complaint, including Exhibits attached hereto.

70. The National Surety Policies do not provide for a duty to defend.

71. No coverage exists under National Surety's Policies because the Insured's conduct was not an "accident," as set forth in National Surety's First Cause of Action.

72. No coverage exists under National Surety's Policies because the Insured's conduct was expected or intended, as set forth in National Surety's Second Cause of Action.

73. No coverage exists under National Surety's Policies with respect to punitive damages, as set forth in National Surety's Third Cause of Action.

74. No coverage exists under National Surety's Policies with respect to occurrences taking place outside the policy period, as set forth in National Surety's Fourth Cause of Action.

75. National Surety has no duty to provide coverage unless and until underlying insurance is exhausted, as set forth in National Surety's Fifth Cause of Action.

76. Because no coverage exists under National Surety's Policies, National Surety has no obligation to reimburse defense costs.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 15 of 16

WHEREFORE, Plaintiff prays for a declaration that National Surety has no duty to defend the Insured or reimburse defense costs, consistent with the relief sought in the First through Fifth Causes of Action set forth above.

SEVENTH CAUSE OF ACTION

Declaration Of National Surety's Rights And Obligations Under The Policies.

77. National Surety incorporates by reference in this Seventh Cause of Action all allegations in this Complaint, including Exhibits attached thereto.

78. To the extent not addressed in the preceding Causes of Action, National Surety seeks a declaration concerning its rights and obligations under policies it issued to Boy Scouts of America and/or Chicago Area Council.

WHEREFORE, Plaintiff prays for a declaration establishing its rights and obligations under policies it issued to Boy Scouts of America and/or Chicago Area Council.

ELECTRONICALLY FILED
11/9/2017 3:08 PM
2017-CH-14975
PAGE 16 of 16

Dated: November 9, 2017

Respectfully submitted,

/s/ Todd C. Jacobs
Todd C. Jacobs (#6201358)
Melissa A. Carrington (#6305591)
Jeremiah D. Junker (*pro hac* pending)
BRADLEY RILEY JACOBS PC
Firm No. 61684
320 W. Ohio Street, Suite 3W
Chicago, IL 60654
Phone: (312) 281-0295
Fax: (319) 363-9824
Email: tjacobs@bradleyriley.com
mcarrington@bradleyriley.com
jjunker@bradleyriley.com

ATTORNEYS FOR THE PLAINTIFF

EXHIBIT C

FILED
DALLAS COUNTY
6/5/2018 3:51 PM
FELICIA PITRE
DISTRICT CLERK

Marissa Pittman

CAUSE NO. DC-18-07313

BOY SCOUTS OF AMERICA, CONNECTICUT YANKEE COUNCIL, SPIRIT OF ADVENTURE COUNCIL, ALOHA COUNCIL, CASCADE PACIFIC COUNCIL	§	IN THE DISTRICT COURT OF
PLAINTIFFS	§	
VS.	§	DALLAS COUNTY, TEXAS
THE HARTFORD ACCIDENT AND INDEMNITY CO., FIRST STATE INSURANCE CO.	§	
DEFENDANTS	§	____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Boy Scouts of America, Connecticut Yankee Council, Spirit of Adventure Council, Aloha Council, and Cascade Pacific Council (collectively, "BSA" or "Plaintiffs") hereby file this Original Petition against Defendants The Hartford Accident and Indemnity Company and First State Insurance Co. (collectively, "Hartford" or "Defendants") and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery in this matter is intended to be conducted under Level 2, pursuant to Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff BSA is a congressionally chartered organization authorized to do business in Texas, and has its headquarters at 1325 Walnut Hill Lane, Irving, Texas 75015.

3. Plaintiff Connecticut Yankee Council is a non-profit corporation organized under the laws of the State of Connecticut, and has its headquarters at 60 Wellington Road, Milford, Connecticut 06460.

4. Plaintiff Spirit of Adventure Council is a non-profit corporation organized under the laws of the State of Massachusetts, and has its headquarters at 600 W. Cummings Park, Suite 275, Woburn, Massachusetts 01801.

5. Plaintiff Aloha Council is a non-profit corporation organized under the laws of the State of Hawaii, and has its headquarters at 42 Puiwa Road, Honolulu, Hawaii 96817.

6. Plaintiff Cascade Pacific Council is a non-profit corporation organized under the laws of the State of Oregon, and has its headquarters at 2145 SW Natio Pkwy, Portland, Oregon 97201.

7. Defendant The Hartford Accident and Indemnity Company is a corporation organized under the laws of the State of Connecticut with its principal place of business in Connecticut. Defendant Hartford Accident and Indemnity Company may be served with process by serving CT Corporation System, 1999 Bryan Street Suite 900, Dallas TX 75201-3136.

8. Defendant First State Insurance Company is a corporation organized under the laws of the State of Delaware with its principal place of business in Massachusetts. Defendant First State Insurance Company may be served with process by serving CT Corporation System, 1999 Bryan Street Suite 900, Dallas TX 75201-3136.

III. JURISDICTION & VENUE

9. The foregoing allegations are incorporated herein by reference.

10. This Court has jurisdiction over this matter because the amount in controversy, exclusive of interest and costs, is within the jurisdictional limits of the Court.

11. Plaintiff seeks monetary relief over $1,000,000.

12. Venue is proper in Dallas County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred in Dallas County at the time the cause of actions accrued.

IV. BACKGROUND FACTS

A. BSA and its Insurance Coverage Program

13. The Boy Scouts of America is one of the nation's largest and most prominent values-based youth development organizations, with more than 2.4 million youth participants and nearly one million adult volunteers. BSA was founded in 1910, and since then, more than 110 million Americans have been participants in BSA programs at some time.

14. BSA operates traditional scouting by chartering local organizations, such as churches, clubs, civic associations, or educational organizations, to implement the scouting program for youth within their communities. Units are led entirely by volunteers appointed by the chartering organization, who are supported by local councils.

15. To insure its many activities and local councils throughout the country, BSA maintains a comprehensive, broad insurance program. From approximately 1970 to 1988, BSA purchased several general liability and umbrella and/or excess liability insurance policies from Hartford.

B. The Underlying Lawsuits

16. Over the past several years, BSA has been subject to numerous claims and lawsuits in which the plaintiffs allege they had been sexually abused while a participant in various BSA programs (the "Underlying Lawsuits").

17. The Underlying Lawsuits allege abuse during various and multiple periods of time and in various and multiple geographic locations.

18. The Underlying Lawsuits generally allege personal injury due to sexual abuse and allege, *inter alia*, that BSA and BSA local councils were negligent in failing to prevent the sexual abuse.

19. The Underlying Lawsuits contain allegations that plaintiffs suffered and continue to suffer from bodily injury, including but not limited to severe and debilitating physical, mental and emotional injury, pain and suffering, physical and emotional trauma, and present psychological damage.

C. BSA's Coverage Dispute with Hartford Regarding the Underlying Lawsuits

20. Hartford issued several general liability and umbrella and/or excess liability insurance policies to BSA in the schedule attached hereto as Exhibit A (collectively, the "Hartford Policies").

21. The Hartford primary insurance policies provide that Hartford will pay "all sums that BSA is obligated to pay as damages because of personal injury [which includes bodily injury] to which the insurance applies, caused by an occurrence."

22. The Hartford primary insurance policies also provide that Hartford has a duty to defend BSA in any suit alleging personal injury, and any defense costs incurred do not reduce the limits of liability under the Hartford primary insurance policies.

23. The Harford excess policies similarly provide that Hartford will indemnify BSA for all sums which BSA shall become legally obligated to pay as damages and expenses by reason of liability because of personal injury (which includes bodily injury) caused by an occurrence which takes place during the policy period anywhere in the world.

24. The Hartford excess policies also provide that Hartford has an obligation to reimburse BSA for any defense costs in connection with any suit alleging personal injury.

25. Several of the Underlying Lawsuits implicate coverage for years that Hartford issued insurance coverage.

26. BSA timely provided Hartford with notice of each of the Underlying Lawsuits that implicated a Hartford Policy.

27. Hartford has nevertheless refused and continues to refuse to satisfy its coverage obligations, including by denying coverage for both defense costs and indemnity payments associated with certain of the Underlying Lawsuits. Hartford has asserted several coverage positions to BSA to deny that it owes an obligation to pay defense and indemnity payments for the Underlying Lawsuits.

28. First, Hartford has taken the position that all the claims for sexual abuse alleged in the multitude of Underlying Lawsuits throughout the country involving various victims are the result of a single occurrence. Hartford asserts the injuries alleged in the Underlying Lawsuits were caused by BSA's failure to warn parents and guardians that Scouts might be abused. Based on this one "occurrence" theory, Hartford contends that once a policy's per-occurrence limits are exhausted by any claim, it has no further responsibility under those policies for claims relating to sexual abuse. Hartford has taken this position despite the fact that it is contrary to its policy language and well-settled law.

29. Second, despite issuing certain policies of insurance to BSA and despite Hartford having produced to BSA copies of said policies, Hartford has also taken the position that certain policies have no force and effect, and do not exist. The policies, however, contain declarations

pages showing policy periods and limits of insurance, as well as policy jackets showing the policy terms, conditions, and exclusions.

30. Third, several of the Hartford Policies either do not contain aggregate limits of liability or contain aggregate limits of liability that are applicable *only* to products completed operations liability or occupational diseases of employees of BSA. Harford nevertheless contends these policies that include only aggregate limits for products completed operations or occupational disease claims also contain aggregate limits for sexual abuse claims. Despite the plain language of the policies, Hartford has taken the position that several of the policies with no aggregate limits are exhausted.

31. Fourth, BSA renewed several of the Hartford Policies[1] so that the policies covered two, separate years. Despite the payment of substantial premiums for those renewals, Hartford has taken the position that only a single per occurrence limit of liability is available to BSA for the two-year period.

32. Due to Hartford's failure to pay amounts owed under the Hartford Policies, BSA has incurred and will continue to incur defense costs to defend itself in the Underlying Lawsuits, and BSA has made and will continue to make indemnity payments to settle the Underlying Lawsuits, all while Hartford is obligated to provide coverage under its policies.

V. CAUSES OF ACTION

COUNT ONE
Declaratory Judgment

33. The foregoing allegations are incorporated herein by reference.

[1] Hartford primary policy, No. 10-CA-43303, policy period January 1, 1972 – January 1, 1973 was renewed to extend through January 1, 1974; Hartford primary policy, No. 10-CA-43304, policy period January 1, 1972 – January 1, 1973 was renewed to extend through January 1, 1974; Hartford primary policy, No. 10-CA-43324, policy period January 1, 1974 – January 1, 1975 was renewed to extend through January 1, 1976; Hartford excess policy, No. 10-HUA-43302, policy period January 1, 1972 – January 1, 1973 was renewed to extend through January 1, 1974.

34. BSA brings this action pursuant to TEX. CIV. PRAC. & REM. CODE §37.004.

35. BSA seeks a declaration that each sexual abuse claim against BSA constitutes an "occurrence" under the Hartford Policies.

36. BSA seeks a declaration that each of the Hartford Policies are in full force and effect.

37. BSA seeks a declaration that BSA's renewal of certain Hartford Policies entitles it to separate per-occurrence limits of liability for each year covered by the relevant Hartford Policy.

38. BSA seeks a declaration that the Hartford Policies that do not contain an aggregate limit or aggregate limits applicable only to products completed operations liability or occupational disease are not and cannot be exhausted due to the payment of loss arising from claims alleging personal injury.

39. BSA seeks a declaration that, pursuant to the terms of the Hartford Policies, Hartford is obligated to pay and/or reimburse BSA for any ongoing defense costs incurred on those Underlying Lawsuits that are pending.

40. An actual and justiciable controversy exists between BSA and Hartford regarding the rights and obligations of BSA and Hartford and Hartford's obligations under the Hartford Policies, and a judicial declaration is necessary to determine BSA's rights and Hartford's duties under the Hartford Policies.

COUNT TWO
Breach of Contract

41. The foregoing allegations are incorporated herein by reference.

42. The Hartford Policies are valid and enforceable contracts.

43. BSA has standing to pursue claims under the Hartford Policies.

44. BSA has satisfied all conditions precedent under the Hartford Policies.

45. The Underlying Lawsuits allege bodily injury/personal injury occurring in whole or in part during the periods of the Hartford Policies.

46. The terms of the Hartford Policies unambiguously require Hartford to defend and indemnify BSA in the Underlying Lawsuits.

47. Alternatively, the terms of the Hartford Policies are ambiguous and must be construed in favor of coverage for BSA.

48. Hartford has breached its contractual obligations under the Hartford Policies by, among other things, refusing and failing to: (a) defend BSA and/or reimburse BSA for defense costs it has incurred defending itself against the Underlying Lawsuits; and (b) indemnify BSA for those settlement payments it has incurred for the Underlying Lawsuits in accordance with the express terms of the Hartford Policies.

49. As a result of Hartford's breach, BSA has sustained substantial damages.

COUNT THREE
Violations of Chapter 542 of the TEXAS INSURANCE CODE

50. The foregoing allegations are incorporated herein by reference.

51. BSA's claim for coverage includes a first-party claim.

52. Hartford's delays and/or denials of coverage violate the Prompt Payment of Claims statute in Chapter 542 of the Texas Insurance Code.

53. Chapter 542 provides that "if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim,. . . the insurer shall pay damages and other items as provided by Section 542.060." TEX. INS. CODE § 542.058.

54. Hartford has received all items, statements and forms reasonably requested and required under Section 542.055 or, alternatively, in light of Hartford's denial of coverage, BSA was not required to submit such items, statements and forms.

55. Hartford has nonetheless refused to pay amounts that are clearly covered under the Hartford Policies.

56. In refusing, failing and delaying payment of BSA's defense costs in connection with the Underlying Lawsuits, Hartford has violated Chapter 542 of the Texas Insurance Code.

57. As a consequence of its statutory violation, Hartford is liable to pay BSA, in addition to the amount of its insurance claim, interest on the amount of its claim at the rate of 18 percent per annum, together with reasonable attorneys' fees. *See* TEX. INS. CODE Sec. 542.060.

COUNT FOUR
Attorneys' Fees

58. The foregoing allegations are incorporated herein by reference.

59. Due to the actions of the Hartford, BSA has been required to retain the services of the law firm of Haynes and Boone, LLP of Dallas, Texas. BSA has agreed to pay Haynes and Boone, LLP a reasonable fee for its services necessarily rendered and to be rendered in this action.

60. Pursuant to §§ 37.009 and 38.001 of the Texas Civil Practices & Remedies Code and Chapters 541 and 542 of the Texas Insurance Code, BSA is entitled to an award of reasonable attorneys' fees against Hartford in an amount to be established at trial.

NOTICE OF INTENT TO PURSUE CLAIM UNDER CHAPTER 541 OF THE TEXAS INSURANCE CODE

61. The foregoing allegations are incorporated herein by reference.

62. Pursuant to § 541.154 of the Texas Insurance Code, BSA hereby provides notice of its intent to pursue a claim against Hartford under § 541.151 of the Texas Insurance Code by amending this suit after 60 days.

63. By, among other things, taking positions as outlined in ¶¶ 29-31, Hartford has engaged in unfair or deceptive acts or practices as defined by Section 541.061 of the Texas Insurance Code. Hartford has violated Section 541.061 of the Texas Insurance Code by making misrepresentations of the insurance policy through one or more of the following acts: (1) making untrue statements of material fact, (2) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made, (3) making a statement in a manner that would mislead a reasonably prudent person to the false conclusion of material fact, and (4) making a material misstatement of law.

64. By, among other things, taking positions as outlined in ¶¶ 29-31, Hartford has violated Section 541.060(1) of the Texas Insurance Code by misrepresenting a material fact or policy provision relating to coverage at issue.

65. Hartford has violated Section 541.060(2) of the Texas Insurance Code by refusing coverage for the Underlying Lawsuits when its liability was reasonably clear.

66. Hartford has violated Section 541.060(3) of the Texas Insurance Code by denying coverage for the Underlying Lawsuits without providing any factual or legal basis for such an assertion.

67. Hartford has violated Section 541.060(7) of the Texas Insurance Code by refusing coverage for the Underlying Lawsuits without conducting a reasonable investigation with respect to the Underlying Lawsuits.

68. As a result of Hartford's conduct, BSA has suffered substantial damages in an amount not less than $13.5 million, as well as attorneys' fees in an amount not less than $100,000.

69. Hartford knowingly committed one or more of the violations referenced above and thus BSA seeks, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

VI. JURY DEMAND

70. BSA hereby requests a jury trial pursuant to Tex. R. Civ. P. 216(a).

VII. PRAYER

WHEREFORE, BSA respectfully prays that this Court grant it the following relief:

a. Declaratory Judgment that each sexual abuse claim against BSA constitutes an "occurrence" under the Hartford Policies;

b. Declaratory Judgment that each of the Hartford Policies are in full force and effect;

c. Declaratory Judgment that each Hartford Policy has a separate per-occurrence limit of liability available for each policy period;

d. Declaratory Judgment that the Hartford Policies that do not contain an aggregate limit or aggregate limits applicable only to products completed operations liability or occupational disease are not and cannot be exhausted due to the payment of loss arising from claims alleging personal injury;

e. Declaratory Judgment that Hartford is obligated to pay and/or reimburse BSA for any defense costs incurred on those Underlying Lawsuits that are ongoing pursuant to the terms of the Hartford Policies;

f. Judgment awarding BSA all damages sustained as a result of Hartford's breach of contract;

g. Judgment awarding BSA actual and treble damages resulting from Hartford's violations of Chapters 541 and/or 542 of the Texas Insurance Code;

h. Judgment awarding BSA all reasonable and necessary attorneys' fees and expenses incurred in this matter against Hartford under Chapter 37 of the Texas

Civil Practice & Remedies, Chapter 38 of the Texas Civil Practice & Remedies Code, Chapter 542, and/or Chapters 541 of the Texas Insurance Code;

i. Judgment awarding BSA pre-judgment and post-judgment interest as allowed by law;

j. Judgment awarding BSA all costs of court; and

k. Any and all other relief to which BSA may be entitled.

Respectfully submitted,

/s/ Ernest Martin, Jr.
Ernest Martin, Jr.
State Bar No. 13063300
ernestmartin@haynesboone.com
Carla Green
State Bar No. 24097762
carlagreen@haynesboone.com
HAYNES AND BOONE, L.L.P.
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5000
Telecopier: (214) 651-5940

Adrian Azer*
**pro hac vice application pending*

ATTORNEYS FOR PLAINTIFFS BOY SCOUTS OF AMERICA, CONNECTICUT YANKEE COUNCIL, SPIRIT OF ADVENTURE COUNCIL, ALOHA COUNCIL, CASCADE PACIFIC COUNCIL

Exhibit A
The Hartford Policies

Insurer	Policy No.	Effective Dates
	1971-72	
The Hartford Accident and Indemnity Co.	10CA43315 (primary)	09/01/1972 - 01/01/1972
The Hartford Accident and Indemnity Co.	10HUA43300 (excess)	05/01/1971 - 05/01/1972
	1972-73	
The Hartford Accident and Indemnity Co.	10CA43303 (primary)	01/01/1972 - 01/01/1973 (extended an additional year)
The Hartford Accident and Indemnity Co.	10CA43304 (primary)	01/01/1972 - 01/01/1973 (extended an additional year)
The Hartford Accident and Indemnity Co.	10HUA43301 (excess)	01/01/1972 - 01/01/1973
The Hartford Accident and Indemnity Co.	10HUA43302 (excess)	01/01/1972 - 01/01/1973 (extended an additional year)
The Hartford Accident and Indemnity Co.	10HUA43303 (excess)	05/01/1972 - 05/01/1973 (extended an additional year)
	1973-74	
The Hartford Accident and Indemnity Co.	10CA43303 (primary)	01/01/1973 - 01/01/1974
The Hartford Accident and Indemnity Co.	10CA43304 (primary)	01/01/1973 - 01/01/1974
The Hartford Accident and Indemnity Co.	10HUA43302 (excess)	01/01/1973 - 01/01/1974
The Hartford Accident and Indemnity Co.	10HUA43303 (excess)	05/01/1973 - 05/01/1974
	1974-75	
The Hartford Accident and Indemnity Co.	10CA43329 (primary)	01/01/1974 - 01/01/1975
The Hartford Accident and Indemnity Co.	10CA43324 (primary)	01/01/1974 - 01/01/1975
The Hartford Accident and Indemnity Co.	10HUA43331 (excess)	01/01/1974 - 01/01/1975
The Hartford Accident and Indemnity Co.	10HUA43335 (excess)	05/01/1974 - 05/01/1975
	1975-76	
The Hartford Accident and Indemnity Co.	10CA43342E (primary)	01/01/1975 - 01/01/1976
	1978-79	
First State Insurance Co.	908954 (excess)	01/01/1978 – 01/01/1979
	1979-80	
First State Insurance Co.	927616 (excess)	01/01/1979 – 01/01/1980

EXHIBIT D

CAUSE NO. DC-18-11896

BOY SCOUTS OF AMERICA, ALOHA COUNCIL, NEW BIRTH OF FREEDOM COUNCIL, CHICAGO AREA COUNCIL,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
INSURANCE COMPANY OF NORTH AMERICA, CENTURY INDEMNITY COMPANY, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, NATIONAL SURETY CORPORATION,	§	
	§	192ND JUDICIAL DISTRICT
Defendants.	§	

PLAINTIFFS' FIRST AMENDED PETITION & REQUEST FOR DISCLOSURE

Plaintiff Boy Scouts of America ("BSA"), Plaintiff Aloha Council ("AC"), Plaintiff New Birth of Freedom Council ("NBC") and Plaintiff Chicago Area Council ("CAC") (collectively, the "Plaintiffs") hereby file this First Amended Petition against Defendants Insurance Company of North America ("INA"), Century Indemnity Company ("Century Indemnity"), Allianz Global Risks US Insurance Company ("Allianz"), and National Surety Corporation ("National Surety") and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery in this matter is intended to be conducted under Level 2, pursuant to Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff BSA is a congressionally chartered organization authorized to do business in Texas, and has its headquarters at 1325 Walnut Hill Lane, Irving, Texas 75015.

3. Plaintiff Aloha Council is a non-profit corporation organized under the laws of the State of Hawaii, and has its headquarters at 42 Puiwa Road, Honolulu, Hawaii 96817.

4. Plaintiff New Birth of Freedom Council is a non-profit corporation organized under the laws of the State of Pennsylvania, and has its headquarters at 1 Baden Powell Lane, Mechanicsburg, Pennsylvania 17050.

5. Plaintiff Chicago Area Council is a non-profit corporation organized under the laws of the State of Illinois, and has its headquarters at 1218 West Adams Street, Chicago, Illinois 60607.

6. Defendant Insurance Company of North America is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania. Defendant INA has made an appearance in this matter.

7. Defendant Century Indemnity Company is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania. Defendant Century Indemnity has made an appearance in this matter.

8. Defendant Allianz Global Risks US Insurance Company is a corporation organized under the laws of the State of Illinois with its principal place of business in Illinois. Defendant Allianz has made an appearance in this matter.

9. Defendant National Surety Corporation is a corporation organized under the laws of the State of Delaware with its principal place of business in Illinois. Defendant National Surety has made an appearance in this matter.

III. JURISDICTION & VENUE

10. The foregoing allegations are incorporated herein by reference.

11. This Court has jurisdiction over this matter because the amount in controversy, exclusive of interest and costs, is within the jurisdictional limits of the Court.

12. Plaintiff seeks monetary relief over $1,000,000.

13. Venue is proper in Dallas County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred in Dallas County at the time the cause of actions accrued.

IV. FACTUAL BACKGROUND

A. Plaintiffs and Their Insurance Coverage Program

14. The Boy Scouts of America is one of the nation's largest and most prominent values-based youth development organizations, with more than 2.4 million youth participants and nearly one million adult volunteers. BSA was founded in 1910, and since then, more than 110 million Americans have been participants in BSA programs at some time.

15. The BSA program is delivered through local chartering organizations, such as churches, clubs, civic associations, or educational organizations, to implement the scouting program for youth within their communities. Units are led entirely by volunteers appointed by the chartering organization, who are supported by local councils like AC, NBC and CAC.

16. To insure its many activities and local councils throughout the country, Plaintiffs maintain a comprehensive, broad insurance program. From approximately 1962 to present, Plaintiffs purchased several general liability and umbrella and/or excess liability insurance policies.

B. The Lawsuits

(i) The Underlying Lawsuits

17. Over the past several years, Plaintiffs have been subject to numerous claims and lawsuits in which the underlying plaintiffs allege they were sexually abused while a participant in various BSA programs (the "Underlying Lawsuits").

18. The Underlying Lawsuits allege abuse during various and multiple periods of time, in various and multiple geographic locations, and based on the conduct of various alleged perpetrators.

19. The Underlying Lawsuits generally allege personal injury due to sexual abuse and allege, *inter alia*, that BSA and BSA local councils, including AC, NBC, and CAC, were negligent in failing to prevent the sexual abuse.

20. The Underlying Lawsuits contain allegations that underlying plaintiffs suffered and continue to suffer from bodily injury, including but not limited to severe and debilitating physical, mental and emotional injury, pain and suffering, physical and emotional trauma, and present psychological damage.

21. As a result of the Underlying Lawsuits, BSA and BSA local councils have incurred and will continue to incur significant defense fees and costs. Many of the defendants have breached and continue to breach their contractual obligations by failing to pay BSA's and BSA local council's defense fees and costs. This includes BSA's retained national coordinating counsel.

22. In addition, certain insurers have failed to fund settlements reached by BSA with underlying plaintiffs. These insurers either contend improperly that coverage is not available or

challenge the reasonableness of the settlements entered by BSA and BSA local councils; two such circumstances are below.

(ii) The Hacker Lawsuits

23. In December of 2012, certain of the Plaintiffs, among others, were named defendants in a case styled *John Doe, et al. v. BSA*, *et al.*, No. 2012-L-013569 in the Circuit Court of Cook County in Chicago, Illinois (the "Hacker Lawsuit"). The Hacker Lawsuit was originally brought by eighteen plaintiffs, but the Circuit Court bifurcated the Hacker Lawsuit into individual cases for each of the plaintiffs, including as follows: John Doe 2 whose case is styled *John Doe 2 v. BSA*, *et al.*, No. 2017-L-9365 (the "John Doe 2 Lawsuit"); John Doe 3 whose case is styled *John Doe 3 v. BSA*, *et al.*, No. 2017-L-7900 (the "John Doe 3 Lawsuit"); John Doe 4 whose case is styled *John Doe 4 v. BSA*, *et al.*, No. 2018-L-000211 (the "John Doe 4 Lawsuit"); John Doe 6 whose case is styled *John Doe 6 v. BSA*, *et al.*, No. 2018-L-000213 (the "John Doe 6 Lawsuit"); John Doe 7 whose case is styled *John Doe 7 v. BSA*, *et al.*, No. 2018-L-000214 (the "John Doe 7 Lawsuit"); John Doe 9 whose case is styled *John Doe 9 v. BSA*, *et al.*, No. 2018-L-000228 (the "John Doe 9 Lawsuit")

24. The John Doe 2 Lawsuit alleged that John Doe 2 was sexually abused by Thomas Hacker ("Hacker"), an alleged BSA scoutmaster, while he was a member of Troop 1600 in Oak Lawn, Illinois between 1983 and 1986.

25. The John Doe 3 Lawsuit alleged that John Doe 3 was sexually abused by Hacker while he was a member of Troop 1600 in Oak Lawn, Illinois between 1984 and 1986.

26. The John Doe 4 Lawsuit alleged that John Doe 4 was sexually abused by Hacker while he was a member of Troop 1600 in Oak Lawn, Illinois between 1984 and 1986.

27. The John Doe 6 Lawsuit similarly alleged that John Doe 6 was sexually abused by Hacker while he was a member of Troop 1600 in Oak Lawn, Illinois between 1984 and 1986.

28. The John Doe 7 Lawsuit alleged that John Doe 7 was sexually abused by Hacker while he was a member of Troop 1600 in Oak Lawn, Illinois in 1980 to 1982.

29. The John Doe 9 Lawsuit alleged that John Doe 9 was sexually abused by Hacker while he was a member of Troop 1600 in Oak Lawn, Illinois between 1984 and 1987.

30. The John Does 2, 3, 4, 6, 7, and 9 Lawsuits each contain allegations that certain of the Plaintiffs were negligent in not preventing the sexual abuse, even though Hacker admits to manipulating BSA's registration system to continue in scouting after he had supposedly been barred from volunteering by BSA.

31. The John Does 2, 3, 4, 6, 7, and 9 Lawsuits allege that the respective John Does have suffered permanent bodily injury, will continue to be damaged psychologically, and will continue to experience mental anguish, humiliation and emotional and physical pain, suffering and distress.

32. The John Doe 2 Lawsuit was set for trial on July 9, 2018.

33. The John Doe 2 Lawsuit was settled prior to the trial date.

34. The John Doe 3 Lawsuit was set for trial on September 7, 2018.

35. The John Doe 3 Lawsuit was settled prior to the trial date.

36. The John Doe 4 Lawsuit was set for trial on October 12, 2018.

37. The John Doe 4 Lawsuit was settled prior to the trial date.

38. The John Doe 6 Lawsuit was set for trial on November 9, 2018.

39. The John Doe 6 Lawsuit was settled prior to the trial date.

40. The John Doe 7 Lawsuit was set for trial on March 8, 2019.

41. The John Doe 7 Lawsuit was settled prior to the trial date.

42. The John Doe 9 Lawsuit was set for trial on February 8, 2019.

43. The John Doe 9 Lawsuit was settled prior to the trial date.

(iii) The Roe 90 Lawsuit

44. On April 21, 2016, certain of the Plaintiffs, among others, were named defendants in a case styled *John Roe No. 90 v. Boy Scouts of America, Aloha Council et al.*, Case No. 16-1-0764-04 in the Circuit Court of the First Circuit, Hawaii (the "Roe 90 Lawsuit").

45. The Roe 90 Lawsuit alleged John Roe No. 90 ("John Roe") was sexually abused by an individual who was allegedly associated with BSA, either as an alleged troop leader and/or scoutmaster for BSA and/or AC.

46. The Roe 90 Lawsuit alleged the abuse from the individual began in 1980 in Honolulu, Hawaii.

47. The Roe 90 Lawsuit asserted claims against certain of the Plaintiffs for gross negligence, grossly negligent infliction of emotional distress, grossly negligent misrepresentation, and punitive damages.

48. The Roe 90 Lawsuit settled prior to trial.

C. Coverage Disputes with Plaintiffs' Insurers Regarding the Lawsuits

49. The significant increase in sexual abuse claims over the last several years has resulted in an increase in disputes with Plaintiffs' insurers. This action addresses Plaintiffs' disputes with INA and/or Century, National Surety, and Allianz for the following claims:

Underlying Lawsuits	INA/Century	National Surety	Allianz
General	✓ First Encounter Agreement and unpaid defense costs		
John Doe 2 (1983)	✓ Settlement Valuation	✓ Coverage	
John Doe 3 (1984)	✓ Settlement Valuation	✓ Coverage	
John Doe 4 (1984)		✓ Coverage	
John Doe 6 (1984)	✓ Settlement Valuation	✓ Coverage	
John Does 9 (1984)	✓ Settlement Valuation		
John Doe 7 (1980)			✓ Coverage
Roe 90			✓ Coverage

(i) Plaintiffs' Coverage Dispute with INA/Century Indemnity Regarding Application of the First Encounter Agreement to the Underlying Lawsuits

50. Certain INA and Century Indemnity entities issued a significant amount of primary, general-liability policies to Plaintiffs from approximately 1962 through 1996. In certain years, certain INA and Century Indemnity entities also issued several excess/umbrella policies to Plaintiffs (collectively, the "INA Policies").

51. In 1996, Plaintiffs approached INA and Century Indemnity in an effort to minimize disputes regarding coverage. As a result of those discussions, on or about May 24, 1996, Plaintiffs and certain INA/Century Indemnity entities executed the "Settlement Agreement Regarding Sexual Molestation Claims." This settlement agreement is often referred to as the "First Encounter Agreement" ("FEA").

52. Pursuant to the FEA, Plaintiffs and certain INA/Century Indemnity entities agreed that "the date of 'occurrence' pertaining to any Sexual Molestation Claim shall be the date when

the first act of Sexual Molestation took place, even if additional acts of Sexual Molestation or additional Personal Injuries arising therefrom also occurred in subsequent policy periods; and all damages arising out of such additional acts of Sexual Molestation or additional Personal Injuries shall be deemed to have been incurred during the policy year when the first act of Sexual Molestation took place."

53. Plaintiffs and certain INA and Century Indemnity entities were the *only* parties to the FEA,[1] and the terms and conditions of the FEA bind only the parties to the FEA (Plaintiffs, INA and Century Indemnity), and only with regard to the INA Policies. Specifically, the FEA provides that the FEA is "not intended to be, nor shall it be construed as, an interpretation of any [non-INA] policy….[and]it shall not be used…against [Plaintiffs], whether directly or indirectly, to create, prove, or interpret the obligations, if any of INA or Century Indemnity under any [non-INA] policy other than an [INA Policy]."

54. The FEA likewise contains a Merger Clause which provides that the FEA "memorializes and constitutes the entire agreement and understanding between [INA, Century Indemnity, and BSA] and supersedes and replaces all prior negotiations, proposed agreements, express or implied, and agreements whether written or unwritten."

55. Notwithstanding the clear language in the FEA, INA presently is breaching the FEA through at least two contentions: (1) that it may allocate liability to all years of abuse; and (2) that other insurers are bound by the FEA, despite not being signatories.

[1] INA is defined in the FEA as Insurance Company of North America, including its predecessors, successors, affiliates, subsidiaries, its past, present and future assigns, parents, and the officers, directors, employees, and agents of any of them. Century Indemnity is defined in the FEA as Century Indemnity Company, including its predecessors, successors, affiliates, subsidiaries, its past, present and future assigns, parents, and the officers, directors, employees, and agents of any of them. Therefore, the FEA was only between the INA and Century Indemnity entities that existed as of May 24, 1996.

56. First, the FEA specifically provides that the only policy triggered is the policy where "the first act of Sexual Molestation took place." Despite this clear language, INA contends that it may allocate its liability for sexual abuse claims to all of the policy years where abuse occurred. This constitutes a breach of the FEA.

57. Second, notwithstanding the Merger Clause and the terms of the FEA, INA has taken the position that the FEA not only binds the INA Policies, but also applies to any policies underlying an INA Policy. INA contends that any policy underlying an excess INA Policy must be exhausted in accordance with the first encounter rule. As such, INA has refused to indemnify Plaintiffs for certain of the Underlying Lawsuits because INA asserts the underlying policies have not been exhausted in accordance with the protocols of the FEA. This too constitutes a breach of the FEA.

(ii) Plaintiffs' Dispute with INA/Century Indemnity Regarding Defense Fees and Costs Related to the Underlying Lawsuits

58. Certain of the INA Policies require INA to either defend or reimburse Plaintiffs for any defense costs it incurs in connection with the Underlying Lawsuits.

59. Despite this obligation, INA has either refused to fund, has delayed payment, or has only partially funded the defense costs Plaintiffs have incurred in connection with the Underlying Lawsuits.

60. INA has also refused to pay defense costs relating to Plaintiffs' National Coordinating Counsel – Ogletree, Deakins, Nash, Smoak & Stewart, P.C. ("Ogletree"). Ogletree is instrumental in coordinating the defense of all of the Underlying Lawsuits, which as noted above, are located all over the United States. As such, INA is obligated to pay these defense costs.

(iii) Plaintiffs' Coverage Dispute with National Surety and INA/Century Indemnity Regarding the John Doe 2 Lawsuit

61. National Surety issued Blanket Excess Liability Policy No. XLX1484309 to Plaintiffs for the policy period January 1, 1983 to January 1, 1984 (the "NS 1983 Policy").

62. The NS 1983 Policy provides that National Surety "shall indemnify [Plaintiffs] for [Plaintiffs]'s 'ultimate net loss' in excess of [Plaintiffs]'s underlying insurance policies."

63. The NS 1983 Policy defines "ultimate net loss" as "all sums actually paid, or which [Plaintiffs] are legally obligated to pay, as damages in settlement or satisfaction of claims or suits for which insurance is afforded by the [NS 1983 Policy]." INA issued Excess Liability Policy No. XCP-144961 to Plaintiffs for the policy period November 17, 1982 to January 1, 1984 (the "INA Excess 1983 Policy").

64. Because the alleged dates of abuse in the complaint trigger coverage under the NS 1983 Policy and the INA Excess 1983 Policy, Plaintiffs provided timely notice to National Surety and INA of the John Doe 2 Lawsuit.

65. On January 18, 2018, Plaintiffs received a time-sensitive demand from John Doe 2 that would fully and finally resolve the John Doe 2 Lawsuit. Plaintiffs tendered this demand to National Surety and demanded that it fund the settlement up to its remaining limits. National Surety, however, refused to fund the settlement demand prior to the deadline to respond.

66. On June 25, 2018, Plaintiffs received another demand from John Doe 2 that would fully and finally resolve the John Doe 2 Lawsuit. The settlement demand received from John Doe 2 in June of 2018 had increased from John Doe 2's previous January 18, 2018 settlement demand. Plaintiffs again tendered this demand to National Surety and demanded that it fund the settlement up to its remaining limits. National Surety, however, refused to satisfy its

coverage obligations and denied that it had an obligation to fund the settlement with its remaining limits.

67. Faced with this denial, Plaintiffs paid that portion of the settlement demand that would have exhausted the NS 1983 Policy. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and National Surety is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 2 Lawsuit.

68. As the amount of the settlement demand was in excess of the NS 1983 Policy, Plaintiffs tendered the remainder of the demand to INA and demanded that it fund its appropriate portion.

69. INA, however, refused to fund in full the remaining settlement demand, instead only funding a portion of the settlement it deemed appropriate.

70. Plaintiffs, therefore, paid the remainder of the settlement amount that INA improperly refused to pay, thereby settling in full its dispute with John Doe 2, and such amount is due and owing from INA.

(iv) Plaintiffs' Coverage Dispute with National Surety and INA/Century Indemnity Regarding the John Doe 3 Lawsuit

71. National Surety issued Blanket Excess Liability Policy No. XLX1484392 to Plaintiffs for the policy period January 1, 1984 to January 1, 1985 (the "NS 1984 Policy").

72. The NS 1984 Policy provides that National Surety "shall indemnify [Plaintiffs] for [Plaintiffs]'s 'ultimate net loss' in excess of [Plaintiffs]'s underlying insurance policies."

73. The NS 1984 Policy defines "ultimate net loss" as "all sums actually paid, or which [Plaintiffs] are legally obligated to pay, as damages in settlement or satisfaction of claims or suits for which insurance is afforded by the [NS 1984 Policy]." The NS 1984 Policy was excess to INA Policy No. XCP 145365 (the "INA 1984 Policy").

74. Because the alleged dates of abuse in the complaint trigger coverage under the NS 1984 Policy and the INA 1984 Policy, Plaintiffs provided timely notice to National Surety and INA of the John Doe 3 Lawsuit.

75. On January 18, 2018, Plaintiffs received a time-sensitive demand from John Doe 3 that would fully and finally resolve the John Doe 3 Lawsuit. Plaintiffs tendered this demand to National Surety and demanded that, after INA funded its remaining limits under the INA 1984 Policy, National Surety fund the remainder of the settlement. National Surety, however, refused to fund the settlement demand prior to the deadline to respond.

76. On July 23, 2018, Plaintiffs received another demand from John Doe 3 that would fully and finally resolve the John Doe 3 Lawsuits. The settlement demands received in July of 2018 had increased from the previous January 18, 2018 settlement demand. Plaintiffs again tendered these demands to INA and National Surety and demanded INA and National Surety fund the settlement.

77. On August 2, 2018, INA agreed to tender its remaining limits under the INA 1984 Policy to contribute its portion of the John Doe 3 settlement. National Surety, however, refused to satisfy its coverage obligations and denied it had an obligation to fund the remainder of the John Doe 3 settlement.

78. Faced with this denial, Plaintiffs paid the remainder of the John Doe 3 settlement demand. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and National Surety is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 3 Lawsuit.

79. Although INA agreed to tender its remaining limits under the INA 1984 Policy, INA disputed the reasonableness of the John Doe 3 settlement amount when INA became

obligated to pay for other claimants alleging abuse in 1984 under the INA Policy No. XCP 145366 (the "INA 1984 Excess Policy"), which is excess to the NS 1984 Policy.

(v) Plaintiffs' Coverage Dispute with National Surety and INA/Century Regarding the John Doe 4 Lawsuit

80. Because the alleged dates of abuse in the complaint trigger coverage under the NS 1984 Policy, Plaintiffs provided timely notice to National Surety of the John Doe 4 Lawsuit.

81. On January 18, 2018, Plaintiffs received a time-sensitive demand from John Doe 4 that would fully and finally resolve the John Doe 4 Lawsuit. Plaintiffs tendered this demand to National Surety and demanded that it fund the settlement. National Surety, however, refused to fund the settlement demand prior to the deadline to respond.

82. On August 10, 2018, Plaintiffs received another demand from John Doe 4 that would fully and finally resolve the John Doe 4 Lawsuit. The settlement demand received in August of 2018 had increased from the previous January 18, 2018 settlement demand. Plaintiffs again tendered this demand to National Surety and demanded National Surety fund the settlement.

83. National Surety, however, refused to satisfy its coverage obligations and denied it had an obligation to fund the John Doe 4 settlement.

84. Faced with this denial, Plaintiffs paid the John Doe 4 settlement demand. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and National Surety is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 4 Lawsuit.

85. Although INA did not owe any amounts for the John Doe 4 Lawsuit under the INA 1984 Policy, INA disputed the reasonableness of the John Doe 4 settlement amount when INA became obligated to pay for other claimants alleging abuse in 1984 under the INA Policy No. XCP 145366 (the "INA 1984 Excess Policy"), which is excess to the NS 1984 Policy.

(vi) Plaintiffs' Coverage Dispute with National Surety and INA/Century Indemnity Regarding the John Doe 6 Lawsuit

86. Because the alleged dates of abuse in the complaint trigger coverage under the NS 1984 Policy, Plaintiffs provided timely notice to National Surety of the John Doe 6 Lawsuit.

87. On January 18, 2018, Plaintiffs received a time-sensitive demand from John Doe 6 that would fully and finally resolve the John Doe 6 Lawsuit. Plaintiffs tendered this demand to National Surety and demanded that it fund the settlement under the NS 1984 Policy. National Surety, however, refused to fund the settlement demand prior to the deadline to respond.

88. On August 10, 2018, Plaintiffs received another demand from John Doe 6 that would fully and finally resolve the John Doe 6 Lawsuit. The settlement demand received in August of 2018 had increased from the previous January 18, 2018 settlement demand. Plaintiffs again tendered this demand to National Surety and demanded National Surety fund the settlement.

89. National Surety, however, refused to satisfy its coverage obligations and denied it had an obligation to fund the John Doe 6 settlement.

90. Faced with this denial, Plaintiffs paid the John Doe 6 settlement demand, which exhausted the limits of the NS 1984 Policy. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and National Surety is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 6 Lawsuit.

91. The INA 1984 Excess Policy is excess to the NS 1984 Policy.

92. Once Plaintiffs paid the settlement amounts owing under the NS 1984 Policy (e.g., the settlement amounts for John Does 3, 4, and 6), the NS 1984 Policy was exhausted for these Hacker Claimants and the INA 1984 Excess Policy was implicated.

93. Because the alleged dates of abuse in the complaint trigger coverage under the INA 1984 Excess Policy, Plaintiffs provided timely notice to INA of the John Doe 6 Lawsuit.

94. INA agreed to tender a portion of the John Doe 6 settlement demand mentioned above, but not all of the amounts owed, and contends that the settlement amount for John Doe 6 was not reasonable. Thus, INA is in breach of its obligations as a result of its failure to fully fund the John Doe 6 settlement, and INA improperly disputes whether it must provide additional coverage under the INA 1984 Excess Policy for the remaining John Doe Claimants alleging abuse in 1984 despite the fact that the INA 1984 Excess Policy's limits are nowhere close to exhausted.

(vii) Plaintiffs' Coverage Dispute with INA/Century Regarding John Doe 9 Lawsuit

95. Because the alleged dates of abuse in the complaint trigger coverage under the INA 1984 Excess Policy, Plaintiffs provided timely notice to INA of the John Doe 9 Lawsuit.

96. On January 18, 2018, Plaintiffs received a time-sensitive demand from John Doe 9 that would fully and finally resolve the John Doe 9 Lawsuit. Plaintiffs tendered this demand to INA and demanded that it fund the settlement under the INA 1984 Excess Policy. INA, however, refused to fund the settlement demand prior to the deadline to respond.

97. On August 10, 2018, Plaintiffs received another demand from John Doe 9 that would fully and finally resolve the John Doe 9 Lawsuit. The settlement demand received in August of 2018 had increased from the previous January 18, 2018 settlement demand.

98. Plaintiffs responded to the August 10, 2018 demand on September 7, 2018, by countering John Doe 9's demand.

99. On January 10, 2019, John Doe 9 responded to Plaintiffs by making another demand to fully and finally settle the claim. Plaintiffs demanded that Century fund the full settlement amount requested by John Doe 9 under the INA 1984 Excess Policy.

100. INA, however, refused to satisfy its coverage obligations and denied that it had an obligation to fund the John Doe 9 settlement.

101. Faced with this denial, Plaintiffs paid the John Doe 9 settlement demand. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and INA is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 9 Lawsuit.

(viii) Plaintiffs' Coverage Dispute with Allianz Regarding John Doe 7 Lawsuit

102. Allianz issued Umbrella Liability Policy No. UMB 599346 to Plaintiffs for the time period January 1, 1980 to January 1, 1981 (the "Allianz Policy").

103. The Allianz Policy provides coverage for "damages on account of . . . personal injur[y] . . . caused by or arising out of each occurrence anywhere." The Allianz Policy defines an "occurrence" as "an accident, including injurious exposure to conditions, which results during the policy period, in personal injury . . . neither expected nor intended from the standpoint of the Insured."

104. Because John Doe 7 alleged physical abuse during the Allianz Policy period, Plaintiffs provided timely notice of the John Doe 7 Lawsuit to Allianz.

105. Allianz declined coverage for the John Doe 7 Lawsuit, asserting that John Doe 7's alleged abuse did not occur in 1980 but rather began in 1981.

106. Plaintiffs provided Allianz with a substantial amount of evidence establishing that John Doe 7's abuse occurred in 1980.

107. Indeed, after Plaintiffs provided Allianz with supplemental information, John Doe 7 amended his complaint to note that he first joined Troop 1600 in 1980 and was first abused in 1980.

108. Despite the great weight of the evidence supporting the conclusion that John Doe 7 was first abused in 1980, Allianz maintained that John Doe 7's abuse occurred in 1981 and refused to contribute a meaningful amount to settle the John Doe 7 Lawsuit.

109. On January 18, 2018, Plaintiffs received an offer to fully and finally settle the John Doe 7 Lawsuit. On March 26, 2018, Plaintiffs' primary insurer, INA, tendered its limits under its general liability policy to effectuate a settlement. Allianz, however, refused to fund in full the remainder of the proposed settlement amount, despite Plaintiffs' demand that Allianz tender its limits.

110. On August 10, 2018, Plaintiffs received another settlement demand from John Doe 7. Plaintiffs demanded that Allianz tender its limits to settle the John Doe 7 Lawsuit, but Allianz once again refused.

111. On November 14, 2018, Plaintiffs received a settlement demand from John Doe 7 that would fully and finally settle the John Doe 7 Lawsuit. Again, Plaintiffs tendered the settlement demand to Allianz, but Allianz refused to fund in full the settlement demand, maintaining that John Doe 7's abuse did not occur in 1980.

112. On January 10, 2019, Plaintiffs received a final settlement demand from John Doe 7. Plaintiffs tendered the settlement demand to Allianz, but Allianz refused to fund in full the settlement demand, maintaining that John Doe 7's abuse did not occur in 1980, notwithstanding that INA tendered its limits under its primary general liability policy.

113. As of the date of the January 10, 2019 demand letter, the John Doe 7 Lawsuit was set for trial on March 8, 2019. Faced with the prospect of trial and Allianz's refusal to pay amounts owed under its policy, Plaintiffs paid the John Doe 7 settlement demand of January 10, 2019. The settlement demand is a sum that Plaintiffs are "legally obligated to pay" and Allianz is obligated to indemnify Plaintiffs for the sums used to settle the John Doe 7 Lawsuit.

(ix) Plaintiffs' Coverage Dispute with Allianz Regarding the Roe 90 Lawsuit

114. Roe 90 alleged physical abuse during the Allianz Policy period and Plaintiffs provided timely notice of the Roe 90 Lawsuit to Allianz.

115. In September 2017, Plaintiffs received an offer to fully and finally settle the Roe 90 Lawsuit. Plaintiffs' primary insurer, INA, tendered its limits under its general liability policy to effectuate a settlement. And while the remainder of the settlement was well within the Allianz Policy's limits of liability, Allianz refused to fund in full the remainder of the proposed settlement amount.

116. On January 18, 2018, Plaintiffs again received a settlement demand from Roe 90 that would fully and finally settle the Roe 90 Lawsuit. Again, Plaintiffs tendered the settlement demand to Allianz, but Allianz refused to fund in full the settlement demand, instead only funding a portion of the settlement it deemed appropriate.

117. Plaintiffs, therefore, paid the remainder of the settlement amount that Allianz improperly refused to pay, thereby settling in full its dispute with Roe 90 and such amount is due and owing from Allianz.

V. CAUSES OF ACTION

COUNT ONE
Declaratory Judgment Against INA Regarding the First Encounter Agreement

118. The foregoing allegations are incorporated herein by reference.

119. Plaintiffs bring this action pursuant to TEX. CIV. PRAC. & REM. CODE §37.004.

120. Plaintiffs seek a declaration that the (1) the FEA bars INA and Century Indemnity from allocating liability for the Underlying Lawsuits to insurance policies for each year of abuse; and (2) the terms and conditions of the FEA do not apply to other policies which are not subject to the FEA.

121. An actual and justiciable controversy exists between Plaintiffs, INA and Century Indemnity regarding the rights and obligations of Plaintiffs, INA and Century Indemnity and each parties' obligations under the FEA, and a judicial declaration is necessary to determine Plaintiffs', INA's and Century Indemnity's obligations under the FEA.

COUNT TWO
Breach of Contract Against INA Regarding the Failure to Pay Defense Costs

122. The foregoing allegations are incorporated herein by reference.

123. The INA Policies are each valid and enforceable contracts.

124. Plaintiffs have standing to pursue claims under the INA Policies.

125. Plaintiffs have satisfied all conditions precedent under the INA Policies.

126. The Underlying Lawsuits allege bodily injury/personal injury occurring in whole or in part during the policy period of the INA Policies.

127. The terms of the INA Policies unambiguously require INA to defend or reimburse Plaintiffs for any defense costs incurred in connection with the Underlying Lawsuits.

128. Alternatively, the terms of the INA Policies are ambiguous and must be construed in favor of coverage for Plaintiffs.

129. INA has breached its contractual obligations under the INA Policies by, among other things, refusing and failing to defend and/or delaying payment and/or refusing to pay

Plaintiffs' defense costs in connection with the Underlying Lawsuits in accordance with the express terms of the INA Policies.

130. As a result of INA's breach, Plaintiffs have sustained substantial damages.

COUNT THREE

Breach of Contract Against National Surety and INA Regarding the John Doe 2 Settlement

131. The foregoing allegations are incorporated herein by reference.

132. The NS 1983 Policy and the INA Excess 1983 Policy are each valid and enforceable contracts.

133. Plaintiffs have standing to pursue claims under the NS 1983 Policy and the INA Excess 1983 Policy.

134. Plaintiffs have satisfied all conditions precedent under the NS 1983 Policy and the INA Excess 1983 Policy.

135. The John Doe 2 Lawsuit alleges bodily injury/personal injury occurring in whole or in part during the policy periods of the NS 1983 Policy and the INA Excess 1983 Policy.

136. The terms of the NS 1983 Policy and INA Excess 1983 Policy unambiguously require National Surety and INA to indemnify Plaintiffs in the John Doe 2 Lawsuit.

137. Alternatively, the terms of the NS 1983 Policy and INA Excess 1983 Policy are ambiguous and must be construed in favor of coverage for Plaintiffs.

138. National Surety and INA have breached their contractual obligations under their respective policies by, among other things, refusing and failing to indemnify Plaintiffs in the John Doe 2 Lawsuit in accordance with the express terms of the NS 1983 Policy and INA Excess 1983 Policy.

139. As a result of National Surety's and INA's breach, Plaintiffs have sustained substantial damages.

COUNT FOUR
Breach of Contract Against National Surety Regarding the John Doe 3, 4, and 6 Settlements

140. The foregoing allegations are incorporated herein by reference.

141. The NS 1984 Policy is a valid and enforceable contract.

142. Plaintiffs have standing to pursue claims under the NS 1984 Policy.

143. Plaintiffs have satisfied all conditions precedent under the NS 1984 Policy.

144. The John Doe 3, 4, and 6 Lawsuits each allege bodily injury/personal injury occurring in whole or in part during the policy periods of the NS 1984 Policy. The terms of the NS 1984 Policy unambiguously require National Surety to indemnify Plaintiffs in the John Doe 3, 4, and 6 Lawsuits. Alternatively, the terms of the NS 1984 Policy are ambiguous and must be construed in favor of coverage for Plaintiffs.

145. National Surety has breached its contractual obligations under the NS 1984 Policy by, among other things, refusing and failing to indemnify Plaintiffs in the John Doe 3, 4, and 6 Lawsuits in accordance with the express terms of the NS 1984 Policy.

146. As a result of National Surety's breach, Plaintiffs have sustained substantial damages.

COUNT FIVE
Breach of Contract Against INA Regarding Exhaustion of the NS 1984 Policy Based on the Reasonable Settlement Values of John Doe 3 and John Doe 4

147. The foregoing allegations are incorporated herein by reference.

148. The INA 1984 Excess Policy is a valid and enforceable contract.

149. Plaintiffs have standing to pursue claims under the INA 1984 Excess Policy.

150. Plaintiffs have satisfied all conditions precedent under the INA 1984 Excess Policy.

151. The John Doe 3 and John Doe 4 Lawsuits each alleged bodily injury/personal injury occurring in whole or in part during the policy periods of the NS 1984 Policy and the INA 1984 Excess Policy.

152. The settlements reached with John Doe 3 and John Doe 4 were reasonable and INA is in breach of its contractual obligations by failing to recognize exhaustion of the NS 1984 Policy.

153. As a result of National Surety's breach, Plaintiffs have sustained substantial damages.

COUNT SIX
Breach of Contract Against INA Regarding the John Doe 6 and John Doe 9 Settlements

154. The foregoing allegations are incorporated herein by reference.

155. The INA 1984 Excess Policy is a valid and enforceable contract.

156. Plaintiffs have standing to pursue claims under the INA 1984 Excess Policy.

157. Plaintiffs have satisfied all conditions precedent under the INA 1984 Excess Policy.

158. The John Doe 6 and John Doe 9 Lawsuits alleged bodily injury/personal injury occurring in whole or in part during the INA 1984 Excess Policy. The terms of the INA 1984 Excess Policy unambiguously requires INA to indemnify Plaintiffs for the John Doe 6 and John Doe 9 settlements, in full. Alternatively, the terms of the INA 1984 Excess Policy are ambiguous and must be construed in favor of coverage for Plaintiffs.

159. The settlement reached with John Doe 6 and John Doe 9 are reasonable and INA has breached its contractual obligations under the INA 1984 Excess Policy by, among other things, refusing and failing to indemnify Plaintiffs in full for the John Doe 6 and John Doe 9 settlements in accordance with the express terms of the INA 1984 Excess Policy.

160. As a result of INA's breach, Plaintiffs have sustained substantial damages.

COUNT SEVEN
Breach of Contract Against Allianz Regarding the John Doe 7 Settlement

161. The foregoing allegations are incorporated herein by reference.

162. The Allianz Policy is a valid and enforceable contract.

163. Plaintiffs have standing to pursue claims under the Allianz Policy.

164. Plaintiffs have satisfied all conditions precedent under the Allianz Policy.

165. The John Doe 7 Lawsuit alleges bodily injury/personal injury occurring during the policy period of the Allianz Policy.

166. The terms of the Allianz Policy unambiguously require Allianz to indemnify Plaintiffs for the John Doe 7 settlement.

167. Alternatively, the terms of the Allianz Policy are ambiguous and must be construed in favor of coverage for Plaintiffs.

168. Allianz has breached its contractual obligations under the Allianz Policy by, among other things, refusing and failing to indemnify Plaintiffs in accordance with the express terms of the Allianz Policy.

169. As a result of Allianz's breach, Plaintiffs have sustained substantial damages.

COUNT EIGHT
Breach of Contract Against Allianz Regarding the Roe 90 Settlement

170. The foregoing allegations are incorporated herein by reference.

171. The Allianz Policy is a valid and enforceable contract.

172. Plaintiffs have standing to pursue claims under the Allianz Policy.

173. Plaintiffs have satisfied all conditions precedent under the Allianz Policy.

174. The Roe 90 Lawsuit alleges bodily injury/personal injury occurring in whole or in part during the policy period of the Allianz Policy.

175. The terms of the Allianz Policy unambiguously require Allianz to indemnify Plaintiffs for the Roe 90 settlement.

176. Alternatively, the terms of the Allianz Policy are ambiguous and must be construed in favor of coverage for Plaintiffs.

177. Allianz has breached its contractual obligations under the Allianz Policy by, among other things, refusing and failing to indemnify Plaintiffs in accordance with the express terms of the Allianz Policy.

178. As a result of Allianz's breach, Plaintiffs have sustained substantial damages.

COUNT NINE
Violations of Chapter 542 of the Texas Insurance Code Against INA

179. The foregoing allegations are incorporated herein by reference.

180. Plaintiffs' claim for coverage includes a first-party claim.

181. INA's delays and/or denials of coverage violate the Prompt Payment of Claims statute in Chapter 542 of the Texas Insurance Code.

182. Chapter 542 provides that "if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim,. . . the insurer shall pay damages and other items as provided by Section 542.060." TEX. INS. CODE § 542.058.

183. INA has received all items, statements and forms reasonably requested and required under Section 542.055 or, alternatively, in light of INA's denial of coverage, Plaintiffs were not required to submit such items, statements and forms.

184. INA has nonetheless refused to pay and/or delayed payment of amounts that are clearly covered under the INA Policies.

185. In refusing, failing and/or delaying payment of Plaintiffs' defense costs in connection with the Underlying Lawsuits, INA has violated Chapter 542 of the Texas Insurance Code.

186. As a consequence of its statutory violation, INA is liable to pay Plaintiffs, in addition to the amount of its insurance claim, interest on the amount of its claim at the rate of 18 percent per annum, together with reasonable attorneys' fees. *See* TEX. INS. CODE Sec. 542.060.

COUNT TEN
Chapter 541 of the Texas Insurance Code Claim
Against INA Related to John Doe 2

187. The foregoing allegations are incorporated herein by reference.

188. Plaintiffs have provided the requisite notice under Section 541 of the Texas Insurance Code.

189. INA has engaged in unfair or deceptive acts or practices as defined by Section 541.061 of the Texas Insurance Code.

190. INA has violated Section 541.060(1) of the Texas Insurance Cody by misrepresenting to Plaintiffs a material fact or policy provision relating to coverage.

191. INA has violated Section 541.060(2) of the Texas Insurance Code by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the John Doe 2 Lawsuit with respect to which Plaintiffs' liability had become reasonably clear.

192. INA has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay the John Doe 2 Lawsuit without conducting a reasonable investigation with respect to those claims.

193. As a result of INA's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount of damages and expenses, including attorney's fees reasonably incurred to INA, separately outside this petition.

194. INA knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT ELEVEN
Notice of Intent to Pursue Claim Under Chapter 541 of the Texas Insurance Code Against INA Related to John Doe 6 and John Doe 9

195. The foregoing allegations are incorporated herein by reference.

196. Pursuant to § 541.154 of the Texas Insurance Code, Plaintiffs hereby provide notice of their intent to pursue a claim against INA under § 541.151 of the Texas Insurance Code by amending this suit after 60 days.

197. By, among other things, taking the actions outlined in ¶¶ 94-100, INA has engaged in unfair or deceptive acts or practices as defined by Section 541.060(1) of the Texas Insurance Code.

198. INA has violated Section 541.060(2) of the Texas Insurance Code by failing to acknowledge the reasonable settlements values for John Doe 3 and John Doe 4, and by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the John Doe 6 and John Doe 9 Lawsuits with respect to which Plaintiffs' liability had become reasonably clear.

199. INA has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

200. As a result of INA's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount of damages

and expenses, including attorney's fees reasonably incurred to INA, separately outside this petition.

201. INA knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT TWELVE
Chapter 541 of the Texas Insurance Code Claim Against National Surety Related to John Does 2 and 3

202. The foregoing allegations are incorporated herein by reference.

203. Plaintiffs have provided the requisite notice under Section 541 of the Texas Insurance Code.

204. National Surety has engaged in unfair or deceptive acts or practices as defined by Section 541.061 of the Texas Insurance Code.

205. National Surety has violated Section 541.060(1) of the Texas Insurance Cody by misrepresenting to Plaintiffs a material fact or policy provision relating to coverage.

206. National Surety has violated Section 541.060(2) of the Texas Insurance Code by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the John Doe 2 and 3 Lawsuits with respect to which Plaintiffs' liability had become reasonably clear.

207. National Surety has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay claims associated with the John Doe 2 and 3 Lawsuits without conducting a reasonable investigation with respect to those claims.

208. As a result of National Surety's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount

of damages and expenses, including attorney's fees reasonably incurred to National Surety, separately outside this petition.

209. National Surety knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT THIRTEEN
Notice of Intent to Pursue Claim Under Chapter 541 of the Texas Insurance Code Against National Surety Related to John Doe 4 and 6

210. The foregoing allegations are incorporated herein by reference.

211. Pursuant to § 541.154 of the Texas Insurance Code, Plaintiffs hereby provide notice of their intent to pursue a claim against National Surety under § 541.151 of the Texas Insurance Code by amending this suit after 60 days.

212. By, among other things, taking the actions outlined in ¶¶ 80-93, National Surety has engaged in unfair or deceptive acts or practices as defined by Section 541.060(1) of the Texas Insurance Code.

213. National Surety has violated Section 541.060(2) of the Texas Insurance Code by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the John Does 4 and 6 Lawsuits with respect to which Plaintiffs' liability had become reasonably clear.

214. National Surety has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

215. As a result of National Surety's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount of damages and expenses, including attorney's fees reasonably incurred to National Surety, separately outside this petition.

216. National Surety knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT FOURTEEN
Chapter 541 of the Texas Insurance Code Claim Against Allianz Related to the Roe Lawsuit

217. The foregoing allegations are incorporated herein by reference.

218. Plaintiffs have provided the requisite notice under Section 541 of the Texas Insurance Code.

219. Allianz has engaged in unfair or deceptive acts or practices as defined by Section 541.060(1) of the Texas Insurance Code.

220. Allianz has violated Section 541.060(2) of the Texas Insurance Code by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the Roe Lawsuit with respect to which Plaintiffs' liability had become reasonably clear.

221. Allianz has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

222. As a result of Allianz's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount of damages and expenses, including attorney's fees reasonably incurred to Allianz, separately outside this petition.

223. Allianz knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT FIFTEEN
Notice of Intent to Pursue Claim Under Chapter 541 of the Texas Insurance Code Against Allianz Related to John Doe 7

224. The foregoing allegations are incorporated herein by reference.

225. Pursuant to § 541.154 of the Texas Insurance Code, Plaintiffs hereby provide notice of their intent to pursue a claim against Allianz under § 541.151 of the Texas Insurance Code by amending this suit after 60 days.

226. By, among other things, taking the actions outlined in ¶¶ 101-112, Allianz has engaged in unfair or deceptive acts or practices as defined by Section 541.060(1) of the Texas Insurance Code.

227. Allianz has violated Section 541.060(2) of the Texas Insurance Code by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the John Doe 7 Lawsuit with respect to which Plaintiffs' liability had become reasonably clear.

228. Allianz has violated Section 541.060(7) of the Texas Insurance Code by refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

229. As a result of Allianz's conduct, Plaintiffs have suffered substantial damages. The amounts of these damages are confidential, but Plaintiffs will provide the amount of damages and expenses, including attorney's fees reasonably incurred to Allianz, separately outside this petition.

230. Allianz knowingly committed one or more of the violations referenced above, and thus Plaintiffs seek, in addition to actual damages, court costs, and attorneys' fees, an amount not to exceed three times the amount of actual damages.

COUNT SIXTEEN
Attorneys' Fees (All Defendants)

231. The foregoing allegations are incorporated herein by reference.

232. Due to the actions of the Defendants, Plaintiffs have been required to retain the services of the law firm of Haynes and Boone, LLP of Dallas, Texas. Plaintiffs have agreed to pay Haynes and Boone, LLP a reasonable fee for its services necessarily rendered and to be rendered in this action.

233. Pursuant to § 37.009 of the Texas Civil Practices & Remedies Code, Plaintiffs are entitled to an award of reasonable and necessary attorneys' fees against the Defendants in an amount to be established at trial. Pursuant to § 38.001 of the Texas Civil Practices & Remedies Code and Chapter 541 of the Texas Insurance Code, Plaintiffs are also entitled to an award of reasonable attorneys' fees against National Surety, Allianz and INA. Plaintiffs are likewise entitled to an award of reasonable attorneys' fees under Chapter 542 of the Texas Insurance Code against INA.

VI. JURY DEMAND

234. Plaintiffs hereby request a jury trial pursuant to TEX. R. CIV. P. 216(a).

VII. REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2

VIII. PRAYER

WHEREFORE, Plaintiffs respectfully pray that this Court grant them the following relief:

a. Declaratory Judgment that (1) the FEA bars INA and Century Indemnity from allocating liability for the Underlying Lawsuits to insurance policies for each year of abuse; and (2) the terms and conditions of the FEA do not apply to other policies which are not subject to the FEA;

b. Judgement awarding Plaintiffs all damages sustained as a result of INA's breach of contract through its failure to pay defense costs due and owing under INA's and Century's policies;

c. Judgment awarding Plaintiffs all damages sustained as a result of National Surety's breach of contract with respect to the John Doe 2, 3, 4, and 6 settlements;

d. Judgment awarding Plaintiffs all damages sustained as a result of INA's breach of contract with respect to (1) the reasonable settlement values of John Doe 3, 4, and 6; and (2) INA's failure to pay the John Doe 9 settlement;

e. Judgment awarding Plaintiffs all damages sustained as a result of Allianz's breach of contract with respect to the John Doe 7 and Roe 90 settlements;

f. Judgment awarding Plaintiffs actual and treble damages resulting from INA's violations of Chapters 541 and/or 542 of the Texas Insurance Code;

g. Judgment awarding Plaintiffs actual and treble damages resulting from National Surety's violations of Chapter 541 of the Texas Insurance Code;

h. Judgment awarding Plaintiffs actual and treble damages resulting from Allianz's violations of Chapter 541 of the Texas Insurance Code;

i. Judgment awarding Plaintiffs all reasonable and necessary attorneys' fees and expenses incurred in this matter against all defendants under Chapter 37 of the Texas Civil Practice & Remedies, Chapter 38 of the Texas Civil Practice & Remedies Code, Chapter 542, and/or Chapters 541 of the Texas Insurance Code;

j. Judgment awarding Plaintiffs pre-judgment and post-judgment interest as allowed by law;

k. Judgment awarding Plaintiffs all costs of court; and

l. Any and all other relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s/ *Ernest Martin, Jr.*
Ernest Martin, Jr.
State Bar No. 13063300
ernest.martin@haynesboone.com
Adrian Azer
State Bar No. 24048332
adrian.azer@haynesboone.com
Carla Green
State Bar No. 24097762
carla.green@haynesboone.com
Emily Buchanan
State Bar No. 24101568
Emily.buchanan@haynesboone.com
HAYNES AND BOONE, L.L.P.
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5000
Telecopier: (214) 651-5940

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served to the following by electronic service on April 5, 2019:

Attorneys for Defendant Nat'l Surety Corporation

Christopher W. Martin
William Edward McMichael
Martin, Disiere, Jefferson & Wisdom, LLP
808 Travis Street, 20th Floor
Houston, Texas 77002
martin@mdjwlaw.com
mcmichael@mdjwlaw.com

and

Todd C. Jacobs
David A. Caves
Bradley Riley Jacobs PC
320 W. Ohio Street, Suite 3W
Chicago, Illinois 60654
tjacobs@bradleyriley.com
dcaves@bradleyriley.com

Attorneys For Defendant Allianz Global Risks Us Insurance Company

Nicole Figueroa
Calli Turner
McDermott Will & Emery LLP
2501 N. Harwood, Suite 1900
Dallas, Texas 75201
nfigueroa@mwe.com
cturner@mwe.com

and

Margaret Warner
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, NW
Washington, DC 20001-1531
mwarner@mwe.com

Attorneys For Defendant Century Indemnity Company

Stephen O. Venable
Charles B. Walther
Walker Wilcox Matousek, LLP
1001 McKinney Street, Suite 2000
Houston, Texas 77002
svenable@wwmlawyers.com
bwalther@wwmlawyers.com

and

Christopher A. Wadley
Walker Wilcox Matousek, LLP
One North Franklin Street
Suite 300
Chicago, IL 60606
cwadley@wwmlawyers.com

/s/ Ernest Martin, Jr.
Ernest Martin, Jr.

EXHIBIT E

Sidley Currently Represents a Subsidiary or Affiliate[1]	Party to the Illinois Coverage Action[2]	Party to the first Texas Coverage Action[3]	Party to the second Texas Coverage Action[4]
Allianz Global Risks US Insurance Company	Yes		Yes
Columbia Casualty Company	Yes		
First State Insurance Company	Yes	Yes	
Harbor Insurance Company	Yes		
Hartford Accident and Indemnity Company		Yes	
Insurance Company of North America	Yes		Yes
Landmark Insurance Company	Yes		
Lexington Insurance Company	Yes		
National Union Fire Insurance Company Of Pittsburgh, PA	Yes		
Twin City Fire Insurance Company	Yes		

1 Listed in the Declaration of Jessica C. K. Boelter as "Active Unrelated Representations." Application Ex. B Boelter Decl. at Schedule 2(i), ECF No. 204.

2 *Nat'l Surety Corp. v. Boy Scouts of Am.*, No. 2017-CH-14975 (Ill. Cir. Ct., Chancery Div. filed Nov. 9, 2017).

3 *Boy Scouts of Am. v. The Hartford Accident and Indemnity Co.*, No. DC-18-07313 (Tex. Dist. Ct. filed June 5, 2018).

4 *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018).

EXHIBIT F

CAUSE NO. DC-18-11896

BOY SCOUTS OF AMERICA, ALOHA COUNCIL, NEW BIRTH OF FREEDOM COUNCIL, CHICAGO AREA COUNCIL	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
INSURANCE COMPANY OF NORTH AMERICA, CENTURY INDEMNITY COMPANY, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, NATIONAL SURETY CORPORATION	§	
Defendants.	§	192ND JUDICIAL DISTRICT

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS INSURANCE COMPANY OF NORTH AMERICA AND CENTURY INDEMNITY COMPANY

TO: Defendants Insurance Company of North America and Century Indemnity Company by and through their attorneys of record, Stephen O. Venable, Charles B. Walther, Walker Wilcox Matousek, LLP, 1001 McKinney Street, Suite 2000, Houston, Texas 77002

Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Plaintiffs Boy Scouts of America ("BSA"), Aloha Council ("AC"), New Birth of Freedom Council ("NBC"), and Chicago Area Counsel ("CAC") (collectively, "Plaintiffs") hereby serve the following First Set of Requests for Production to Defendants Insurance Company of North America and Century Indemnity Company (collectively, "Defendants" or "Century").

I. DEFINITIONS

1. "Communication" means every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise), whether oral or written, including, but not limited to, conversations, meetings, discussions, telephone calls, telegrams, telecopies, emails, voicemails, telexes, seminars, conferences, writings, letters,

messages, notes, or memoranda, and other Documents that contain or reflect such transmission of information.

2. "Concern," "concerning," "referring to," "regarding," "reflecting" and "relating" are interchangeable, and mean about, including, regarding, referencing, involving, concerning, connected with, pertaining to, constituting, summarizing, reflecting, supporting, containing, analyzing, considering, explaining, discussing, describing, demonstrating, prepared for, resulting from, mentioning, commenting on, embodying, evaluating, analyzing, and/or constituting, whether directly or indirectly, explicitly or implicitly, or in whole or in part, a stated subject matter.

3. The terms "Document" and "Documents" are used in the broadest sense possible and include but are not limited to:

a. all material in written or printed format of any kind, such as letters, correspondence, facsimiles, memoranda, records, telegrams, teletypes cablegrams, reports, notes, books, papers, minutes, schedules, tabulations, computations, lists, ledgers, journals, purchase orders, contracts, invoices, agreements, vouchers, accounts, checks, affidavits, diaries, calendars, desk pads, drawings, sketches, charts, graphs, or any other written or printed matter or tangible thing on which any words, phrases or symbols are affixed;

b. all electronic or digital information of any kind (translated, if necessary, into reasonably usable form) contained in any kind of electronic or digital format, such as (1) electronic mail or "e-mail"; (2) anything maintained on any kind of USB drive, computer disk, diskette, floppy disk, "zip" file, or CD-ROM disk; (3) anything maintained in an office or home personal computer or laptop computer; (4) anything maintained on any kind of server or mainframe system, or in any database; (5) any word processing, Excel, spreadsheet, or similar Documents; (6) voice mail stored electronically; (7) calendar programs and similar devices; (8) digital pictures, video, and audio; (9) any information maintained on any internet or intranet sites; and (10) any other possible sources of active or inactive electronic or digital data or information;

c. all sound or picture recordings of any kind, such as tape recordings, photographs, videotapes, photo stats, motion pictures, or slides; and

d. copies or drafts of any such Documents referred to above, including, but not limited to, for electronic or digital information, any kind of data that has been archived, backed-up, residing on obsolete hardware, or is information that is "residual" or otherwise may have been "deleted" by command but is or may be present or residing in any way within the computer or retrievable in any way.

This includes, but is not limited to, e-mail and other data or information that exists in electronic or magnetic form as identified by Rule 196.4.

4. "Employee" means any former or present employee, officer, agent, representative, consultant, office, committee, department, division, or group within or retained by You.

5. "First Encounter Agreement" means the Settlement Agreement Regarding Sexual Molestation Claims executed between Plaintiffs and certain INA/Century entities on or about May 24, 1996.

6. "Hacker Lawsuits" means the case styled *John Doe, et al. v. BSA*, *et al.*, No. 2012-L-013569 and subsequent separate actions in the Circuit Court of Cook County in Chicago, Illinois.

7. "Insured" means an assured or insured under any Policy.

8. "Person" means natural persons or individuals, corporations, limited liability companies, partnerships, professional corporations or associations, governments or agencies thereof, quasi-public entities, proprietorships, joint ventures, trusts, estates, and all other forms of legal entities.

9. "Petition" means Plaintiffs' Original Petition filed in the 192nd Judicial District, District Court of Dallas County, Texas, Cause No. DC-18-11896.

10. "Policy" means an insurance policy or portion of an insurance policy that affords coverage for an insured's liability for, among other things, personal injury, property damage, bodily injury, and commercial liability. This definition includes, but is not limited to, any policy

designated as a liability policy, general liability policy, "primary" liability policy, "excess" liability policy, "umbrella" policy, "follow form" policy, "third-party" policy, "products liability" policy, and any part(s) of any such insurance policy, including any declarations pages, endorsements, riders, binders, policy jackets, standard forms, inserts, or any other item that is or could be construed to be a part of or related to the terms of such insurance policy. The term "Policy" also means anything You describe as an insurance policy.

11. "Reinsurance Agreement" means any insurance Policy or other Document under which any Person may be liable, or may have been liable, to indemnify, reimburse, or otherwise insure or reinsure You for payments that You have made, may make, or could have been asked to make under the Subject Insurance Policies.

12. "Reinsurer" means any Person that issued, or that otherwise may have an obligation under, a Reinsurance Agreement.

13. "Subject Insurance Policies" means any Policy that the Petition alleges You issued, sold, or subscribed to and that was purchased by Plaintiffs anytime from 1962-2019.

14. "Sexual Abuse Claims" includes any claim and/or lawsuit in which an individual alleges that they were sexually abused while participating in a program affiliated, sponsored, or organized by Plaintiffs.

15. "You" or "Your" refers to Defendants Insurance Company of North America and Century Indemnity Company and/or any predecessors, successors, parent, sister or affiliated companies, partnerships, joint ventures, and all current and former officers, directors, employees, partners, shareholders, owners, members, sureties, assigns, agents, servants, or other representatives acting for or on its behalf.

II. INSTRUCTIONS

1. Defendants are instructed to respond to Plaintiffs' First Set of Requests for Production in the manner provided for by the Texas Rules of Civil Procedure, as interpreted and applied by Texas courts.

2. Defendants are instructed to produce, or make available for inspection, responsive documents at the offices of Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, on the date required for Defendants to respond to Plaintiffs' First Set of Requests for Production under Rule 196.

3. These Document Requests cover, without limitation, all responsive Documents and tangible things that are within Your possession, custody, or control. This includes Documents in the possession, custody, or control of any other Persons that You consulted concerning any factual matters or opinions relating to any of the facts or issues involved in the Petition or in the Sexual Abuse Claims, including Your experts, consultants, and, unless privileged, Your current and former attorneys.

4. All Documents should be produced as they are kept in the usual course of business or should be organized and labeled to correspond to the specific Document Request to which they relate.

5. Each Document Request calls for the production of any versions or drafts of the Document that differ in any respect whatsoever from the final draft or from any other version or draft (e.g., by reason of handwritten notes or comments having been added to one copy of a Document but not to the original or other copies thereof).

6. Where an objection is made to any Document Request, or any subpart thereof, the objection should state with specificity all grounds for the objection.

7. If any Document is withheld based on a claim of privilege, protection, or other ground for non-disclosure, pursuant to Texas Rule of Civil Procedure 193.3, Plaintiffs request the production of a privilege log. The log or index must establish the basis for the assertion of a privilege, such that the assertion can reasonably be tested. The log or index must, at a minimum, identify the following:

a. the "Bates" number of the Document;
b. the date (or Your best approximation thereof) on which the Document was prepared;
c. the author(s) of the Document;
d. all recipient(s) or Persons to whom the Document was sent or shown, whether addressee(s) or Persons who were copied or blind-copied thereon;
e. the title and subject matter(s) of the Document;
f. a description of the type of Document withheld (e.g., letter, report, etc.);
g. whether the Document was redacted or withheld in its entirety; and
h. the particular ground(s) for redacting the information or withholding the Document sufficient to allow counsel for BSA and the Court to determine the appropriateness of such claim of privilege, protection, or other ground for non-disclosure.

8. You are obligated to disclose any requested, non-privileged information contained in any responsive Document, even if any such Document also contains other information that may be subject to a claim of privilege. To the extent a requested Document contains information that You claim is subject to privilege, protection, or other ground for non-disclosure, produce the Document to the fullest extent possible so as not to disclose the specific portion of the Document claimed to be protected (i.e., redact it), and then furnish the information requested in Instruction No. 7 above as to the portion of the Document withheld. If the entirety of any Document is being withheld, furnish the information requested in Instruction No. 7 above.

9. If any Documents are withheld on the assertion that production is precluded by a protective order or confidentiality agreement, describe the terms of the order or agreement such that the assertion can reasonably be tested.

10. In the event that any Document called for by these Document Requests has been destroyed, lost, discarded, or otherwise disposed of, any such Document is to be identified and described as completely as possible, including the following information with respect to each such Document:

a. the date (or Your best approximation thereof) of the disposal;
b. the manner of the disposal;
c. the reason for the disposal;
d. the Person(s) authorizing the disposal;
e. the Person(s) disposing of the Document;
f. the title and subject matter(s) of the Document; and
g. the efforts made to locate the Document.

11. If any response, or any portion thereof, to a Document Request is incomplete due to an incomplete or ongoing investigation, the Document Request is to be answered as completely as possible based upon the investigation completed and information available to date and must include the following:

a. the nature and extent of the investigation completed to date;
b. the nature and extent of the investigation that must be completed in order to respond fully to the Document Request; and
c. the date when the investigation can be expected to be completed so that the Document Request can be answered in full.

12. The singular form of any word shall include the plural and the plural form shall include the singular.

13. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Document Request all responses that might other-wise be construed to be outside its scope.

14. The word "any" shall be understood to include and encompass "all" and vice-versa as necessary to make the Document Requests inclusive rather than exclusive.

15. The word "each" shall be understood to include and encompass "every" and vice-versa as necessary to make the Document Requests inclusive rather than exclusive.

16. Pursuant to Rule 193.5, You are instructed to promptly amend or supplement any and all responses made hereto if You learn that any response to these interrogatories or requests for production was incomplete when made or is no longer complete or correct.

17. You are instructed that a failure by You to make, amend or supplement a response in a timely manner or to otherwise comply with the Texas Rules of Civil Procedure may result in sanctions against You, including but not limited to those provided for under Rules 193.6 and 215.

18. Pursuant to Rule 196.4, You are instructed to produce electronic or magnetic data responsive to Plaintiffs' First Set of Requests for Production in native format and in TIF format.

III. DOCUMENT REQUESTS

1. All Documents and Communications related to the negotiation of the First Encounter Agreement.

2. All Documents and Communications related to Century's allocation of liability for the Sexual Abuse Claims to insurance policies for each year of abuse, including any and all internal communications related to the allocation of any such liabilities.

3. All Documents and Communications related to any claims for contribution against other insurers based upon Century's payment of Sexual Abuse Claims pursuant to the First Encounter Agreement.

4. All Documents or Communications between Century and the Reinsurers of the Subject Insurance Policies involving the Sexual Abuse Claims, including but not limited to any submissions in connection with arbitration referenced in Civil Action No. 18-12041 in the United States District Court for the District of Massachusetts, and any submissions in the aforementioned

civil action.

5. All Documents, including but not limited to underwriting and training manuals, guidelines, or instructional materials, that relate to Your policies and procedures in underwriting and placing any general liability Policies between 1962 – 1972 and 1978 – 1990.

6. All Documents concerning, used by, referred to, or relied upon, during the drafting, placing, issuing, underwriting, or renewal of the Subject Insurance Policies, including but not limited to:

a. Documents You used or reviewed in the underwriting process;

b. Documents obtained from Plaintiffs;

c. underwriting files;

d. Documents relating to Plaintiffs' business activities, including Documents that You generated;

e. underwriting manuals, guidelines, policies and procedures, and reference instruction materials;

f. actuarial analyses;

g. Documents relating to premium calculations;

h. other Documents relating to the application for, or the negotiation, evaluation, drafting, issuance, or approval of, the Subject Insurance Policies, including, but not limited to, Communications between or among You and Plaintiffs; and

i. Communications with, and Documents obtained from or provided for, or the negotiation evaluation, drafting, issuance, or approval of, the Subject Insurance Policies.

7. All minutes of or other written documentation relating to every meeting of Your board of directors, any committee or subcommittee thereof, any task force or working group thereof, or any of Your other executive task forces or working groups, during which there was discussion of Bodily Injury Claims arising from sexual encounters/abuse or insurance coverage for such claims, including without limitation, the Sexual Abuse Claims or insurance coverage for such claims, including but not limited to handouts, agendas, attachments, and notes made by participants.

8. All Documents concerning the underwriting, drafting, history, formulation, developments, or revision of the Subject Insurance Policies or the Policies to which the Subject Insurance Policies follow form regarding coverage for punitive damages.

9. All Documents, including without limitation claims-handling manuals, guidelines, policies, practices, directives, and procedures, that relate to Your handling, processing, adjusting, review, investigation, evaluation, acceptance, denial, reservation of rights, or other response to Plaintiffs' claims for coverage with respect to the Sexual Abuse Claims.

10. All Documents concerning (a) any investigation that You conducted pertaining to the Sexual Abuse Claims, and (b) any database, computer system, or other system that contains or reflects information about the Sexual Abuse Claims, including but not limited to databases, indices, computer programs, computer software, and computer databases.

11. Your complete claims files pertaining to the Sexual Abuse Claims, including but not limited to all inter-office memoranda and other forms of written communication of any employee, agent, or third-party adjuster of Century relating to the initial or continued processing or analysis of the Sexual Abuse Claims.

12. All Documents that contain or relate to any Communications between You and any

other Persons regarding the Sexual Abuse Claims or Plaintiffs' claims for insurance coverage for the Sexual Abuse Claims, including but not limited to Communications with (a) any other insurer; (b) Plaintiffs or their counsel; (c) any Persons submitting or pursuing any Sexual Abuse Claims, including without limitation counsel for any claimants; or (d) any insurance broker or agent.

13. All Documents relating to whether the Subject Insurance Policies include any deductibles or self-insured retentions, and whether such deductibles or self-insured retentions have been satisfied.

14. All Documents related to whether the Subject Insurance Policies (a) do not obligate You to pay defense costs, (b) obligate You to pay defense costs subject to the applicable limits of liability, or (c) obligate You to pay defense costs in addition to the applicable limits of liability, including but not limited to drafting history of such provisions or underwriting manuals.

15. All Documents concerning, summarizing, depicting, or relating to the impairment, erosion, or exhaustion of any deductibles, self-insured retentions, or limits of liability of the Subject Insurance Policies, including without limitation all Communications with any other insurer, all past and current loss runs, and any other Documents concerning any payments made by You or by any other insurer under any of the Subject Insurance Policies.

16. All Documents concerning, summarizing, depicting, or relating to the impairment, erosion, or exhaustion of any deductibles, self-insured retentions, or limits of liability of any Policy that You contend must be exhausted before any Subject Insurance Policy attaches, including without limitation all Communications with any other insurer, all past and current loss runs, and any other Documents concerning any payments made under such Policies.

17. All Documents, including without limitation Communications with any other insurer, concerning the potential that any Policy excess of any of the Subject Insurance Policies

may or will be attached based on the impairment, erosion, or exhaustion of any of the Subject Insurance Policies.

18. All Documents and Communications prior to June 29, 2018 that relate to Century's evaluation of the settlement values for the claimants in the Hacker Lawsuits that trigger coverage under the 1983 INA Excess Policy No. XCP 144961 and 1984 INA Excess Policy No. XCP 145366, including but not limited to any Documents and Communications with outside counsel.

19. All Documents and Communications relating to notices provided to You by Plaintiffs or any other Person regarding (a) the Sexual Abuse Claims, or (b) any other claims or circumstances that were tendered for potential coverage under the Subject Insurance Policies.

20. All Documents and Communications concerning the reserves set by You in connection with Plaintiffs' claims for coverage for the Sexual Abuse Claims.

21. All Documents and Communications between You and any Reinsurer(s) relating to: (a) Plaintiffs; (b) the Subject Insurance Policies; (c) the Sexual Abuse Claims; or (d) Plaintiffs' claims for insurance coverage under the Subject Insurance Policies (whether or not regarding the Sexual Abuse Claims).

22. All Documents concerning any lawsuits or arbitrations since 2008 involving sexual abuse, sexual molestation, or sexual encounters, in which You have contested the reasonableness of any proposed settlement. This Document Request is limited to pleadings, written discovery responses, including without limitation answers to interrogatories and responses to requests for admission and orders or decisions.

23. All Documents concerning Century's internal valuation process for sexual abuse, sexual molestation, or sexual encounters, including determining the value of such claims based on the frequency or severity of abuse. This includes but is not limited to internal databases, internal

memoranda, claims guidelines, indices, computer programs, computer software, and computer databases.

24. All Documents concerning Century's evaluation of the reasonableness of defense costs and/or fees, including but not limited to internal databases, internal memoranda, claims guidelines, indices, computer programs, computer software, and computer databases.

25. All Documents concerning any lawsuits or arbitrations since 2008 in which You have contested the reasonableness of any defense costs and/or fees. This Document Request is limited to pleadings, written discovery responses, including without limitation answers to interrogatories and responses to requests for admission and orders or decisions.

26. All Documents or other exhibits you intend to introduce at the trial of this lawsuit.

27. All Documents relating to the Sexual Abuse Claims generated by, prepared by, prepared for, or reviewed by any expert retained by Century.

28. The curriculum vitae of each expert who may testify at the trial of this lawsuit.

Respectfully submitted,

/s/ *Ernest Martin, Jr.*

Ernest Martin, Jr.
State Bar No. 13063300
ernest.martin@haynesboone.com
Adrian Azer
State Bar No. 24048332
adrian.azer@haynesboone.com
Carla Green
State Bar No. 24097762
carla.green@haynesboone.com
Emily Buchanan
State Bar No. 24101568
Emily.buchanan@haynesboone.com
HAYNES AND BOONE, L.L.P.
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5000
Telecopier: (214) 651-5940

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served to the following by electronic service on December 27, 2018:

Attorneys for Defendant Nat'l Surety Corporation

Christopher W. Martin
William Edward McMichael
Martin, Disiere, Jefferson & Wisdom, LLP
808 Travis Street, 20th Floor
Houston, Texas 77002
martin@mdjwlaw.com
mcmichael@mdjwlaw.com

and

Todd C. Jacobs
David A. Caves
Bradley Riley Jacobs PC
320 W. Ohio Street, Suite 3W
Chicago, Illinois 60654
tjacobs@bradleyriley.com
dcaves@bradleyriley.com

Attorneys For Defendant Allianz Global Risks Us Insurance Company

Nicole Figueroa
Calli Turner
McDermott Will & Emery LLP
2501 N. Harwood, Suite 1900
Dallas, Texas 75201
nfigueroa@mwe.com
cturner@mwe.com

and

Margaret Warner
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, NW
Washington, DC 20001-1531
mwarner@mwe.com

Attorneys For Defendant Century Indemnity Company

Stephen O. Venable
Charles B. Walther
Walker Wilcox Matousek, LLP
1001 McKinney Street, Suite 2000
Houston, Texas 77002
svenable@wwmlawyers.com
bwalther@wwmlawyers.com

/s/ Ernest Martin, Jr.
Ernest Martin, Jr.

4830-8045-0178 v.2

EXHIBIT G

CAUSE NO. DC-18-11896

BOY SCOUTS OF AMERICA, ALOHA COUNCIL, NEW BIRTH OF FREEDOM COUNCIL, CHICAGO AREA COUNCIL	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
INSURANCE COMPANY OF NORTH AMERICA, CENTURY INDEMNITY COMPANY, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, NATIONAL SURETY CORPORATION	§	
	§	192ND JUDICIAL DISTRICT
Defendants.	§	

PLAINTIFFS' FIRST SET OF INTERROGATORIES
TO DEFENDANTS INSURANCE COMPANY OF
NORTH AMERICA AND CENTURY INDEMNITY COMPANY

TO: Defendants Insurance Company of North America and Century Indemnity Company by and through their attorneys of record, Stephen O. Venable, Charles B. Walther, Walker Wilcox Matousek, LLP, 1001 McKinney Street, Suite 2000, Houston, Texas 77002

Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Plaintiffs Boy Scouts of America ("BSA"), Aloha Council ("AC"), New Birth of Freedom Council ("NBC"), and Chicago Area Counsel ("CAC") (collectively, "Plaintiffs") hereby serve the following First Set of Interrogatories to Defendants Insurance Company of North America and Century Indemnity Company (collectively, "Defendants" or "Century").

I. DEFINITIONS

1. "Communication" means every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise), whether oral or written, including, but not limited to, conversations, meetings, discussions, telephone calls,

telegrams, telecopies, emails, voicemails, telexes, seminars, conferences, writings, letters, messages, notes, or memoranda, and other Documents that contain or reflect such transmission of information.

2. "Concern," "concerning," "referring to," "regarding," "reflecting" and "relating" are interchangeable, and mean about, including, regarding, referencing, involving, concerning, connected with, pertaining to, constituting, summarizing, reflecting, supporting, containing, analyzing, considering, explaining, discussing, describing, demonstrating, prepared for, resulting from, mentioning, commenting on, embodying, evaluating, analyzing, and/or constituting, whether directly or indirectly, explicitly or implicitly, or in whole or in part, a stated subject matter.

3. The terms "Document" and "Documents" are used in the broadest sense possible and include but are not limited to:

a. all material in written or printed format of any kind, such as letters, correspondence, facsimiles, memoranda, records, telegrams, teletypes cablegrams, reports, notes, books, papers, minutes, schedules, tabulations, computations, lists, ledgers, journals, purchase orders, contracts, invoices, agreements, vouchers, accounts, checks, affidavits, diaries, calendars, desk pads, drawings, sketches, charts, graphs, or any other written or printed matter or tangible thing on which any words, phrases or symbols are affixed;

b. all electronic or digital information of any kind (translated, if necessary, into reasonably usable form) contained in any kind of electronic or digital format, such as (1) electronic mail or "e-mail"; (2) anything maintained on any kind of USB drive, computer disk, diskette, floppy disk, "zip" file, or CD-ROM disk; (3) anything maintained in an office or home personal computer or laptop computer; (4) anything maintained on any kind of server or mainframe system, or in any database; (5) any word processing, Excel, spreadsheet, or similar Documents; (6) voice mail stored electronically; (7) calendar programs and similar devices; (8) digital pictures, video, and audio; (9) any information maintained on any internet or intranet sites; and (10) any other possible sources of active or inactive electronic or digital data or information;

c. all sound or picture recordings of any kind, such as tape recordings, photographs, videotapes, photo stats, motion pictures, or slides; and

d. copies or drafts of any such Documents referred to above, including, but not limited to, for electronic or digital information, any kind of data that has been archived, backed-up, residing on obsolete hardware, or is information that is "residual" or otherwise may have been "deleted" by command but is or may be present or residing in any way within the computer or retrievable in any way.

This includes, but is not limited to, e-mail and other data or information that exists in electronic or magnetic form as identified by Rule 196.4.

4. "Employee" means any former or present employee, officer, agent, representative, consultant, office, committee, department, division, or group within or retained by You.

5. "First Encounter Agreement" means the Settlement Agreement Regarding Sexual Molestation Claims executed between Plaintiffs and certain INA/Century entities on or about May 24, 1996.

6. "Hacker Lawsuits" means the case styled *John Doe, et al. v. BSA*, *et al.*, No. 2012-L-013569 and subsequent separate actions in the Circuit Court of Cook County in Chicago, Illinois.

7. "Insured" means an assured or insured under any Policy.

8. "Identify" means:

a. With respect to an individual, to state:

i. the Person's full name, present or last known residence, and present or last known home telephone number;
ii. the Person's present or last known occupation, employer, title, business address, business telephone number, and business e-mail address;
iii. the Person's title and employer at the time of the event either inquired about in the Interrogatory or referenced in Your response;
iv. the Person's occupational responsibilities at the time of the event either inquired about in the Interrogatory or referenced in Your response; and
v. whether the Person is deceased, if known.

b. With respect to a company or business entity, to state the name of the company or business entity at the time of the event either inquired about in the Interrogatory or referenced in Your response, its place of incorporation, and the address of its head office at the time of the event either inquired about in the Interrogatory or referenced in Your response;

c. With respect to a Document, to state:

i. the name or title of the Document;
ii. the date of the Document;
iii. the substance of the Document;
iv. the author(s) of the Document;
v. the recipient(s) of the Document, including whether the addressee was copied or blind-copied on the Document;
vi. the custodian of the Document; and
vii. sufficient detail about the Document to Identify its location.

d. With respect to a Communication, meeting, or act, to state the following:

i. the substance of the Communication, meeting, or act;
ii. the date, place, and time it occurred;
iii. the identity of each participant;
iv. the identity of each and every Person present when it took place;
v. whether any record of such Communication, meeting, or act was made and if such record now exists, the location of the record and the identity of the Person having possession, custody, or control of that record;
vi. the type of Communication (*e.g.*, e-mail or telephone call); and
vii. with respect to any other fact, thing, or procedure, to state sufficient detail and information to make the identity of the fact, thing, or procedure reasonably clear to the reader.

9. "Person" means natural persons or individuals, corporations, limited liability companies, partnerships, professional corporations or associations, governments or agencies thereof, quasi-public entities, proprietorships, joint ventures, trusts, estates, and all other forms of legal entities.

10. "Petition" means Plaintiffs' Original Petition filed in the 192nd Judicial District, District Court of Dallas County, Texas, Cause No. DC-18-11896.

11. "Policy" means an insurance policy or portion of an insurance policy that affords coverage for an insured's liability for, among other things, personal injury, property damage, bodily injury, and commercial liability. This definition includes, but is not limited to, any policy designated as a liability policy, general liability policy, "primary" liability policy, "excess" liability policy, "umbrella" policy, "follow form" policy, "third-party" policy, "products liability" policy, and any part(s) of any such insurance policy, including any declarations pages, endorsements, riders, binders, policy jackets, standard forms, inserts, or any other item that is or could be construed to be a part of or related to the terms of such insurance policy. The term "Policy" also means anything You describe as an insurance policy.

12. "Reinsurance Agreement" means any insurance Policy or other Document under which any Person may be liable, or may have been liable, to indemnify, reimburse, or otherwise insure or reinsure You for payments that You have made, may make, or could have been asked to make under the Subject Insurance Policies.

13. "Reinsurer" means any Person that issued, or that otherwise may have an obligation under, a Reinsurance Agreement.

14. "Subject Insurance Policies" means any Policy that the Petition alleges You issued, sold, or subscribed to and that was purchased by Plaintiffs anytime from 1962-2019.

15. "Sexual Abuse Claims" includes any claim and/or lawsuit in which an individual alleges that they were sexually abused while participating in a program affiliated, sponsored, or organized by Plaintiffs.

16. "You" or "Your" refers to Defendants Insurance Company of North America and Century Indemnity Company and/or any predecessors, successors, parent, sister or affiliated companies, partnerships, joint ventures, and all current and former officers, directors, employees, partners, shareholders, owners, members, sureties, assigns, agents, servants, or other representatives acting for or on its behalf.

II. INSTRUCTIONS

1. Answer these Interrogatories or subparts thereof separately and fully in writing under oath. Answers should include all responsive information known or reasonably available to You and any other Persons consulted concerning any factual matters or matters of opinion relating to any of the facts or issues involved in this Petition or the Sexual Abuse Claims.

2. Any requested identification, description, or explanation of Documents, Persons, Communications, or other information that is specific in nature should not be interpreted to diminish the breadth of any more general request that may otherwise encompass such information or materials.

3. No part of any Interrogatory should be left unanswered because an objection is interposed to another part of the Interrogatory.

4. If any part of the following Interrogatories cannot be answered in full, answer to the extent possible and specify the reasons for Your inability to answer the remainder. If You assert that You cannot answer an Interrogatory in full or in part because of a protective order or confidentiality agreement, describe the terms of the order or agreement, such that the assertion can reasonably be tested.

5. These Interrogatories are continuing and require supplemental responses if You discover additional information that is responsive to these Interrogatories.

6. The singular form of any word shall include the plural and the plural form shall include the singular.

7. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

8. The word "any" shall be understood to include and encompass "all" and vice-versa as necessary to make the Interrogatories inclusive rather than exclusive.

9. The word "each" shall be understood to include and encompass "every" and vice-versa as necessary to make the Interrogatories inclusive rather than exclusive.

10. The words "include" or "including" shall be understood to encompass "includes without limitation" and "including without limitation" and vice-versa as necessary to make an Interrogatory inclusive rather than exclusive.

III. INTERROGATORIES

1. Identify all Persons who assisted You in any way in responding to any one of these Interrogatories. In Your response, identify each Interrogatory number(s) with which he or she assisted in answering, regardless of whether the assistance he or she provided was incorporated into the final answer.

2. Identify each Person who participated in, or is expected to participate in, the search for or collection of Documents responsive to Plaintiffs' First Set of Requests for Production of Documents.

3. Identify all Persons who were involved in or who have knowledge regarding the underwriting, drafting, marketing, evaluating, approving, brokering, placing, or issuing of the Subject Insurance Policies, including, but not limited to, any applications for the Subject Insurance

Policies, and with respect to each Person, describe the nature of that Person's participation or knowledge.

4. Identify all Persons who have knowledge regarding the First Encounter Agreement, including but not limited to those Persons involved in the drafting, negotiating, execution, or application of the First Encounter Agreement.

5. State Century's position regarding its pro-rata payment of Sexual Abuse Claims pursuant to the First Encounter Agreement.

6. State whether any of the Subject Insurance Policies are or are not exhausted and the basis for such contention. In Your Response, identify the remaining limits for the Subject Insurance Policies if the Subject Insurance Policies are not exhausted, and the basis for such contention.

7. Identify all Persons who had any responsibility for, or who have knowledge regarding the handling, investigation, evaluation, processing, adjusting, review, or determination of the Sexual Abuse Claims or Plaintiffs' claims for coverage for the Sexual Abuse Claims under the Subject Insurance Policies, and for each person, describe the nature of that Person's responsibility or knowledge.

8. For each of the Subject Insurance Policies, state whether they (a) do not obligate You to pay defense costs, (b) obligate You to pay defense costs subject to the applicable limits of liability, or (c) obligate You to pay defense costs in addition to the applicable limits of liability. In Your response, describe the basis for Your contentions and Identify each person with knowledge regarding the basis for Your contention.

9. Identify all litigation involving Century and the Reinsurers of the Subject Insurance Policies involving the Sexual Abuse Claims, including but not limited to (1) the arbitration

between Century and the Reinsurers, and (2) Civil Action No. 18-12041 in the United States District Court for the District of Massachusetts.

10. Identify all communications with the Reinsurers regarding the Sexual Abuse Claims between 2008 – present.

11. Identify any internal databases, internal memoranda, claims guidelines, indices, computer programs, computer software, and computer databases in the custody or control of Century that contain information regarding settlement values for sexual abuse claims between 2008 – present.

12. Identify any internal databases, internal memoranda, claims guidelines, indices, computer programs, computer software, and computer databases in the custody or control of Century that contain information regarding the evaluation of defense fees or costs between 2008 – present.

13. Identify any individual (expert or non-expert) that prepared valuations for Century regarding reasonable settlements of the Hacker Lawsuits.

Respectfully submitted,

/s/ *Ernest Martin, Jr.*

Ernest Martin, Jr.
State Bar No. 13063300
ernest.martin@haynesboone.com
Adrian Azer
State Bar No. 24048332
adrian.azer@haynesboone.com
Carla Green
State Bar No. 24097762
carla.green@haynesboone.com
Emily Buchanan
State Bar No. 24101568
Emily.buchanan@haynesboone.com
HAYNES AND BOONE, L.L.P.
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5000
Telecopier: (214) 651-5940

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served to the following by electronic service on December 27, 2018:

Attorneys for Defendant Nat'l Surety Corporation

Christopher W. Martin
William Edward McMichael
Martin, Disiere, Jefferson & Wisdom, LLP
808 Travis Street, 20th Floor
Houston, Texas 77002
martin@mdjwlaw.com
mcmichael@mdjwlaw.com

and

Todd C. Jacobs
David A. Caves
Bradley Riley Jacobs PC
320 W. Ohio Street, Suite 3W
Chicago, Illinois 60654
tjacobs@bradleyriley.com
dcaves@bradleyriley.com

Attorneys For Defendant Allianz Global Risks Us Insurance Company

Nicole Figueroa
Calli Turner
McDermott Will & Emery LLP
2501 N. Harwood, Suite 1900
Dallas, Texas 75201
nfigueroa@mwe.com
cturner@mwe.com

and

Margaret Warner
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, NW
Washington, DC 20001-1531
mwarner@mwe.com

Attorneys For Defendant Century Indemnity Company

Stephen O. Venable
Charles B. Walther
Walker Wilcox Matousek, LLP
1001 McKinney Street, Suite 2000
Houston, Texas 77002
svenable@wwmlawyers.com
bwalther@wwmlawyers.com

/s/ Ernest Martin, Jr.
Ernest Martin, Jr.

4815-3072-0642 v.2

Boelter Exhibit 1

SIDLEY

SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036 FAX

AMERICA • ASIA PACIFIC • EUROPE

JCONLAN@SIDLEY.COM
+1 312 853 6890

October 3, 2018

Privileged and Confidential

Boy Scouts of America
Attn: Steven McGowan, General Counsel
1325 W. Walnut Hill Lane
Irving, TX 75038

Dear Mr. McGowan:

Introduction. Sidley Austin LLP ("Sidley" or "we") appreciates the opportunity to serve as your counsel. This letter, including its Attachment entitled "Additional Terms and Conditions," explains the policies and procedures that apply to this engagement. If this letter is acceptable, please sign two copies in the space provided below, retain one copy and return the other to me.

Client. The client in the matter described below will be Boy Scouts of America (the "Client" or "you"). The Client will include your subsidiaries and affiliates as well as your and their boards acting as and for you or your subsidiaries and affiliates, but will not include any of your or their respective directors, officers or employees in their individual capacity. Thus, our representation of you will not give rise to any conflict of interest if our representation of any other Sidley client is adverse to any of your or their respective directors, officers or employees.

Matter; Scope. Our representation of you is limited to strategic litigation and restructuring planning, advice and implementation (the "Matter"). We would be pleased to consider expanding the scope of this Matter, or representing you in other matters; however, we must first confirm any such expansion or other representation in writing. If we take on additional matters, each will be governed by this letter unless otherwise agreed.

Fees and Expenses. Our fees for the Matter will be based on the hourly billing rate for each attorney and paralegal (and any other relevant timekeeper) devoting time to the Matter. Our billing rates for attorneys in our United States offices currently range from $495 per hour for new associates to $1600 per hour for senior partners. Our billing rates for paralegals in those offices currently range from $245 per hour to $420 per hour. These billing rates are reviewed annually and may be changed effective January 1 of each year.

We are committed to serving you with efficient and cost-effective support systems. We will include on our bills charges for services such as document reproduction, messenger and

SIDLEY
Boy Scouts of America
October 3, 2018
Page 2

overnight courier service, computerized research, travel, long-distance telephone, facsimile, document processing, search and filing fees, and internal litigation and practice support services. Fees and expenses of others (such as outside experts, consultants, other non-legal professionals, local counsel and co-counsel) will generally be billed directly to you by those others. Our website, which can be accessed at http://www.sidley.com/costrecoveryandpreadmittancebillingratepolicy/us/, includes detailed information about our expense recovery policies and procedures, which are an integral part of this letter. These policies and procedures take into account, among other things, a number of special arrangements we have with some of our vendors and service providers.

We want our clients to be satisfied with the quality and reasonableness of our services. Our usual practice is to bill monthly, and we expect payment within 30 days following your receipt of our invoice; provided, however, that we may request payment in a time period less than 30 days in accordance with the terms and conditions of the Attachment with respect to our advance payment retainer. Subject to applicable rules of professional conduct, we may suspend work on a matter or resign from a representation if satisfactory arrangements are not made for the payment of amounts outstanding and we do not receive satisfactory assurance of the payment of amounts that will become due in the future.

Retainer. You have agreed to pay an advance payment retainer of $250,000 to be governed by the applicable provision in the Attachment.

Conflicts. This letter does not create an exclusive relationship; you are free to retain other counsel of your choosing for any matter. Correspondingly, we have numerous clients that rely upon us for general representation, including clients that may be indebted to, or are creditors of you or one or more of your affiliates. In particular, Sidley has longstanding relationships with many clients. Sidley has represented, and may be currently representing, one or more of these clients in connection with many aspects of their businesses. As a result, without advance conflicts waivers from Sidley clients, conflicts of interest could arise that could deprive either you or other Sidley clients of the right to select Sidley as counsel.

In light of the foregoing, other current or future clients (collectively, the "Other Clients") may ask us to represent them in matters, such as litigation, business transactions, investigations, regulatory, insolvency, restructuring or other matters that are adverse to you and may negatively impact your interests. If we are not representing you in such a matter , and the matter in which you and an Other Client have adverse interests is not substantially related to our current or past representation of you and does not involve our use, to your disadvantage, of confidential information you have provided to us, you agree that we may represent such Other Client, you waive any conflict of interest arising from such representation, and you agree that you will not seek to disqualify or otherwise prevent us from representing such Other Client. **You acknowledge that you have had an opportunity to consult with other counsel (in-house or otherwise) and to raise any questions you may have with us before agreeing to this waiver.**

SIDLEY
Boy Scouts of America
October 3, 2018
Page 3

Term of Engagement. We trust that our relationship with you will be mutually satisfactory. However, either you or Sidley may terminate our representation at any time for any reason, subject on our part to applicable rules of professional conduct. If we terminate the representation before it is concluded, we will take reasonably practicable steps to protect the Client's interests. If a court's permission is required for withdrawal from the representation, we will promptly apply for such permission, and you agree to cooperate in such application – including, where appropriate, by engaging successor counsel in the matter.

Unless previously terminated, our engagement in the Matter and representation of the Client in the Matter will terminate without further notice upon the earliest of: (i) our completion of the Matter; (ii) a decision by you not to proceed with the Matter; (iii) our sending a final statement for services rendered in the Matter. The termination of a matter by either the Client or Sidley will not affect the Client's obligation to pay unpaid fees and expenses incurred as of that time, and will not be affected by the fact that Sidley (a) thereafter makes efforts to collect unpaid fees and expenses or (b) is designated in an agreement with another party or on a court service list to receive notices related to the matter.

Arbitration of Disputes. We expect that any disagreement between us relating to an engagement governed by this letter or to our relationship with the Client (including any claim of malpractice or breach of contract, or relating to fees or charges for the representation) will be resolved by discussion. If, however, such discussion is not successful, we both agree that any such dispute or claim will be finally resolved by arbitration conducted in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non Administered Arbitration (effective November 1, 2007), except as they may be modified herein or by our mutual agreement. The arbitration shall take place in Dallas, Texas or in another location agreed to by you and us. In addition, we both consent to the jurisdiction of the federal or state courts in the location where the arbitration is conducted over any judicial proceedings relating to any aspect of the arbitration, including motions to confirm, vacate, modify or correct an arbitration award. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq*., and judgment may be entered by any court having jurisdiction over the award or the relevant party or its assets.

The arbitration shall be conducted by one arbitrator, who shall be selected by our mutual agreement or by the CPR if you and we are unable to agree on an arbitrator within 30 days after arbitration is initiated. Each of us will be responsible for paying the costs of the arbitration in accordance with CPR rules. Each of us agrees to keep the arbitration confidential, and neither the proceeding's existence nor any element of it shall be disclosed by either of us beyond the tribunal, the parties and their counsel, and any person necessary to the conduct of the proceeding. The confidentiality obligations shall not apply if disclosure is required by law or in judicial or administrative proceedings, or to the extent that disclosure is necessary to enforce the rights arising out of the award, provided that each of us agrees to use best efforts to limit the scope of any required disclosure and, subject to court approval, to seek to submit any such disclosure to a

SIDLEY
Boy Scouts of America
October 3, 2018
Page 4

court or agency under seal. Claimants who are not parties to this letter may not bring claims in the arbitration proceeding.

This agreement to arbitrate shall constitute an irrevocable waiver of each party's right to a trial by jury, as well as of rights to discovery or to an appeal that would customarily be available in a judicial proceeding but that may be limited or unavailable in connection with such an arbitration. You acknowledge that you have had the opportunity to consult with other counsel (in-house or otherwise) prior to agreeing to this waiver, including regarding the waiver of jury trial, discovery, and appeal rights, and have made your own decision about whether to do so.

* * *

Please call me if you have any questions regarding this letter. Thank you for the opportunity to serve you.

Very truly yours,

James F. Conlan

Attachment: Additional Terms and Conditions

Acknowledged and Agreed

By: _____
General Counsel
Boy Scouts of America

cc: Yvette Ostolaza
Jessica C. Knowles Boelter

PRIVILEGED AND CONFIDENTIAL

Additional Terms and Conditions

This is an attachment to, and integral part of, the letter dated October 3, 2018 with Boy Scouts of America.

Limitations on the Scope of the Matter. Unless otherwise agreed by Sidley in writing, our engagement in the Matter or in any other representation contemplated by this letter will not include advising you on insurance coverage issues; Sidley will not provide advice concerning notification of insurance carriers, and will not be responsible for notifying such carriers or for follow-up communications with the carriers regarding the status of the Matter.

After completion of the Matter, changes may occur in applicable laws or regulations or applicable transaction documentation that could have an impact on the Client's future rights and liabilities. Unless the Client actually engages us to provide additional advice after the completion of the Matter on issues arising from the Matter, and we accept such an engagement in writing, we will have no continuing obligation to advise the Client with respect to future legal developments.

No Warranty. Sidley will endeavor to achieve successful results for the Client, but Sidley makes no promises or warranties to the Client regarding the outcome or cost of the Matter.

Advance Payment Retainer. As we have discussed, Sidley will undertake the representation described above only if the Client, in the exercise of its sole discretion, pays Sidley a nonrefundable retainer ("Advance Payment Retainer") of $250,000 to assure the Client's ability to obtain and pay for essential legal services (notwithstanding claims of creditors, deterioration in the Client's financial condition, or other circumstances that could impair the Client's ability to pay for such services). Any Advance Payment Retainer will become the property of Sidley upon receipt and will be deposited into Sidley's operating account. At no time will any portion of any Advance Payment Retainer be transferred to, or held in, a client trust account, custodial or escrow account. Any and all fees and expenses of Sidley, whether or not invoiced, posted or recorded, will be satisfied from the Advance Payment Retainer as services are rendered and expenses incurred by Sidley. In contrast to an Advance Payment Retainer, a security retainer would be held in trust by Sidley for the Client and therefore could become unavailable to pay for essential legal services as a result of attachment by the Client's creditors or other circumstances beyond the Client's control. During the course of the representation, if reasonably foreseeable fees and expenses appear likely to exceed the amount of the initial Advance Payment Retainer, we may request the Client to make additional payments to replenish the Advance Payment Retainer. If the Client does not so replenish the Advance Payment Retainer, Sidley may, subject to applicable rules of professional conduct, withdraw from further representation of the Client. At the conclusion of the representation, and upon payment of all Sidley's fees and expenses, we will pay to the Client an amount equal to the difference between the amount of the Advance Payment Retainer and the amount of fees and expenses incurred on the Client's behalf.

Conflicts Relating to Restructuring and Insolvencies. Sidley's representation of an entity in financial distress may involve adversity to that entity's numerous creditors, equity interest holders, or other parties in interest (including Client). Accordingly, you agree that in a matter for another Sidley client which involves the bankruptcy or financial restructuring of such other client, we may represent such other client adversely to you provided the matter involved is not substantially related to our representation of you.

Confidentiality and Document Retention. When a matter is concluded, we will keep our file confidential in accordance with applicable rules of professional conduct. At the Client's request at the termination of a matter, Sidley will provide the Client with Sidley's file relating to the representation, including any documents or other property that the Client provided to Sidley in connection with the representation. Such file will not include Sidley's administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal Sidley work product (such as drafts, notes, and internal memoranda and emails). Sidley may make and retain a copy of the file provided to the Client. If the Client does not request delivery of the file, Sidley will retain the file in accordance with its records management policy and procedures, and documents may be destroyed after Sidley's applicable records retention periods have expired.

Responses to Subpoenas and Similar Requests. If Sidley is required to respond to a subpoena or other formal request for records or other information relating to a representation, or to testify by deposition or otherwise concerning the representation (a "Request"), Sidley will first, to the extent permitted by applicable law, consult with the Client to determine whether the Client wishes Sidley to comply with the Request, or to resist it, if there is a basis for doing so. The Client agrees to reimburse Sidley for its reasonable time and expense incurred in responding to any Request, including time and expense incurred in reviewing documents, appearing at depositions or hearings, and otherwise addressing issues raised by the Request.

Responses to Audit Inquiries. We respond to a client's request to provide information to the client's auditor regarding client legal matters with the same care and professionalism used to handle other client legal work. We will, accordingly, charge for those services at the same rates. A written request by or on behalf of you that we provide information to an auditor will constitute your consent that we disclose the requested information on your behalf.

Privacy, Data Protection and Confidentiality. Our policies with respect to privacy, data protection and information security can be accessed on our website at https://www.sidley.com/en/sidley-pages/privacy-policy. Subject to those policies and to applicable ethical confidentiality obligations, and unless otherwise directed by the Client, Sidley may use a variety of electronic communication systems in communicating internally, with the Client and with others during the representation, including cellular or satellite telephone calls, e-mails, facsimile transmissions, video conferencing and other evolving forms of electronic communications. Sidley uses outsourced non-lawyer personnel for a variety of support functions, including mailroom, photocopy, information technology and word processing, and they are required by Sidley to agree to maintain the confidentiality of information relating to Sidley's clients.

Laws Covered. Except as may be otherwise agreed to by Sidley in writing, our representation of the Client hereunder will be limited to matters of United States federal law, state law in states in which we have offices and, as applicable, the Delaware Revised Uniform Partnership and Limited Partnership Acts, the Delaware Limited Liability Company Act and the Delaware General Corporation Law.

Publicity. Unless the Client instructs otherwise, Sidley may, for conflicts resolution purposes, disclose to other clients and potential clients (in engagement letters or otherwise) that the Client is represented by Sidley. Sidley will not, however, disclose that it represents or has represented the Client in a particular matter without Client consent unless the matter has been publicly disclosed, such as by a filing with a court or regulatory authority or by the Client's issuance of a press release. Unless the Client consents to the inclusion of additional information, Sidley's disclosure of information about a matter will be limited to the Client's name, the name of the other party or parties, and a short description of the matter which contains only publicly-available information.

Consent Regarding Privileged Sidley Communications. When issues arise concerning Sidley's professional duties and rights, including under applicable professional conduct rules, Sidley may seek confidential counsel from internal Sidley lawyers with responsibility or expertise in the areas in question, and in some instances from outside counsel as well. Sidley believes that it is in the mutual interest of Sidley and its clients that Sidley receive expert and confidential legal advice regarding its professional duties and rights in such circumstances. Accordingly, the Client consents to such consultation, waives any claim of conflict of interest that could result from such consultation, and agrees that such consultation will not be a basis for a waiver of any attorney/client privilege that would otherwise be available to Sidley. However, Sidley will continue to comply with its professional obligation to provide the Client with sufficient information regarding a matter to permit the Client to make informed decisions regarding the representation.

Governing Law and Choice of Forum. This letter (including these Additional Terms and Conditions) shall be governed by, and construed in accordance with, applicable rules of professional conduct and the laws of the State of Texas. Any claim arising under or relating to this letter, including these Additional Terms and Conditions, that is not subject to arbitration shall only be brought in the state or federal courts in such State, and the Client and Sidley each agree to submit to the jurisdiction of such courts.

Sidley lawyers outside the U.S. may be asked to perform work on behalf of or adverse to you. In many respects the conflict of interest rules outside the U.S. are less restrictive than those in the U.S. A matter on which the work will be performed entirely or substantially by Sidley lawyers not admitted to practice in a U.S. jurisdiction will be governed by the conflicts of interest rules in the jurisdiction in which the substantial work on the matter is performed, and not by the law of any U.S. jurisdiction.

Severability. If any provision of this letter (including these Additional Terms and Conditions) is held to be unenforceable or invalid for any reason, the remaining provisions will continue in full force and effect.

Boelter Exhibit 2

WALKER WILCOX
WALKER WILCOX MATOUSEK LLP

October 17, 2019

Christopher A. Wadley
Tel: 312.244.6717
cwadley@walkerwilcox.com

VIA EMAIL
ernest.martin@haynesboone.com

Ernest Martin, Jr.
Haynes and Boone, LLP
2323 Victory Ave. Ste. 700
Dallas, TX 75219-7672

Re: Boy Scouts of America

Dear Ernest:

As Boy Scouts of America (BSA) knows, the insurance policies that Chubb issued to BSA over the years prohibit BSA from settling claims or voluntarily incurring any other liabilities without Chubb's express consent.[1] The policies also require BSA to cooperate with Chubb in the investigation, defense, and settlement of claims. Consequently, Chubb reserves the right to disclaim coverage for any settlement or other liability voluntarily incurred by BSA without Chubb's consent. Chubb likewise reserves the right to disclaim coverage if BSA fails to cooperate with Chubb in the investigation, defense, or settlement of any claim.

While BSA is undoubtedly aware of these provisions, Chubb must reiterate them in light of the meeting that occurred on Monday, October 14, 2019. At the meeting, BSA disclosed that it has engaged in significant discussions with the claimants' attorneys regarding the settlement of current claims as part of a bankruptcy, made promises to the claimants' attorneys about the manner in which negotiations would proceed, had an expert present information to the claimants' attorneys about BSA's finances, and provided information to the claimants' attorneys about BSA's insurance. BSA also disclosed that it has retained [redacted] to serve as mediator and scheduled a mediation that will involve over one thousand claims for November 4 and 5, 2019, giving Chubb only three weeks to

[1] "Chubb" refers to all companies who operate under the Chubb name with respect to the various liability insurance policies issued to BSA, including, but not limited to, Century Indemnity Company, as successor to Insurance Company of North America (INA).

prepare. Last, BSA disclosed that it has also engaged in discussions with a potential future claims representative.

BSA engaged in those discussions, conveyed information, created expectations, selected a mediator, and scheduled a mediation without informing Chubb or soliciting Chubb's participation. Chubb believes that BSA's conduct in that regard may prove prejudicial to Chubb with respect to the ultimate resolution of current and future claims. Consistent with the policies' provisions, BSA should have invited Chubb to participate meaningfully in BSA's settlement discussions and mediation decisions, insofar as BSA intends to seek coverage from Chubb for any settlements that are reached. Chubb must therefore respectfully reserve the right to disclaim coverage to the extent BSA's conduct to date prejudices Chubb.

During the meeting on October 14, 2019, BSA also shared its plan to settle all current sex-abuse claims based on a draft "matrix protocol" in a mediation with [redacted] BSA provided the matrix to Chubb the preceding Friday, October 11, 2019. Chubb conveyed its objection to the values in the matrix protocol and asked that they not be provided to the claimants' attorneys as an opening offer. The values are high considering the administrative ease, expedited payment, and relaxed proof required of the claimants under the matrix protocol. Chubb also asked for information to assess the matrix protocol and looks forward to receiving it.

That said, Chubb remains committed to working with BSA in good faith to resolve claims consistent with the insurance coverage afforded to BSA under the policies. Accordingly, Chubb respectfully asks that, going forward, BSA cooperate with Chubb in the handling of claims, notify Chubb in advance of any settlement discussions that may occur, and include Chubb on a real-time basis in any settlement communications that do occur, including discussions pertaining to the selection of mediators and claims representatives. Moreover, BSA should not enter into any settlement, voluntarily incur any liability, or otherwise agree to any terms without Chubb's prior express consent. Otherwise, BSA risks breaching the policies' terms and forfeiting any coverage that might otherwise be available.

With respect to the settlement communications that have already occurred, please provide Chubb with copies of all communications that BSA or its representatives have exchanged with the claimants' attorneys, [redacted] or prospective representatives for future claimants. Chubb also requests that BSA provide it with the same presentation that BSA's expert gave to the claimants' attorneys regarding BSA's finances.

Ernest Martin
October 17, 2019
Page 3

As always, please feel free to contact me if you would like to discuss the matter further. Thank you.

WALKER WILCOX MATOUSEK LLP

Christopher A. Wadley

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. Docket Nos. 204, 426** **Hearing Date: May 4, 2020 at 10:00 a.m. (ET)**

RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

[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 West Walnut Hill Lane, Irving, Texas 75038.

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 6

A. Sidley's Retention By BSA 6

B. Sidley's Relationship With Century 7

C. BSA's Retention Of Sidley Is Publicly Reported In December 2018 And Sidley's Representation Of Century Continues Without Objection 11

D. Century Participates in Discussions Regarding BSA's Potential Restructuring Without Objection 13

E. Century Belatedly Raises A Potential Conflict In Late October 2019 14

F. The Attorney-Client Relationship Breaks Down And Sidley Withdraws From Representing Century 15

G. BSA's Application To Retain Sidley And Century's Objection 18

ARGUMENT 19

I. Sidley Meets The Standards For Retention. 19

A. Section 327 Requires Disinterestedness And The Absence Of An Adverse Interest To Protect The Fairness And Integrity Of The Proceeding. 19

B. Sidley Satisfies Section 327's Requirements Because It Is Disinterested And Holds No Interest Adverse To The Estate. 21

C. Century's Request That Sidley Be Disqualified Based On Alleged Ethical Violations Should Be Denied 23

1. Disqualification Is An Extreme Measure. 23

2. Century Unreasonably Delayed in Raising Its Claims. 25

3. The Dispute Between Sidley And Century Can Be Addressed In An Alternative Forum. 27

4. If The Court Does Entertain Disqualification As A Potential Sanction, Sidley's Representation Of BSA Does Not Violate Rule 1.9 Regarding Duties To Former Clients. 28

a. Century Is A Former Sidley Client Both In Fact And Under The Ethical Rules. 28

b. Century Has Admitted That Sidley's Representation Of BSA Is Not "Substantially Related" To Its Representation Of Century In Reinsurance Collection Actions. 31

5. Even If Century's Relationship With Sidley Is Evaluated Under The Present Client Standard, Sidley's Representation Of BSA Did Not Violate Rule 1.7. 36

a. Sidley Was Not "Directly Adverse" To Century At Any Point Before Its Withdrawal. 37

b. Sidley's Representation Of Century Was In No Way "Materially Limited" By Its Representation Of BSA. 40

II. Sidley's Disclosures Were Appropriate Under Federal Rule Of Bankruptcy Procedure 2014. 42

III. Sidley Is Prepared To Take Appropriate Steps To Address Any Potential Concerns. 43

CONCLUSION 45

TABLE OF AUTHORITIES

Page(s)

Cases

In re Ampal-Am. Israel Corp.,
691 F. App'x 12 (2d Cir. 2017) 21

Arnett v. Mid-Cont'l Cas. Co.,
No. 08-cv-2373, 2010 WL 11507481 (M.D. Fla. Apr. 13, 2010).....26

In re AroChem Corp.,
176 F.3d 610 (2d Cir. 1999).....19

BancInsure, Inc. v. McCaffree,
No. 12-cv-2110, 2013 WL 5769918 (D. Kan. Oct. 24, 2013) 31

Bd. of Regents of Univ. of Neb. v. BASF Corp.,
No. 04-cv-3356, 2006 WL 2385363 (D. Neb. Aug. 17, 2006) 34

In re Best Craft Gen. Contr. & Design Cabinet, Inc.,
239 B.R. 462 (Bankr. E.D.N.Y. 1999).....19

In re BH & P Inc.,
949 F.2d 1300 (3d Cir. 1991).....19, 20

Bos. Sci. Corp. v. Johnson & Johnson Inc.,
647 F. Supp. 2d 369 (D. Del. 2009).....24

In re Caesars Entm't Operating Co., Inc.,
561 B.R. 420 (Bankr. N.D. Ill. 2015) 20

Chem. Bank v. Affiliated FM Ins. Co.,
No. 87-cv-0150, 1994 WL 141951 (S.D.N.Y. Apr. 20, 1994) 32

City of Joliet v. Mid-City Nat'l Bank of Chi.,
998 F. Supp. 2d 689 (N.D. Ill. 2014) 30

Conley v. Chaffinch,
431 F. Supp. 2d 494 (D. Del. 2006).....26

Elonex I.P. Holdings, Ltd. v. Apple Computer, Inc.,
142 F. Supp. 2d 579 (D. Del. 2001).....24

Emp'rs Ins. Co. of Wausau v. Munich Reinsurance Am., Inc.,
No. 10-cv-3558, 2011 WL 1873123 (S.D.N.Y. May 16, 2011) 32

In re Empire State Conglomerates, Inc.,
546 B.R. 306 (Bankr. S.D.N.Y. 2016) 22

End of Rd. Tr. v. Terex Corp.,
No. 99-477, 2002 WL 242464 (D. Del. Feb. 20, 2002) 24

In re Enron Corp.,
No. 01-16034, 2002 WL 32034346 (Bankr. S.D.N.Y. May 23, 2002) 25, 43

In re Fairvue Club Properties LLC,
No. 09-13807, 2010 WL 569561 (Bankr. M.D. Tenn. Feb. 12, 2010) 22

Finmeccanica S.p.A. v. Gen. Motors Corp.,
No. 07-cv-08222, 2008 WL 11340060 (C.D. Cal. Apr. 29, 2008) 26

In re First Jersey Sec., Inc.,
180 F.3d 504 (3d Cir. 1999) 19, 22

In re Fullenkamp,
477 B.R. 826 (Bankr. M.D. Fla. 2011) 35

In re Glob. Indus. Techs., Inc.,
645 F.3d 201 (3d Cir. 2011) 38

In re Golden Guernsey Dairy, LLC,
No. 13-10044, 2015 WL 3669932 (Bankr. D. Del. June 12, 2015) 20, 23

In re Harold & Williams Dev. Co.,
977 F.2d 906 (4th Cir. 1992) 20

Hernandez v. Helm,
No. 18-cv-7647, 2019 WL 5922233 (N.D. Ill. Nov. 12, 2019) 42

High 5 Games, LLC v. Marks,
No. 13-cv-7161, 2018 WL 2278103 (D.N.J. May 18, 2018) 23

Intelli-Check, Inc. v. Tricom Card Techs., Inc.,
No. 03-cv-3706, 2008 WL 4682433 (E.D.N.Y. Oct. 21, 2008) 25

Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing & Securitization, LLC,
616 F. Supp. 2d 461 (S.D.N.Y. 2009) 21

Jackson v. Rohm & Haas Co.,
366 F. App'x 342 (3d Cir. 2010) 23

In re Jade Mgmt. Servs.,
386 F. App'x 145 (3d Cir. 2010) 20

Macheca Transp. Co. v. Phila. Indem. Co.,
463 F.3d 827 (8th Cir. 2006) 24

In re Mack Indus., Ltd,
606 B.R. 313 (Bankr. N.D. Ill. 2019) 34

In re Marvel Entm't Grp., Inc.,
140 F.3d 463 (3d Cir. 1998).....19, 20, 21, 22

Merck Eprova AG v. ProThera, Inc.,
08-cv-0035, 2009 WL 10696470 (S.D.N.Y. Oct. 6, 2009).....28

Mitchell v. Metro. Life Ins. Co.,
No. 01-cv-2112, 2002 WL 441194 (S.D.N.Y. Mar. 21, 2002).....32

In re Muma Servs., Inc.,
286 B.R. 583 (Bankr. D. Del. 2002) 21, 22, 39

N. River Ins. Co. v. Emp'rs Reinsurance Corp.,
197 F. Supp. 2d 972 (S.D. Ohio 2002) 31

In re Onejet, Inc.,
No. 18-24070, 2020 WL 1879029 (Bankr. W.D. Pa. Mar. 27, 2020) 23, 24

P&L Dev. LLC v. Bionpharma Inc.,
No. 17-cv-1154, 2019 WL 357351 (M.D.N.C. Jan. 29, 2019).....34

Raba v. Suozzi,
No. 06-cv-1109, 2006 WL 8435604 (E.D.N.Y. Nov. 17, 2006) 35

Ransburg Corp. v. Champion Spark Plug Co.,
648 F. Supp. 1040 (N.D. Ill. 1986) 29

Reeves v. Town of Cottageville,
No. 12-cv-02765, 2014 WL 4231235 (D.S.C. Aug. 26, 2014).....26

Regalo Int'l, LLC v. Munchkin, Inc.,
211 F. Supp. 3d 682 (D. Del. 2016).....19, 23, 33

In re Relativity Media, LLC,
No. 18-11358, 2018 WL 3769967 (Bankr. S.D.N.Y. July 6, 2018) 41

Sanchez v. Navigators Specialty Ins. Co.,
No. 12-cv-00724, 2012 WL 12336234 (C.D. Cal. July 24, 2012).....21

Santacroce v. Neff,
134 F. Supp. 2d 366 (D.N.J. 2001) 29

Sonos, Inc. v. D & M Holdings Inc.,
No. 14-cv-1330, 2015 WL 5277194 (D. Del. Sept. 9, 2015).....22, 33

Spear v. Fenkell,
No. 13-cv-02391, 2014 WL 6676660 (E.D. Pa. Nov. 25, 2014).....26

In re Star Broad., Inc.,
81 B.R. 835 (Bankr. D.N.J. 1988).....39

Stonebridge Cas. Ins. v. D.W. Van Dyke & Co.,
No. 10-cv-81157, 2015 WL 8330980 (S.D. Fla. Oct. 23, 2015).....38

Talecris Biotherapeutics, Inc. v. Baxter Int'l Inc.,
491 F. Supp. 2d 510 (D. Del. 2007).....32, 33, 34, 36

In re Tate,
No. 19-00237, 2019 WL 3294073 (Bankr. D.D.C. July 22, 2019).....27

In re Thorpe Insulation Co.,
677 F.3d 869 (9th Cir. 2012).....37, 38

Tipton v. Canadian Imperial Bank of Commerce,
872 F.2d 1491 (11th Cir. 1989).....39

TQ Delta, LLC v. 2Wire, Inc.,
Nos. 13-cv-1835, 13-cv-1836, 13-cv-2013, 2016 WL 5402180 (D. Del. Sept. 26, 2016).....24

United States v. Prevezon Holdings Ltd.,
839 F.3d 227 (2d Cir. 2016).....27

United States v. Wilson,
503 U.S. 329 (1992).....21

Universal City Studios, Inc. v. Reimerdes,
98 F. Supp. 2d 449 (S.D.N.Y. 2000).....26

Vanguard Sav. & Loan Ass'n v. Banks,
No. 93-cv-4627, 1994 WL 284222 (E.D. Pa. June 28, 1994).....42

In re Washington Mut., Inc.,
442 B.R. 314 (Bankr. D. Del. 2011).....41

Worley v. Moore,
807 S.E.2d 133 (N.C. 2017).....35

Wyeth v. Abbott Labs.,
692 F. Supp. 2d 453 (D. N.J. 2010).....25, 35

Statutes & Rules

11 U.S.C. § 101(14) 20, 23

Federal Rule Of Bankruptcy Procedure 2014 .....42, 43

Other Authorities

ABA Formal Op. 05-435 (Dec. 8, 2004) 38

ABA Model Rule 1.7 ..... *passim*

ABA Model Rule 1.9 ..... *passim*

ABA Model Rule 1.16 30

3 Collier on Bankruptcy ¶ 327.04[1] 18

Reinsurance, Black's Law Dictionary (11th ed. 2019) 31

Ronald D. Rotunda & John S. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility § 1.7-1(f) (2018-2019 ed.) 27

1. Sidley Austin LLP ("Sidley") hereby files this response to the Objection to Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date (ECF No. 426) (the "Objection") filed by Century Indemnity Company ("Century"), and in further support of Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date (ECF No. 204) (the "Application"). In further support of the Application and this response, Sidley submits: (1) the Declaration of William Sneed ("Sneed Decl."); (2) the Declaration of Jessica Boelter ("Boelter Decl."); and (3) the Declaration of Professor Nancy Rapoport ("Rapoport Decl.").[2]

PRELIMINARY STATEMENT

2. By the Application, the Debtors are seeking to retain Sidley as their restructuring counsel in these cases. For the past year and a half, the professionals at Sidley have been working closely with Debtors in this complex and unusual matter. During that time, Sidley has become intimately familiar with BSA, its mission, and the unique, historic, and complicated challenges presented by this bankruptcy—the first involving a congressionally chartered non-profit corporation. Sidley has substantial historical and ongoing working relationships with the many different parties in interest to this proceeding. These include representatives of abuse survivors, the future claimants' representative, insurers, and Local Councils. Simply put, Sidley has deep institutional knowledge and substantial ties to the Debtors that would not be easily or quickly replaceable.

[2] Sidley is submitting the Sneed Declaration, Rapoport Declaration, and certain portions of this brief *in camera* pending resolution of confidentiality issues raised by Century.

3. The sole objection to Sidley's retention comes from Century. Although styled as an objection under Section 327 of the Bankruptcy Code, Century's objection is in substance a motion to disqualify Sidley from continuing to represent the Debtors in any capacity. Century's objection relies solely on Sidley's previous work for Century in certain reinsurance collection actions, which are entirely unrelated to these Chapter 11 cases. As Sidley disclosed in Ms. Boelter's declaration in support of the Application, the reinsurance dispute at issue involved claims under insurance policies Century or its predecessors issued to BSA. Critically, however, BSA had already received payment under its insurance policies with Century, and BSA was not a party to, and has no interest in, the outcome of the disputes between Century and its reinsurers.

4. Century seeks this relief two months after Sidley filed the Debtors' Chapter 11 petition and substantial progress has been made. Tellingly, the Objection was filed literally on the eve of a hearing on April 15 to address the selection of mediators as part of the carefully designed process intended to move these cases toward a conclusion. Century claims that the draconian sanction of disqualification is the only possible way to address Sidley's purported "irrefutable conflict" between its representation of Debtors and its ethical duties to Century.

5. Over the years, the lawyers at Sidley have earned a deserved reputation for zealous and thoughtful representation of clients and for scrupulous adherence to the canons of ethics and professionalism. Sidley's lawyers take their ethical obligations with the utmost seriousness. Sidley has made repeated efforts to fairly address any legitimate concerns raised by Century, and we hoped that it would not be necessary to air our dispute in this forum. But given Century's very serious accusations, let there be no mistake: Sidley categorically and unequivocally denies any breach of duty or other wrongdoing in this matter, and firmly rejects Century's claims that it is conflicted from continuing as Debtors' counsel in this matter.

6. The Objection provides an incomplete and misleading presentation of the issues. When the record is corrected and the facts are reviewed fairly and in their entirety, it is clear that there is no basis under which to grant the relief that Century asks of this Court. In particular:

- **Century was aware of Sidley's work for BSA long before October 2019.** Century claims that it only first learned of Sidley's work for BSA in October 2019. But the *Wall Street Journal* reported that BSA had hired Sidley in connection with a potential restructuring in December 2018—*i.e.*, almost a year before Century claims it first learned of Sidley's retention. In fact, Sidley and Century discussed the issue at the time. And while Sidley, consistent with its ethical duties to BSA, could not confirm its role, Sidley nevertheless explained that representation of Century with respect to a reinsurance dispute would not constitute adversity to a Century insured such as BSA. At no point during that conversation or in subsequent discussions—that is, until nearly a year later—did Century ever assert a possible conflict, much less the view that a representation of BSA or any other Century insured in a bankruptcy would be a "textbook" or "shocking" breach of duty.

- **The reinsurance disputes did not involve the same policies and issues that are at issue in the bankruptcy.** Century now asserts that Sidley's work for Century involved the same policies and issues that are at issue in this bankruptcy. That is not how Century defined the scope prior to this dispute. In fact, the agreement that Century claims governs the relationship describes Sidley's work as involving "Non-Claims Legal Services," *i.e.*, "services performed by [Sidley] for [Century] that are *unrelated to the defense of an insurance claim or a related insurance coverage claim*." Consistent with that description, the reinsurance disputes addressed historical payments by Century for which it was seeking reimbursement from its reinsurer under a separate and distinct reinsurance contract. BSA was not a party to and has no interest in the outcome of the disputes between Century and its reinsurers, and nothing about those disputes would have any impact or influence on the estate or be relevant to any legal advice that Sidley is giving to BSA in this proceeding.

- **Sidley's representation of BSA predated its representation of Century.** Century attempts to portray itself as a longtime substantial client of Sidley that had an existing attorney-client relationship at the time BSA retained Sidley as restructuring counsel. Not so. BSA retained Sidley *before* Century hired Sidley to represent it in the reinsurance actions at issue. Century's narrative that Sidley dropped an existing client—Century—like a "hot potato" to take on a new and more remunerative matter—the BSA restructuring—is wrong.

- **Any purported conflict can be addressed through conflicts/coverage counsel.** Assuming, arguendo, that a conflict does exist (which it does not), Century claims any potential issues associated with Sidley participating in the bankruptcy are impossible to address through separate coverage counsel, screens, and delineation

of roles between Sidley and other counsel. In fact, as discussed below, well before this dispute, Century *itself* offered to grant Sidley a waiver of any potential conflicts, subject to certain limited exceptions that are entirely consistent with how Sidley proposes to proceed here. Moreover, the Court has already approved BSA's retention of Haynes and Boone LLP ("Haynes and Boone") to serve as special insurance counsel—a role they held before Sidley was hired—and to advise on issues related to general liability insurance, including the treatment of insurance under any Chapter 11 plan. And the Court has also approved Morris Nichols Arsht & Tunnell LLP ("Morris Nichols") as BSA's Delaware-based bankruptcy co-counsel.

- **Sidley disclosed its prior representation of Century to the Court.** Finally, Century castigates Sidley for failing to adequately disclose the alleged conflict. Ms. Boelter's declaration filed in support of the Application, however, prominently disclosed the nature of Sidley's prior representation of Century—in the body of the declaration and not simply in a footnote or an attached list. As discussed below, Century fails to identify for the Court the relevant paragraph of Ms. Boelter's declaration in which this information was expressly disclosed. And ironically, Century appears to assert that Sidley was obligated to disclose certain additional information about the prior representation that Century itself expressly directed Sidley *not* to disclose, as well as information that Century has redacted from the information that it submitted to the Court under seal.

7. Courts in Delaware and elsewhere have been appropriately skeptical of disqualification motions because they are frequently wielded tactically for purposes of delay or to disrupt or increase the cost of the proceedings. That caution is especially warranted where, as here, the specific dispute between the lawyer and its former client can and should be addressed in a different forum (in an arbitration proceeding that Century already took steps to commence); where, as here, the Debtors have conflicts counsel (both special insurance counsel (Haynes and Boone) and bankruptcy co-counsel (Morris Nichols) for any Century coverage or other dispute); and where, as here, counsel (Sidley) is prepared to agree, as part of its retention, to maintain an existing ethical wall and clear demarcation of the respective roles and responsibilities of various counsel in the retention order.

8. Moreover, delay would be enormously destabilizing at a critical juncture. BSA is a non-profit organization with limited funding. An expeditious exit from bankruptcy is vital to

preserving its mission. Since filing, Debtors' position has become even more precarious as a result of the COVID-19 pandemic. Under these circumstances, depriving Debtors of their chosen counsel and requiring them to retain a different law firm would squander precious time and estate resources. And it would seriously jeopardize the Debtors' ultimate goal of achieving a restructuring that provides for equitable recoveries to abuse survivors and that preserves the mission of BSA as an ongoing institution.

9. As stressed from the outset, BSA's goal is to proceed through bankruptcy with minimal expense and the utmost efficiency in order to preserve its mission. Additionally, delay caused by BSA being forced to jettison its chosen counsel at this critical juncture would be devastating. Sidley possesses unique knowledge of the complex issues and interests at play in this proceeding and has unique experience in navigating bankruptcies, like this one, involving mass tort claims. The time necessary to replace that expertise would all but preclude an efficient exit from bankruptcy, and the attendant expense would not only further burden BSA, but also reduce the funds available to abuse survivors. And the extreme remedy of disqualification that Century is proposing is wholly unnecessary in light of the involvement of Haynes and Boone and Morris Nichols, and the willingness of Sidley to clearly delineate the role it will take in this matter going forward.

10. For all the reasons discussed below, Sidley satisfies the Bankruptcy Code's requirements for retention, and Century has provided no basis for the drastic remedy of disqualification. As such, Sidley's retention should be approved. A decision to the contrary is not warranted as a matter of fact or law and would severely prejudice BSA and run counter to the interests of the many parties to this proceeding. Century's Objection should be denied.

BACKGROUND

A. Sidley's Retention By BSA

11. On September 26, 2018, BSA engaged a team of Sidley restructuring attorneys (the "Restructuring Team") to explore its restructuring options in light of, among other factors, the increasing number of abuse claims asserted against BSA. (Boelter Decl. ¶¶ 3-4; *see also* ECF No. 4, Informational Brief at 39.)[3] The Sidley Restructuring Team has substantial experience in navigating restructurings involving mass tort claims,[4] and the team has leveraged that experience over the past year and a half to plot BSA's course to financial viability.

12. Since the fall of 2018, and culminating in the Chapter 11 filing on February 18, 2020, the Sidley Restructuring Team has dedicated significant time and energy to this matter and leveraged its experience to counsel BSA regarding a host of issues, including retaining a future claimants' representative, discussions with an ad hoc group of attorneys representing significant numbers of current abuse claimants, the formation of the Local Council Committee, and strategies for reaching a global resolution of BSA's abuse liability. (ECF No. 4, Informational Brief at 37-46; Boelter Decl. ¶ 6.)

13. In addition to Sidley, BSA has also been represented by Haynes and Boone, Morris Nichols, and Ogletree, Deakins, Nash, Smoak & Stewart, P.C. ("Ogletree Deakins"). Haynes and Boone is special insurance counsel to BSA. In connection with the work described above, lawyers at Haynes and Boone have taken the lead on all insurance coverage matters and advised BSA on other insurance issues, including, among other things, analyzing policies held by

---

[3] The engagement letter is dated October 3, 2018. (Boelter Decl. ¶ 4, Ex. 1.)

[4] Specifically, the Sidley Restructuring Team includes lawyers involved in *In re TK Holdings Inc.*, No. 17-11375 (Bankr. D. Del.), *In re Yarway Corp.*, No. 13-11025 (Bankr. D. Del.), *In re Owens Corning et al.*, No. 00-03837 (Bankr. D. Del.), *In re Federal Mogul Global Inc., et al.*, No. 01-10578 (Bankr. D. Del.), *In re Montreal, Maine & Atlantic Railway, Ltd.*, No. 13-10670 (Bankr. D. Me.), and certain of the Catholic archdiocese bankruptcy cases. (Boelter Decl. ¶ 5.)

BSA and drafting certain portions of the proposed Plan of Reorganization pertaining to insurance matters, such as the language relating to insurance neutrality. (Boelter Decl. ¶ 7.) BSA filed an application to retain Haynes and Boone as special insurance counsel, which the Court granted without objection. (ECF No. 463.) Morris Nichols is additional Delaware-based bankruptcy co-counsel to BSA. Morris Nichols' retention was approved by this Court without objection. (ECF No. 339.) Ogletree Deakins represents BSA in the abuse claims litigation. (Boelter Decl. ¶ 7.) This Court also authorized Ogletree Deakins' retention without objection. (ECF No. 364.) As discussed in more detail, BSA and Sidley intend for Haynes and Boone to continue on in its role as special insurance counsel as the case progresses, and, in conjunction with Morris Nichols, will handle any coverage or other disputes with Century, including any adversary actions that may arise out of these proceedings, and handling any Century-specific objections to the proposed Plan of Reorganization. (*See* Boelter Decl. ¶ 7.)

B. Sidley's Relationship With Century

14. In light of Century's allegations, a detailed review of the nature and scope of Sidley's work for Century is necessary. Although it now characterizes Sidley's reinsurance work as substantially related to the underlying coverage issues with BSA, that is not how Century described it before this dispute arose. In connection with its retention, Century provided Sidley with a "Service Level Agreement" ("SLA"), a document that spells out the duties and obligations of the respective parties and that Century views as governing the relationship between itself and outside counsel. The SLA that Century claims is applicable describes the work as being "Non-Claims Legal Services," *i.e.*, "services performed by [Sidley] for [Century] that are *unrelated to the defense of an insurance claim or a related insurance coverage claim*." (Sneed Decl. Ex. 4 at 4 (emphasis added).) Put differently, Century retained Sidley for work that was "unrelated" to any claim under the policies Century issued to BSA.

15. That description is entirely consistent with the scope of the work that Sidley was asked to do. On October 5, 2018 (after BSA retained Sidley), Century retained Sidley partner William Sneed to analyze potential next steps in a reinsurance collection dispute against Lloyd's of London Syndicates (the "Lloyd's Matter"). (*See* Objection at 4; Sneed Decl. ¶¶ 3-5.) At the time, Century brought Sidley on in a consulting capacity to review the record of a prior arbitration between Century and Lloyd's in which Century had been represented by a different law firm. (Sneed Decl. ¶ 4.) Joshua Schwartz, Managing Counsel, Director of Reinsurance Litigation for Century, was Sidley's primary point of contact at Century for the Lloyd's Matter. (*Id.* ¶ 3.)

16. The prior Lloyd's arbitration, in which Sidley had no involvement, involved a claim by Century to Lloyd's for reimbursement for payments made in settling certain abuse cases in which Century had defended and indemnified BSA. (Sneed Decl. ¶ 4 (citing *Certain Underwriters at Lloyd's, London v. Century Indemnity Co.*, Nos. 18-cv-12041, 19-cv-11056, 2020 WL 1083360, at *2 (D. Mass. Mar. 6, 2020)).) Lloyd's had reinsured Century for losses arising from Century's entire book of business in a given year—*i.e.*, "treaty reinsurance"—which included, among many other policies, coverage for eight annual policies of insurance that Century issued to BSA from 1963 to 1970. *Lloyd's*, 2020 WL 1083360, at *2. Beginning in or about February 2016, Century notified and billed its reinsurer, Lloyd's, for a portion of the payments it had made in settling those cases. *Id.* But Lloyd's refused to pay Century under those reinsurance contracts. *Id.* That dispute had been arbitrated and resolved adversely to Century. *Id*. Following the arbitrators' ruling, Century submitted new re-insurance bills for the same abuse claims in August 2018—this time in conformity with the ruling—that Lloyd's likewise refused to pay. *Id*. at *2-3.

17. At that point, the only remaining substantive issue of significance in the Lloyd's dispute was whether Century could permissibly re-issue reinsurance billings to Lloyd's that accumulated separate abuse claims as a single "occurrence" under the reinsurance treaties—an issue that the original arbitration panel had declined to decide. (Sneed Decl. ¶ 5 (citing *Lloyd's*, 2020 WL 1083360, at *3).) When Sidley was first retained, Mr. Sneed was asked to provide a preliminary analysis of certain issues. (*Id.* ¶ 5.) The only information that Mr. Sneed received in connection with this work was the record of the prior arbitration and other limited materials. (*Id.* ¶ 7.)

18. The engagement expanded in late November 2018. Mr. Sneed was asked by Century to prepare to move to compel another arbitration in federal court—this time based on Lloyd's denial of Century's re-submitted bills. (*Id.* ¶ 6.) The petition seeking an order compelling arbitration was filed in the District of Massachusetts on May 6, 2019. (*Id.* ¶ 6 (citing *Lloyd's*, 2020 WL 1083360, at *3).)[5]

19. In July 2019, Century also asked Mr. Sneed to represent Century in a reinsurance collection dispute with a different reinsurer (the "Second Matter"). (*Id.* ¶ 8.) Like the Lloyd's Matter, the Second Matter involved efforts to collect reinsurance arising from payments previously made under the Century policies issued to BSA—this time with different reinsurers. (*Id.*)[6]

20. Consistent with the limited scope of these representations and nature of the issues being litigated in the reinsurance context, Sidley did not receive any confidential privileged

---

[5] Those efforts were successful, and on March 6, 2020, the District of Massachusetts directed a new arbitration to proceed. *See Lloyd's*, 2020 WL 1083360, at *6.

[6] Mr. Sneed also represented and counseled Century and its affiliates in various other matters with no connection to BSA at all, specifically in an arbitration against a different insurance company and two matters involving sporadic counseling. (Sneed Decl. ¶ 9.)

information with respect to any coverage dispute involving the primary policies issued by Century to BSA during the course of either the Lloyd's or the Second Matters. (*Id.* ¶ 18.) Century's Objection makes reference to a coverage dispute between BSA and Century. (Objection at 4.) However, Sidley did not receive pleadings, motions, or other filings related to any pending insurance coverage litigation, much less confidential information in that regard—which would not have been relevant to the reinsurance disputes. (Sneed Decl. ¶ 18.)[7]

21. At the time Century hired Sidley in connection with the Lloyd's Matter, Century's relationship with Sidley had lapsed. (*Id.* ¶ 22.) Mr. Sneed was required to obtain a new engagement letter and open a new matter in keeping with Sidley's standard protocol. (*Id.* ¶ 23.) Pursuant to that protocol, which had changed since Century had last opened a new matter, Mr. Sneed raised the need for an advance waiver for non-contentious (transactional) matters orally with Mr. Schwartz on or around November 30, 2018, and sent a follow-up email in that regard on December 7, 2018. (Sneed Decl. ¶ 23, Ex. 1.)[8]

22. Discussions regarding the advance waiver continued into March of 2019.[9] (*Id.* ¶ 24.) Century eventually proposed an advance waiver that included a restructuring waiver to

---

[7] The only interaction of any sort Mr. Sneed had with any insurance coverage dispute came in connection with the discovery requests Century cites in its Objection (at 28 & n.114). Those requests required Mr. Sneed to contact Lloyd's counsel under the confidentiality agreement that governed the prior reinsurance arbitration between Century and Lloyd's, which he did. Mr. Sneed did not obtain, review, or produce any materials in that litigation. (Sneed Decl. ¶ 21.)

[8] Century's Objection incorrectly places the start of these conversations in January 2019, *i.e.*, after the BSA's retention of Sidley had been publically reported. (Objection at 6.)

[9] Despite Century's claim that "it was not until the end of October that anyone on the reinsurance side learned about the October 14 meeting and realized that Sidley was concurrently representing Century and the BSA" (Schwartz Decl. ¶ 12), during February 2019, Mr. Schwartz on more than one occasion inquired whether the advance waiver was meant to protect Sidley in its representation of BSA in its restructuring. Mr. Sneed, however, had initiated the advance waiver negotiations per the firm's new protocol before he was even aware that BSA had retained Sidley bankruptcy attorneys. (Sneed Decl. ¶¶ 23, 25.)

allow Sidley to represent an entity insured by a Century affiliate in a bankruptcy proceeding, with the following conditions:

- There must be a wall between the Sidley [Restructuring] team and any attorneys at Sidley who work on any [Century] matters, which prohibits such Sidley lawyers from working on any bankruptcy or insolvency matter involving [Century] insurance or reinsurance policies.
- Sidley would have no direct or indirect involvement in any motions to compel arbitration involving [Century] filed in a bankruptcy or insolvency proceeding, nor in any arbitration that subsequently ensues.
- Sidley would not have any direct or indirect involvement in disputes regarding: a) [Century] collateral agreements; b) asset purchase agreements in which the debtor sells assets to a third party and there is a dispute between [Century] and the buyer; and c) coverage disputes (including allegations of bad faith/ECO).

(*Id.* ¶ 24, Ex. 2.)

23. Ultimately, Sidley determined to proceed with the Century engagement without an advance waiver to avoid imposing myriad individually negotiated obligations on an advance basis. (Sneed Decl. ¶ 24.) As a result, the engagement was memorialized in a "Service Level Agreement" between Sidley and Century. (*Id.* ¶ 24, Ex. 4.)

C. BSA's Retention Of Sidley Is Publicly Reported In December 2018 And Sidley's Representation Of Century Continues Without Objection

24. In the midst of Sidley and Century's advance waiver discussions, the *Wall Street Journal* published an article that publicly revealed Sidley's representation of BSA in its potential restructuring. (*See* Sneed Decl. Ex. 6, Katy Stech Ferek, *Boy Scouts of America Considers Bankruptcy Filing Amid Sex-Abuse Lawsuits*, WALL ST. J. (Dec. 12, 2018).) On December 13, 2018, Mr. Schwartz forwarded the *Wall Street Journal* article to Mr. Sneed as an "FYI" without

further discussion, and then proceeded to discuss the transition of the Lloyd's Matter to Sidley. (Sneed Decl. ¶ 26, Ex. 5.)[10]

25. The following day, on December 14, 2018, Mr. Sneed and Mr. Schwartz spoke on the phone. (Sneed Decl. ¶ 27.) Mr. Sneed indicated he had spoken to one of his partners and—consistent with Sidley's duty of confidentiality—told Mr. Schwartz that he was not able to expressly confirm or deny what was stated in the *Wall Street Journal* article respecting Sidley's representation of BSA. (*Id.*) Nonetheless, Mr. Sneed explained to Mr. Schwartz that it was Sidley's view that the firm's representation of an insurer with respect to collecting reinsurance due it following payment to an insured does not constitute adversity to the insured; thus, Sidley would have no conflict in continuing to represent Century against Lloyd's on the BSA reinsurance dispute. (*Id.*) Mr. Schwartz told Mr. Sneed that he was pleased to hear that Sidley was not conflicted. (*Id.*) At no point did Mr. Schwartz contest Sidley's view regarding the lack of conflict. (*Id.*) Nor did Mr. Schwartz raise a concern that Century might view Sidley's representation of BSA as a conflict of interest (*id.*), much less a "textbook" or "irrefutable" conflict (Objection at 1, 23).

26. After the December 14, 2018 phone call, Century proceeded to transition the Lloyd's Matter to Sidley. At no point during the transition did Mr. Schwartz or any representative from Century raise a concern that Century would view Sidley's possible representation of BSA as a conflict of interest. (Sneed Decl. ¶ 28.)

---

[10] Notably, that same day Chubb representative Eric Samansky, Vice President of External Communications, North America, is quoted in a similar article published by NBC News, which also highlights Sidley's representation of BSA. *See* Corky Siemaszko, *Boy Scouts of America Considering Bankruptcy*, NBC NEWS (Dec. 14, 2018), https://www.nbcnews.com/news/us-news/boy-scouts-america-pushed-brink-bankruptcy-battles-insurers-n948181.

27. These are not the only occasions on which Sidley and Century discussed the matter. On or around October 3 or 4, 2019, Mr. Sneed and Mr. Schwartz spoke during a coffee break at the ARIAS reinsurance industry conference in New York City. (*Id.* ¶ 29.) Robert Omrod, an executive at Brandywine Holdings, another Century affiliate, also participated in the conversation. (*Id.*) During that exchange, Mr. Schwartz and Mr. Sneed discussed the Lloyd's Matter, and Mr. Omrod remarked that he was aware that Sidley represented BSA in its potential restructuring. (*Id.*) At no point in that conversation did Mr. Schwartz or Mr. Omrod express a view that Sidley's role posed a conflict of interest. (*Id.*)

D. Century Participates in Discussions Regarding BSA's Potential Restructuring Without Objection

28. In the late summer and fall of 2019, BSA was intensively working to reach a global resolution among all interested stakeholders that would result in a prepackaged bankruptcy to effect a global resolution of outstanding tort claims. BSA involved Haynes and Boone, its dedicated insurance counsel, from the outset of its restructuring negotiations. (Boelter Decl. ¶¶ 7-8.) Through Haynes and Boone, BSA initiated substantive discussions with its insurers including Century, which has policy obligations that do not contain aggregate limits for abuse claims arising in certain of these policy years. (*Id.* ¶ 9.)

29. In late September 2019, Haynes and Boone reached out to set up a meeting with Century that included BSA's restructuring counsel—*i.e.*, Sidley. (Objection at 7; Boelter Decl. ¶ 10.) That meeting took place on October 14, 2019, at Sidley's Chicago office and included three individuals from Century (and its affiliates), a lawyer from Haynes and Boone, and members of the Sidley Restructuring Team. (Boelter Decl. ¶ 11.) Shortly before the meeting, Sidley was informed that Century had hired Tancred Schiavoni of O'Melveny & Myers LLP as outside restructuring counsel, and Mr. Schiavoni attended the meeting. (*Id.*) Century said nothing

about Sidley's role as restructuring counsel before, during, or in the days after that meeting, much less claim that it conflicted with its representation of Century. (*Id.* ¶ 12.) On October 17, 2018, Century sent a letter to Haynes and Boone addressing the substance of the October 14 meeting. That letter did not express any concerns over Sidley's participation in the process. (*Id.* ¶ 13, Ex. 2.)

30. The following week, a Century representative attended three days of meetings in Sidley's Chicago office (although Sidley attorneys did not attend) to discuss the future claims matrix. (Boelter Decl. ¶ 14.) Again, no concerns were brought to Sidley's attention following those meetings. (*Id.*)

E. Century Belatedly Raises A Potential Conflict In Late October 2019

31. On October 29, 2019, Century first expressed its view that Sidley's role as BSA's restructuring counsel might create a conflict. On that date, Messrs. Sneed and Schwartz spoke by phone, after which Mr. Schwartz sent an email stating that he had "just learned" that Sidley represented BSA, that Century did not "waive any conflict" presented by Sidley's "potential representation" of BSA in connection with its restructuring, and promising to "discuss this issue internally and circle back to you after we conclude those discussions." (Sneed Decl. ¶ 30; Schwartz Decl. Ex. 3.) As Mr. Sneed reminded Mr. Schwartz on the phone call, any claim that Century was surprised to learn of Sidley's role with BSA was simply not accurate given their prior discussions. (Sneed Decl. ¶ 30.)

32. Even following this exchange, however, Century continued to participate in discussions with Sidley's Restructuring Team without raising any issues relating to a potential conflict. On October 31, 2019, and continuing the following day, Century (and its outside counsel, Mr. Schiavoni), Haynes and Boone, and members of the Sidley Restructuring Team

participated in a video conference that involved, among other things, a presentation of BSA's revenue streams. (Boelter Decl. ¶ 15, Ex. 3.)

33. Then, on Sunday, November 3, 2019, on the eve of the mediation, Century's bankruptcy counsel abruptly sent an email stating Century's view that the mediation could not "go forward with Sidley Austin as a participant" due to "concern[s]" that Sidley's role as BSA's restructuring counsel put it in an adverse position to Century. (Boelter Decl. ¶ 16, Ex. 4.) Ms. Boelter responded two hours later, stating that there was no conflict from Sidley's role as restructuring counsel and noting that Haynes and Boone had been retained as coverage counsel. (Boelter Decl. Ex. 4 at 2.) She also emphasized that, as had been explained to Century and its advisors at several points, the mediation had taken significant effort to plan and was of critical importance to BSA. (*Id.*)

34. The following morning, Sidley attorneys met with Century before the mediation was set to begin at Sidley's New York office. (Boelter Decl. ¶ 17.) After discussion, it was agreed that the mediation would proceed without Century waiving any rights. (*Id.*) In an abundance of caution, and to assuage any concerns on Century's part, Sidley put in place a formal screen on November 4, 2019. (*Id.* ¶ 18, Ex. 5.) There had been no crossover of teams or confidential information prior to the implementation of the formal screen. (Boelter Decl. ¶¶ 17, 19.)

F. The Attorney-Client Relationship Breaks Down And Sidley Withdraws From Representing Century

35. In the weeks following, Sidley repeatedly asked Century representatives to schedule a meeting or phone call to more fully discuss the perceived conflict. (*See* Schwartz Decl. Ex. 4; Boelter Decl. Ex. 4 (email dated Nov. 25, 2019).) Despite its assertions that Century engaged in "extensive efforts to try to resolve this issue" (Objection at 2), Century would not

agree to a meeting or call to discuss the issue, nor did Century articulate the basis for its belief that a conflict of interest existed. (*See* Sneed Decl. Ex. 7; Schwartz Decl. Ex. 4.) Instead, in response to Sidley's requests for a meeting or discussion, and as a precondition for engaging on the subject, Century continually requested Sidley first send a written "General Counsel's Opinion" explaining the absence of a conflict and conditioned its willingness to continue discussions on Sidley's production of that opinion. (*See, e.g.*, Sneed Decl. Ex.7 (Nov. 27, 2019 email from Mr. Schwartz: "Before we have a discussion, we would like to review Sidley's General Counsel opinion"); Schwartz Decl. Ex. 4 (Dec. 12, 2019 email from Mr. Schwartz: "We will gladly discuss the conflict issue further with you once Sidley has supplied the information requested").) In its Objection, Century claims that Mr. Sneed had given Century the idea that Sidley had such a written opinion during the October 29, 2019 phone call. (Objection at 7 (citing Schwartz Decl. Ex. 4 (December 2019 email exchange between Sidley attorney Michael Andolina and Mr. Schwartz on which Mr. Sneed was merely copied)).) Mr. Sneed said no such thing; he expressed a view (*i.e.*, *an* opinion), never referencing a *written* opinion. (Sneed Decl. ¶ 32.) Notably, contrary to the assertion in Century's brief, Mr. Schwartz's actual declaration makes no mention of Mr. Sneed having described a written General Counsel's opinion. (*Compare* Objection at 7, *with* Schwartz Decl. ¶ 13.)

36. On December 18, 2019, Mr. Sneed was finally able to schedule a conference call with Mr. Schwartz and another Century representative in an attempt to understand and address Century's concerns. (Sneed Decl. ¶¶ 33-34.) Although Century accuses Mr. Sneed of "bull[ying]" and making "threat[s]" (Objection at 8), that is simply not the case. In fact, Mr. Sneed made clear that Sidley's preference was to continue to represent Century in its reinsurance matters. (*Id.* ¶ 34.) But Mr. Sneed also explained that Sidley would not withdraw from

representing BSA because no conflict existed, and due to the broad way that Century had framed its conflicts complaint, Sidley might be forced to withdraw from its representation of Century if the issue could not be resolved. (*Id.*) Throughout the call, Mr. Sneed urged Century to schedule a management-level conference to resolve the perceived conflict. (*Id.* ¶ 35.) No such conference was scheduled before BSA filed for bankruptcy. (*Id.*)

37. In fact, in its next communication on January 3, 2020, while Sidley's invitation to schedule a management-level meeting or conference was still outstanding, Century sent a letter notifying Sidley that it had consulted with outside ethics counsel and accused Sidley of "shocking and offensive" behavior. (Schwartz Decl. Ex. 5.) At this point, it was clear that no headway would be made, as Century continued to assert that it could not "rule out" a conflict or potential conflict and would not agree to any waiver. (*Id.*)

38. As a result of this breakdown in its relationship with Century, Sidley began an orderly withdrawal of its existing representations by providing notice to Century on January 16, 2020. (Sneed Decl. ¶ 37, Exs. 9-13.) The petition to compel arbitration relating to the new August 2018 reinsurance bills in the Lloyd's Matter had been fully briefed and awaiting judicial decision since September 2019. (Sneed Decl. Ex. 9.) Sidley filed an agreed motion to withdraw, which the court granted on February 21, 2020. (Sneed Decl. ¶ 37.) In the Second Matter, no arbitration schedule had been set, and Sidley provided Century with the required submissions for an upcoming organizational meeting before communicating its withdrawal to the arbitrators over a month later, on February 20, 2020. (*Id.* ¶ 37, Ex. 11.)[11] Sidley further informed Century that it was withdrawing from its remaining matters for Century, both of which involved sporadic advice

[11] In the remaining arbitration, Sidley offered to represent Century through the close of discovery (scheduled for February 14, 2020) (Sneed Decl. Ex. 9), but Century chose to retain substitute counsel and seek a new discovery schedule. (*Id.* Ex. 13.) Sidley communicated its withdrawal to the arbitrators on February 20, 2020. (*Id.* Ex. 12.)

(and one of which had been dormant for over two years). (Sneed Decl. Ex. 13.) As of February 21, 2020, Sidley no longer represented Century or any of its affiliated entities. (Sneed Decl. ¶ 38.)[12]

G. BSA's Application To Retain Sidley And Century's Objection

39. BSA filed for bankruptcy on February 18, 2020. As Ms. Boelter explained during the first day hearing, BSA has two objectives in this proceeding: (1) to provide equitable compensation for abuse survivors and (2) to preserve BSA's mission. (First Day Hearing Tr. 25:13-19 (Feb. 19, 2020).) To achieve these objectives, it is critically important that this bankruptcy proceed expeditiously. To that end, Sidley proceeded to coordinate numerous tasks aimed at facilitating an efficient resolution of the case, including setting up a data room, coordinating with the Ad Hoc Committee of Local Councils, moving for appointment of a future claimants' representative and a judicial mediator, and items related to the nationwide litigation of abuse actions. (ECF No. 4, Informational Brief, at 7-9.)

40. On March 17, 2020, BSA filed its application to retain Sidley as debtors' counsel. The declaration of Ms. Boelter accompanying that application disclosed that Sidley had previously represented Century but had since formally withdrawn from those representations and did not currently represent Century. (Application Ex. B, Boelter Decl. ¶ 22 (disclosing that Sidley had previously represented Century in reinsurance matters and that "[t]he underlying insurance claims … were claims under insurance policies Century or its predecessors issued to

[12] Century suggests that Sidley's communications were improper or unauthorized. However, as the correspondence makes clear, while Sidley was fully prepared to work with Century and Chubb to transition the matters, with respect to the remaining arbitration, Sidley became increasingly concerned that Chubb was creating a misleading impression on the part of the arbitral panel and other counsel that Sidley would continue to remain involved in the matters through their conclusion. That was wrong—Sidley had made clear that it intended to withdraw entirely from the matters. (Sneed Decl. ¶ 37.)

the BSA").) Notably, although Century argues that Ms. Boelter's application does not sufficiently disclose the nature of the matters that Sidley had previously handled for Century, Century itself does not cite to ¶ 22 of the Boelter Declaration, which contains the prominent disclosure regarding Sidley's connections with Century. Sidley also disclosed that ESIS, Inc., a Century affiliate, is a third-party claims administrator utilized by BSA and certain of its insurers. (*Id.*)

ARGUMENT

41. A debtor's choice of counsel is entitled to substantial deference. *See* 3 Collier on Bankruptcy ¶ 327.04[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Accordingly, rejection of a debtor's chosen counsel is "a drastic measure that should be avoided unless absolutely necessary." *In re Best Craft Gen. Contr. & Design Cabinet, Inc.*, 239 B.R. 462, 470-71 (Bankr. E.D.N.Y. 1999); *cf. Regalo Int'l, LLC v. Munchkin, Inc.*, 211 F. Supp. 3d 682, 687 (D. Del. 2016) ("disqualification is disfavored, and the Court approaches motions to disqualify counsel with cautious scrutiny, mindful of a litigant's right to the counsel of its choice" (quotation omitted)). This is not one of the "rare cases" that would warrant depriving Debtors of their chosen counsel.

I. Sidley Meets The Standards For Retention.

A. Section 327 Requires Disinterestedness And The Absence Of An Adverse Interest To Protect The Fairness And Integrity Of The Proceeding.

42. Section 327 is meant to protect the fairness and integrity of the bankruptcy process by ensuring debtor's counsel provides undivided loyalty to the estate. *See generally In re BH & P Inc.*, 949 F.2d 1300, 1316 (3d Cir. 1991); *In re AroChem Corp.*, 176 F.3d 610, 621 (2d Cir. 1999); *see also* Objection at 13 ("the Bankruptcy Code is designed to protect the interests of a debtor's estate"). It accomplishes this goal by requiring that professionals retained by a debtor

"do not hold or represent an interest adverse to the estate" and are "disinterested persons." 11 U.S.C. § 327. A professional holds a prohibited "adverse interest" where that professional holds or represents interests in competition with the debtor that would actually (as opposed to speculatively) impair its service as an estate fiduciary. *See In re First Jersey Sec., Inc.*, 180 F.3d 504, 509 (3d Cir. 1999) ("A Court may consider an interest adverse to the estate when counsel has a competing economic interest tending to diminish estate values or to create a potential or actual dispute in which the estate is a rival claimant." (quotation omitted)); *In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 477 (3d Cir. 1998). A disinterested person is defined, in pertinent part, as someone without "an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders." 11 U.S.C. § 101(14).

43. The court has considerable discretion in approving a debtor's retention of counsel under the standards of Section 327 in light of the specific facts and circumstances of the case. *Marvel*, 140 F.3d at 477; *BH & P*, 949 F.2d at 1313, 1316 ("historically, bankruptcy courts have been accorded wide discretion in connection with … the terms and conditions of the employment of professionals" (alteration in original) (quotation omitted)). Disqualification is mandated only where there is "an actual conflict of interest." *Marvel*, 140 F.3d at 476. And the Third Circuit has made clear that a "court may not disqualify an attorney on the appearance of conflict alone." *Id.*; *see also In re Jade Mgmt. Servs.*, 386 F. App'x 145, 148 (3d Cir. 2010).

44. Moreover, in exercising its discretion, the court should be wary of allowing preemptive plan objections and unsupported allegations regarding prepetition conduct to bootstrap a tactical disqualification that would improperly delay the proceedings or provide an unfair advantage to a party in interest. *Cf. In re Golden Guernsey Dairy, LLC*, No. 13-10044, 2015 WL 3669932, at *2 (Bankr. D. Del. June 12, 2015); *see also In re Harold & Williams Dev.*

Co., 977 F.2d 906, 910 (4th Cir. 1992) (court's discretion must be exercised with a view to the "protection of the interests of the bankruptcy estate and its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding").

45. While the initial burden of satisfying Section 327 rests on the applicant, that burden has been met by the filing of the Application. *In re Caesars Entm't Operating Co., Inc.*, 561 B.R. 420, 431 (Bankr. N.D. Ill. 2015). As a result, the "burden of going forward" has "shift[ed] to the objecting party"—that is, Century. *Id.* (citing *In re Brennan*, 187 B.R. 135, 145 (Bankr. D.N.J. 1995), *rev'd on other grounds sub nom. In re First Jersey Secs., Inc.*, 180 F.3d 504 (3d Cir. 1999)). Century has failed to meet that burden.[13]

B. Sidley Satisfies Section 327's Requirements Because It Is Disinterested And Holds No Interest Adverse To The Estate.

46. In its Objection, Century says next to nothing about Section 327. That is hardly surprising: Sidley's compliance with Section 327's requirements cannot be seriously disputed. Consistent with the present-tense language of the provision itself, *e.g.*, "hold," "represent," "are disinterested," a professional may only be disqualified under Section 327 based on a *present* adverse interest. *See In re Ampal-Am. Israel Corp.*, 691 F. App'x 12, 15 (2d Cir. 2017) ("counsel will be disqualified under section 327(a) *only if it presently holds* or represents an interest

[13] Century relies on the "expert opinions" of Charles Slanina to attempt to meet this burden. (*See* Objection at 15, 16, 19, 21, 22.) Slanina's opinions, however, are little more than a recitation of the ABA Model Rules of Professional Conduct followed by Slanina's legal conclusions that those rules apply to Century's version of disputed facts. (*See, e.g.*, Slanina Dec. ¶¶ 7-8 (quoting Rule 1.7(a), and then applying the rule "[b]ased on the facts [Slanina] was provided"); ¶¶ 21, 24 (same with respect to Rule 1.9).) Slanina's declaration thus adds little of value to Century's Objection. *See Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing & Securitization, LLC*, 616 F. Supp. 2d 461, 465 (S.D.N.Y. 2009) (giving little weight to a legal ethics expert's declaration on a conflict of interest question because it made "quite sweeping conclusions"); *see also Sanchez v. Navigators Specialty Ins. Co.*, No. 12-cv-00724, 2012 WL 12336234, at *2 n.1 (C.D. Cal. July 24, 2012) (expert opinions "comprised primarily of unsupported legal conclusions" are not entitled to weight).

[adverse] to the estate, *notwithstanding any interests it may have held or represented in the past*" (quoting *AroChem*, 176 F.3d at 623)); *In re Muma Servs., Inc.*, 286 B.R. 583, 591 (Bankr. D. Del. 2002). The Supreme Court has recognized that "Congress' use of a verb tense is significant in construing statutes." *United States v. Wilson*, 503 U.S. 329, 333 (1992); *see also Marvel*, 140 F.3d at 475 (in interpreting § 327(a): "we must, of course, begin with the language of the statute").

47. Here, Sidley no longer represents Century, and therefore it has no present interest adverse to the estate. *See, e.g.*, *Marvel*, 140 F.3d at 477-48 (reversing denial of retention application where law firm had, among other things, "severed all attorney-client relations with [the creditor] in anticipation of its selection"); *In re Empire State Conglomerates, Inc.*, 546 B.R. 306, 315 (Bankr. S.D.N.Y. 2016) (finding no "adverse interest" where purportedly conflicting representation had already concluded); *In re Fairvue Club Properties LLC*, No. 09-13807, 2010 WL 569561, at *6 & n.4 (Bankr. M.D. Tenn. Feb. 12, 2010) (same); *cf. Muma Servs.*, 286 B.R. at 591 (denying motion to disqualify under § 1103(b) where representation had terminated prior to the motion to disqualify by analogizing to § 327(a) and noting that "counsel will be disqualified under section 327(a) only if it presently 'holds or represents an interest adverse to the estate,' notwithstanding any interests it may have held or represented in the past" (quoting *AroChem*, 176 F.3d at 623)).[14] And Century does not identify any "competing economic interest

[14] To be sure, Century argues that it should be treated as a current client for purposes of the ethics rules citing the so-called "hot potato" doctrine. (*See, e.g.*, Objection at 22-24.) But Century provides no support for the notion that the Section 327 analysis should treat it as such. Indeed, neither the Third Circuit nor the District of Delaware have recognized the "hot potato" doctrine in the context of a Section 327 objection. *See Sonos, Inc. v. D & M Holdings Inc.*, No. 14-cv-1330, 2015 WL 5277194, at *3 n.1 (D. Del. Sept. 9, 2015) ("The Third Circuit, however, has not had occasion to adopt the hot potato doctrine."). Nor would there be a basis for doing so, given Section 327's focus on present conflicts. At a minimum, while Sidley vigorously disagrees with Century's claim that it improperly withdrew from representing Century, that is a matter between

tending to diminish estate values" held by Sidley, much less an interest held by Sidley that could "create a potential or actual dispute in which the estate is a rival claimant." *First Jersey*, 180 F.3d at 509 (quotation omitted). Indeed, Sidley's prior representation of Century in reinsurance collection disputes would not create such an interest even if still active. BSA was not a party to any of those disputes, and the outcome of the reinsurance collection actions would have no impact—much less a negative impact—on BSA. (*See also* Part I.C.5, *infra*.)[15]

C. Century's Request That Sidley Be Disqualified Based On Alleged Ethical Violations Should Be Denied.

1. Disqualification Is An Extreme Measure.

48. Although styled as an opposition to Sidley's retention under Section 327, Century's Objection is in substance a motion to disqualify based on what it describes as "textbook" and incurable violations of the rules of ethics. (*See* Objection at 1, 13-17, 17-18.) The Third Circuit has described disqualification as an "extreme remedy." *Jackson v. Rohm & Haas Co.*, 366 F. App'x 342, 347 (3d Cir. 2010); *see also In re Onejet, Inc.*, No. 18-24070, 2020 WL 1879029, at *6 (Bankr. W.D. Pa. Mar. 27, 2020) (describing disqualification as a "draconian measure" (quoting *EEOC v. Hora, Inc.*, 239 F. App'x 728, 731 (3d Cir. 2007))). A party seeking disqualification bears a "heavy burden" and "must meet a high standard of proof before a lawyer is disqualified." *High 5 Games, LLC v. Marks*, No. 13-cv-7161, 2018 WL 2278103, at *2 (D.N.J. May 18, 2018); *see also Regalo*, 211 F. Supp. 3d at 687 ("a moving party has the burden to

---

Sidley and Century, not one that is properly part of this Court's consideration whether Sidley has a present "adverse interest" as to Debtors.

[15] In addition to having no interest materially adverse to the estate, to be disinterested an attorney cannot "have an interest materially adverse to the interest … of any class of creditors or equity security holders." 11 U.S.C. § 101(14)(C). There is no contention that Sidley possesses any such interest; indeed, Century, the lone objector here, is neither a creditor nor equity security holder. Even if Century were a creditor, the prior reinsurance work would not give Sidley an interest materially adverse to any class of creditors.

demonstrate that continued representation would be impermissible"). And because motions to disqualify are frequently used as a tactical device, they are disfavored. *See Onejet*, 2020 WL 1879029, at *6 ("The burden is an exceptionally heavy one as motions to disqualify are viewed with disfavor within our Circuit because of the potential for abuse as a litigation tactic."); *Golden Guernsey Dairy*, 2015 WL 3669932, at *2.

49. Throughout its Objection, Century conflates the existence of a purported violation of the ethical rules with the remedy of disqualification on the assumption that the former automatically requires the latter. That is not the law. *See, e.g.*, *Bos. Sci. Corp. v. Johnson & Johnson Inc.*, 647 F. Supp. 2d 369, 374 n.7 (D. Del. 2009) (denying motion to disqualify despite violation of Rule 1.7: "In the Third Circuit, … whether disqualification is appropriate depends on the facts of the case and is never automatic"); *End of Rd. Tr. v. Terex Corp.*, No. 99-477, 2002 WL 242464, at *2-3 (D. Del. Feb. 20, 2002) (denying motion to disqualify despite admitted violation of Rule 1.7(a)). To the contrary, an attorney should be disqualified only when "***absolutely necessary***." *Onejet*, 2020 WL 1879029, at *6 (emphasis added) (quoting *Tiversa Holding Corp. v. LabMD, Inc.*, No. 13-1296, 2013 WL 6796538, at *2 (W.D. Pa. Dec. 20, 2013)); *see also Macheca Transp. Co. v. Phila. Indem. Co.*, 463 F.3d 827, 833 (8th Cir. 2006) ("A party's right to select its own counsel is an important public right and a vital freedom that should be preserved; the extreme measure of disqualifying a party's counsel of choice should be imposed only when absolutely necessary." (quotation omitted)).

50. That is particularly so where the debtor would experience substantial prejudice, the proceeding would be derailed, and the case is complex. *See, e.g.*, *TQ Delta, LLC v. 2Wire, Inc.*, Nos. 13-cv-1835, 13-cv-1836, 13-cv-2013, 2016 WL 5402180, at *6 (D. Del. Sept. 26, 2016) (based on the complexity of the proceeding, if counsel was disqualified, the client "would

be prejudiced beyond mere inconvenience" and "getting new counsel up to speed[] would come at a substantial cost—in terms of both time and money"); *End of Rd. Tr.*, 2002 WL 242464, at *3 (denying motion to disqualify despite admitted violation of Rule 1.7(a) where the firm "invested a substantial amount of time and effort," the case is "complex," and granting the motion for disqualification would "delay [the] case"); *Elonex I.P. Holdings, Ltd. v. Apple Computer, Inc.*, 142 F. Supp. 2d 579, 584 (D. Del. 2001) (client had "compelling" interest in retaining counsel because "[t]here [was] no doubt that it [would] be both inefficient and costly for [client] to get new counsel up to speed in this matter").[16] That is precisely the case here. As explained in the Debtors' Reply Brief, filed contemporaneously herewith, given the unique nature of this restructuring combined with the unprecedented economic impact of COVID-19, the burdens imposed on BSA if Sidley was removed as counsel would be devastating.

2. Century Unreasonably Delayed in Raising Its Claims.

51. Judicial skepticism about disqualification is particularly warranted where, as here, the party seeking disqualification delayed in asserting its claim. *See In re Enron Corp.*, No. 01-16034, 2002 WL 32034346, at *4 (Bankr. S.D.N.Y. May 23, 2002) (discussing a delay of two months after learning of the alleged conduct: "Delay in bringing any motion to disqualify counsel is generally frowned upon because of the disruption it would cause to the case"), *aff'd* No. 02-cv-5638, 2003 WL 223455 (S.D.N.Y. Feb. 3, 2003). "This is especially so in a bankruptcy reorganization in which a disruption, in addition to causing delay in getting a

[16] *See also Wyeth v. Abbott Labs.*, 692 F. Supp. 2d 453, 460 (D. N.J. 2010) ("if [client] were required to obtain new counsel, there would likely be some delay in this litigation as well as certain additional costs incurred by [client] while new counsel familiarized itself with this case"); *Intelli-Check, Inc. v. Tricom Card Techs., Inc.*, No. 03-cv-3706, 2008 WL 4682433, at *5 (E.D.N.Y. Oct. 21, 2008) (party "would suffer harm if required to obtain new counsel at this stage in the litigation" and "[m]astery of this case would require substantial work on the part of a new firm, at a substantial cost to the Defendants, and a substantial delay to the case").

decision or a judgment or payment of money, causes a loss of value—value that cannot be regained." *Id.*.

52. Century concedes it has been on notice of this alleged conflict since October 2019. (*See, e.g.*, Objection at 7.) Century could have filed this objection two months ago after BSA filed its petition. Instead, Century did not even appear in this case until April 8. (ECF No. 362.) And Century waited until April 14 to file its Objection, literally on the eve of the hearing at which the Debtors' motion for appointment of mediators—to which Century had objected (ECF No. 388)—was to be heard. *See Universal City Studios, Inc. v. Reimerdes*, 98 F. Supp. 2d 449, 455 (S.D.N.Y. 2000) (denying motion to disqualify and finding "substantial reason to believe" the motion was "motivated at least partly by tactical considerations" where movant "knew of" but "did not even raise" conflict for nearly a month, during which significant case developments had occurred).

53. This delay alone merits denial of Century's request to disqualify Sidley based on supposed violations of the ethical rules. A party waives the right to seek disqualification when it was aware of the alleged conflict "but failed to raise an objection promptly when he had the opportunity." *Conley v. Chaffinch*, 431 F. Supp. 2d 494, 498-99 (D. Del. 2006). That is the case here. *See, e.g.*, *id.* (finding waiver of objection to continued representation when movant waited almost nine months after becoming aware of the representation); *Spear v. Fenkell*, No. 13-cv-02391, 2014 WL 6676660, at *1-3 (E.D. Pa. Nov. 25, 2014) (finding waiver of right to relief on its motion to disqualify when movant delayed for six months after it became aware of the basis for the alleged conflict); *Arnett v. Mid-Cont'l Cas. Co.*, No. 08-cv-2373, 2010 WL 11507481, at *2-3 (M.D. Fla. Apr. 13, 2010) (movant waived right to object to law firm's continued representation of client because it waited five-plus months to bring a motion for

disqualification); *Finmeccanica S.p.A. v. Gen. Motors Corp.*, No. 07-cv-08222, 2008 WL 11340060, at *3-5 (C.D. Cal. Apr. 29, 2008) (holding motion to disqualify untimely because movant waited six months after discovering alleged conflict to seek relief); *cf. Reeves v. Town of Cottageville*, No. 12-cv-02765, 2014 WL 4231235, at *3 (D.S.C. Aug. 26, 2014) (movant waived objection to opposing counsel where its counsel knew of alleged conflict five weeks before filing motion for disqualification).

3. The Dispute Between Sidley And Century Can Be Addressed In An Alternative Forum.

54. This is fundamentally a dispute between Sidley and Century. It does not have any bearing whatsoever on Sidley's ability to represent BSA's interests in this matter. As discussed below (*see* Part I.C.4.b, *infra*), Sidley's representation of Century was not substantially related to its work for BSA, and Haynes and Boone has been retained by Debtors as special insurance counsel. As such, Sidley's prior representation of Century will have no impact on the integrity of this proceeding. Accordingly, the dispute is best left to another forum. *See United States v. Prevezon Holdings Ltd.*, 839 F.3d 227, 241 (2d Cir. 2016) ("disqualification is called for only where 'an attorney's conduct tends to taint the underlying trial,' because federal and state disciplinary mechanisms suffice for other ethical violations." (quoting *Bd. of Educ. of City of N.Y. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979))); Ronald D. Rotunda & John S. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility § 1.7-1(f) (2018-2019 ed.) ("However, if the alleged ethical violation does not affect the fact finding process or the fairness of the trial, then the court should leave any enforcement of the alleged violation to the other fora for remedying conflicts of interest."); *see also In re Tate*, No. 19-00237, 2019 WL 3294073, at *1 (Bankr. D.D.C. July 22, 2019) ("courts are admonished that 'unless an attorney's conduct tends to taint the underlying trial'"—either because "there is a

serious question of the attorney's ability to zealously represent the client" or "the attorney is in the position to potentially create an unfair advantage by the use of privileged information of the other side"—to "be quite hesitant to disqualify an attorney" (quotations omitted)). Indeed, Century gave Sidley notice of its intent to proceed with an arbitration regarding the matters at issue here on March 10, 2020, although no arbitration case has yet been filed. (Schwartz Decl. Ex. 13, Sneed Decl. Ex. 3.)

4. If The Court Does Entertain Disqualification As A Potential Sanction, Sidley's Representation Of BSA Does Not Violate Rule 1.9 Regarding Duties To Former Clients.

a. Century Is A Former Sidley Client Both In Fact And Under The Ethical Rules.

55. It cannot be disputed that Sidley no longer represents Century in any ongoing matter and that the attorney-client relationship between Sidley and Century has terminated. As the result of a breakdown in the attorney-client relationship, Sidley notified Century on January 16, 2020, that it would be withdrawing from all matters in which it represented Century and its affiliates. And the process of communicating that withdrawal to the relevant courts and arbitrators was complete as of February 20, 2020, *i.e.*, just days after BSA's bankruptcy filing. Century, however, seeks to have Sidley's ethical obligations judged under the current client standard, citing the so-called "hot potato" doctrine to argue that Sidley impermissibly jettisoned Century, its current client, to take on a more lucrative new client in BSA. (Objection at 22-27.) According to Century, because Sidley began consulting on the Lloyd's Matter on October 5, 2018, Rule. 1.7 required Sidley to decline to represent BSA or withdraw from representing BSA as soon as a conflict emerged. (*Id.* at 23-24.) While Century is incorrect as to what Rule 1.7

requires (*see* Part I.C.5, *infra*), Century's invocation of the "hot-potato" doctrine likewise fails on its own terms.[17]

56. As an initial matter, Century has the timing backward. Sidley and Century did not have an attorney-client relationship on the date BSA retained Sidley as restructuring counsel. To the contrary, BSA retained Sidley first. As noted above, BSA retained Sidley to be its restructuring counsel on September 26, 2018, which was memorialized in a formal engagement letter on October 3, 2018. Century did not retain Sidley as a consultant in the Lloyd's Matter until October 5, 2018, and advance waiver discussions continued until March 2019. So according to Century's own logic, if direct adversity existed as of October 2018, which, as explained elsewhere, it did not, the proper course of action would have been to decline representation of *Century*, not BSA. Contrary to Century's suggestion, Sidley did not abandon an existing client to take on a more remunerative representation.[18]

57. Century further attempts to confuse the relevant timeframes by repeatedly referring to a "fifteen year" relationship and status as a "longtime" or "longstanding" client. (Objection at 1, 3, 22-23.) To be sure, Sidley had represented Century in the past. Tellingly, however, Century does not identify a single matter that Sidley was handling for Century that was

[17] Century also relies on authority suggesting a rule that the present-client standard applies even if the concurrent representation ceased prior to the disqualification motion. (Objection at 18-19 & nn.82-83.) As Century's own authority recognizes, however, this rule and the hot potato doctrine are simply two sides of the same coin. *Merck Eprova AG v. ProThera, Inc.*, 08-cv-0035, 2009 WL 10696470, at *6 (S.D.N.Y. Oct. 6, 2009) ("[W]here counsel have simultaneously represented clients with differing interests, the standard for concurrent representation applies even if the representation ceases prior to the filing of a disqualification motion.… More colloquially, this is referred to as the 'hot potato' rule ….") (cited in Objection at 18-19 n.82).

[18] *Santacroce v. Neff*, 134 F. Supp. 2d 366 (D.N.J. 2001), and *Ransburg Corp. v. Champion Spark Plug Co.*, 648 F. Supp. 1040 (N.D. Ill. 1986), both of which Century features in its Objection (at 18-19), are readily distinguishable. Both cases involved concurrent representation of parties that were directly adverse because they had sued or were imminently planning to sue the other, which would place them on opposing sides of the "v." in active lawsuits—a situation in which consent cannot be given.

active as of October 2018 when Sidley was retained to consult in the Lloyd's Matter. (*See generally* Schwartz Decl.) That is because at the time period in question—that is, fall 2018—the attorney-client relationship between Century and Sidley had lapsed. Thus, what is relevant here, as evidenced by the focus in Century's own papers, are the Lloyd's Matter and BSA restructuring.

58. More fundamentally, the "hot potato" doctrine prevents attorneys from dropping one client to avoid a *conflict* with another client. There was no conflict to be avoided here, particularly given that the reinsurance matters were not related to any coverage issues that might present themselves in the bankruptcy and in light of the use of coverage counsel, Haynes and Boone, to address any coverage-related disputes. (*See* Part I.C.5, *infra*.)[19] Century's insistence that there was a conflict when there was none and its baseless accusations that Sidley had engaged in "shocking and offensive" behavior led to a breakdown of the attorney-client relationship that, in turn, precipitated Sidley's withdrawal. That withdrawal was entirely proper. *See* ABA Model Rule 1.16(b)(1), (6)-(7) ("a lawyer may withdraw from representing a client if … withdrawal can be accomplished without material adverse effect on the interests of the client," the representation "has been rendered unreasonably difficult by the client," or for "other good cause"); *City of Joliet v. Mid-City Nat'l Bank of Chi.*, 998 F. Supp. 2d 689, 693 (N.D. Ill. 2014) ("withdrawal for good cause includes a withdrawal based on a breakdown in the attorney-client relationship" (quotation omitted)). Accordingly, because Sidley had withdrawn before any conflict arose, Rule 1.9 applies.

[19] It also bears noting that Century supports its Rule 1.7 arguments, which form the basis of its hot potato theory, with actions taken by Sidley in this proceeding that post-date Sidley's withdrawal. (*E.g.*, Objection at 15, 17.) Such evidence cannot be used to suggest that a conflict existing at the time of withdrawal made that withdrawal invalid.

b. Century Has Admitted That Sidley's Representation Of BSA Is Not "Substantially Related" To Its Representation Of Century In Reinsurance Collection Actions.

59. Contrary to Century's suggestion (Objection at 24-26), Sidley's representation of BSA is not "substantially related" to its prior representation of Century in reinsurance collection actions. Before this dispute arose, Century admitted as much. As noted above (at ¶ 14), under the SLA that Century claims governs the relationship, Century described the work that Sidley did as "*unrelated to the defense of an insurance claim or a related insurance coverage claim*." That should be the end of the matter.

60. In any event, however, Sidley's actual work was consistent with Century's prior description of the engagement as being "unrelated" to any direct insurance claim. Sidley's representation dealt with reinsurance agreements, not the primary insurance contracts between Century and BSA. The reinsurance matters arose from obligations that Century had already paid. The issue in the reinsurance collection actions was to what extent the reinsurers were liable for Century's prior payments, which turned on the construction of separate agreements between Century and its reinsurers.[20]

61. For example, with respect to the Lloyd's Matter, Century had been defending and indemnifying BSA on individual claims and had paid enough in settlements to reach its

[20] While Century asserts in a general sense that insurance and reinsurance are "inextricably intertwined" (Objection at 26), that is true only in that by definition reinsurance is "[i]nsurance of … one insurer's risk by a second insurer." Reinsurance, Black's Law Dictionary (11th ed. 2019). Insurance and reinsurance arrangements are governed by separate agreements, with different terms and between different parties that give rise to distinct issues for litigation. *See, e.g.*, *BancInsure, Inc. v. McCaffree*, No. 12-cv-2110, 2013 WL 5769918, at *6 (D. Kan. Oct. 24, 2013) ("Policy terms, conditions, and exclusions between insurance and reinsurance can be materially different."); *cf. N. River Ins. Co. v. Emp'rs Reinsurance Corp.*, 197 F. Supp. 2d 972, 980 (S.D. Ohio 2002) (noting, in a choice-of-law decision, that "the location of the underlying insured was immaterial to the determination of a reinsurance dispute" and "individuals who are not parties to the reinsurance contract have no right of action against the reinsurer").

reinsurance retentions with Lloyd's. As such, Century's obligations did not arise out of the sort of coverage litigation between BSA and its insurers mentioned in Century's papers. (Objection at 4-5; Schwartz Decl. ¶¶ 2-5.) In the subsequent reinsurance collection action, the issue was how the *settled claims* would be treated under Century's reinsurance treaty with Lloyd's—a completely separate contract from the underlying policies issued to BSA. While Century repeatedly attempts to suggest that Sidley did "work for Century on the Boy Scouts' insurance *and* reinsurance claims" (Objection at 26 (emphasis added); *see also, e.g.*, *id.* at 3-4), it was *only* the reinsurance claims that fell within the scope of Sidley's engagement. And those reinsurance claims do not have any impact in this proceeding.

62. Courts have found that no substantial relationship exists even when there is some degree of overlap in matters. *See, e.g.*, *Talecris Biotherapeutics, Inc. v. Baxter Int'l Inc.*, 491 F. Supp. 2d 510, 515 (D. Del. 2007) (holding no substantial relationship between the prior and current litigation even though the "two litigations overlap[ped] to some degree" because "'the underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.'" (quoting Rule 1.9 cmt. [2])); *Emp'rs Ins. Co. of Wausau v. Munich Reinsurance Am., Inc.*, No. 10-cv-3558, 2011 WL 1873123, at *6 (S.D.N.Y. May 16, 2011) (holding that lawyer's previous representation of a client in reinsurance arbitration was not substantially related to later reinsurance arbitration against the now-former client despite both involving issue of how to define an "occurrence" for determining if retention was exceeded). Indeed, even Century's own authority holds that a "substantial relationship" merits disqualification "only upon a showing that the relationship between issues in the prior and present cases is patently clear," meaning "identical or essentially the same." *Chem. Bank v. Affiliated FM Ins. Co.*, No. 87-cv-0150, 1994

WL 141951, at *12 (S.D.N.Y. Apr. 20, 1994) (quotations omitted) (cited in Objection at 19 n.83); *see also, e.g.*, *Mitchell v. Metro. Life Ins. Co.*, No. 01-cv-2112, 2002 WL 441194, at *4 (S.D.N.Y. Mar. 21, 2002) (cited in Objection at 28 n.113). That is not the case here.

63. Century asserts that Sidley will be forced to "compromise" its representation of BSA because Sidley obtained "highly privileged and confidential information … about [Century's] insurance for the Boy Scouts" during the course of its representation of Century in reinsurance disputes. (Objection at 16.) That is wrong. As a factual matter, Sidley did not receive confidential privileged information related to Century that could compromise its representation of BSA in this bankruptcy. (Sneed Decl. ¶¶ 7-8, 10-18.) Nor did it need to. The reinsurance matters were, in essence, collection disputes arising from obligations that Century had *already* paid to BSA. The question was to what extent the reinsurers were liable for those amounts—not what BSA has or will receive from Century for claims submitted by BSA under its insurance policies. Put another way, Sidley's representation of Century was not related to the defense of any underlying insurance claims that have been or might be made by BSA against Century. It thus makes sense that Sidley, as noted above, did not obtain any confidential privileged information from Century about those underlying policies. *See Talecris Biotherapeutics*, 491 F. Supp. 2d at 515 ("the court should not allow its imagination to run free with a view to hypothesizing conceivable but unlikely situations in which confidential information 'might' have been disclosed which would be relevant to the present suit." (citation omitted)).[21]

[21] Moreover, whatever confidential information on which Century bases its complaints cannot be information already known to BSA either through its being a counterparty to the relevant insurance agreements or prior coverage litigation. Rule 1.9 cmt. [3] ("Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.").

64. In this regard, Century relies on little more than conclusory assertions that Sidley received various categories of "confidential information" concerning the insurance coverage between BSA and Century that are inconsistent with the scope of Sidley's representation. (*See* Objection at 1, 3-4, 16-17, 35; Schwartz Decl. ¶¶ 3, 5.)[22] Century provides no particulars suggesting that whatever confidential information received by Sidley in the reinsurance disputes would bear in specific issues at play in this bankruptcy, much less that would "materially advance" BSA's position relative to Century on an issue that Sidley would handle (as opposed to Haynes and Boone). Rule 1.9 cmt. [3].[23] Century's "vague and unsupported" allegations do not suffice. *Talecris Biotherapeutics*, 491 F. Supp. 2d at 515 & n.2 (denying motion for disqualification because movant failed to demonstrate that "any confidential information [firm] might have learned" in the first case would bear on the issues being litigated in the second case); *see, e.g.*, *P&L Dev. LLC v. Bionpharma Inc.*, No. 17-cv-1154, 2019 WL 357351, at *8 (M.D.N.C. Jan. 29, 2019) (denying motion for disqualification where the former client's

[22] Century claims that Sidley received confidential information about Century's insurance and reinsurance programs generally. (*See, e.g.*, Objection at 1, 3; Schwartz Decl. ¶ 3.) Even if that were the case, this sort of generic information about a former client has long been held insufficient to create a conflict. *See Sonos*, 2015 WL 5277194, at *4 (knowledge of former client's "general strategy … is not enough to warrant disqualification"); *Regalo*, 211 F. Supp. 3d at 692 ("[I]f the generalized citation to counsel's knowledge of a prior client's 'litigation philosophies,' 'strategies' and 'risk tolerances' necessarily demonstrated that the past representations were 'substantially related' to any new matter where an attorney is adverse to the prior client, the floodgates for disqualification would open wide."); *In re Mack Indus., Ltd*, 606 B.R. 313, 325 (Bankr. N.D. Ill. 2019) ("[G]eneral knowledge of a client's policies and practices ordinarily will not preclude a subsequent representation." (citing *Watkins v. Trans Union, LLC*, 869 F.3d 514, 522 (7th Cir. 2017))).

[23] To be sure, Century need not provide the Court with the actual privileged and confidential information that it claims Sidley possesses and that would damage Century. But that does not mean that it may simply rely on vague and conclusory assertions that are inconsistent with the actual scope of the work that it asked Sidley to do. Otherwise, a client could handcuff a lawyer forever into the future by vaguely characterizing the engagement in general terms, and then later asserting that "confidential" information should be presumed to have been provided relating to that general engagement.

"speculative" concerns provided "the only path towards the conclusion that there is a substantial risk that confidential information [counsel] normally would have acquired from [former client] would materially advance [current client's] position here"); *Bd. of Regents of Univ. of Neb. v. BASF Corp.*, No. 04-cv-3356, 2006 WL 2385363, at *8 (D. Neb. Aug. 17, 2006) (denying motion to disqualify despite affidavit that "in broad, conclusory terms" stated the firm was privy to confidential information, because movant "produced no evidence describing any specific items of such information" and "no evidence that any such information relates to [] claims in [the present] litigation"); *see also Worley v. Moore*, 807 S.E.2d 133, 140 (N.C. 2017) ("A former client's subjective perception or conclusory allegations that he shared confidential information during the past representation should not be considered.").[24] As explained in the Expert Declaration of Professor Nancy Rapoport, these circumstances support the reasonableness of Sidley's belief that nothing about the prior engagement would preclude it from representing BSA here. (*See* Rapoport Decl. ¶¶ 22-24.)

65. Finally, as it does throughout its Objection, Century's position likewise ignores the specific roles of the different law firms representing BSA in this proceeding. Haynes and Boone, not Sidley, will be involved in any negotiation or adversary proceeding regarding

[24] And even if Mr. Sneed did possess such information, which he did not, that information would not have come into the possession of the Bankruptcy Team. There was no overlap between Sidley's Reinsurance and Bankruptcy Teams and no sharing of client information between those teams at any point. Since Century first raised its concerns about Sidley's representation of BSA, a formal screen has been in place between those teams. That is more than sufficient to alleviate any concerns. *See In re Fullenkamp*, 477 B.R. 826, 833 (Bankr. M.D. Fla. 2011) (granting retention application over objection where "any concern[] about confidential information can be remedied by screening"); *cf. Wyeth*, 692 F. Supp. at 459 (denying motion to disqualify because, amongst other reasons, there was "no [firm] personnel overlap on the two matters" and the firm "put up an ethical screen between the[] personnel to ensure confidential information does not pass between them"). Century complains that Sidley erected its formal screen too late. (Objection at 2.) But it did so as soon as any concern was raised by Century. Moreover, courts have rejected such arguments where no confidential information was in fact shared. *See, e.g.*, *Raba v. Suozzi*, No. 06-cv-1109, 2006 WL 8435604, at *12-13 (E.D.N.Y. Nov. 17, 2006).

Century's obligations under the policies it issued to BSA. So even if those policies had been at issue in the reinsurance collection matters, which they were not, there would not be a substantial relationship between those matters and Sidley's representation of BSA as restructuring, *not coverage*, counsel.

66. Put simply, Sidley's service as BSA's restructuring counsel and prior representation of Century in reinsurance disputes do not "involve the same transaction or legal dispute." Rule 1.9 cmt. [3] (discussing the "substantial relationship" standard). Nor did Sidley obtain "confidential information" in the course of representing Century that could "materially advance" BSA's position in this proceeding. *Id.* Accordingly, Century has failed to "meet its burden in establishing that a substantial relationship exists," *Talecris Biotherapeutics*, 491 F. Supp. 2d at 514, and Sidley's continued representation of BSA does not violate Rule 1.9.

5. Even If Century's Relationship With Sidley Is Evaluated Under The Present Client Standard, Sidley's Representation Of BSA Did Not Violate Rule 1.7.

67. Century asserts that Sidley's representation of BSA is a "textbook violation" of the ethical rules and created an "irrefutable conflict" from the moment it commenced in the fall of 2018. (Objection at 1, 20, 23.)[25] Specifically, Century argues that Sidley's representation of BSA was "directly adverse" to Century and "materially limited" Sidley's ability to represent Century in the reinsurance actions from its inception. (*Id.* at 13-22.) Both arguments are without merit.

[25] This is a new position. Until filing this motion, Century equivocated as to whether an actual or even potential conflict existed. Even as late as January 3, 2020, the last written communication between Sidley and Century on this matter before Sidley's withdrawal, Century merely stated that it was "unable to rule out that [Sidley]'s representation of Boy Scouts of America constitutes a conflict or potential conflict of interest with the duties that Sidley owes to the [Century] companies." (Schwartz Decl. Ex. 5 at 1.) Despite having already "consulted with outside ethics counsel" (*id.* at 2), Century did not definitely state that even a potential conflict existed.

a. Sidley Was Not "Directly Adverse" To Century At Any Point Before Its Withdrawal.

68. During the period prior to Sidley's withdrawal, the relationship between Century and Sidley bore none of the hallmarks of direct adversity. No lawsuit was filed by Sidley against Century on BSA's behalf, nor did Sidley's role as restructuring counsel result in Sidley conducting a hostile examination of a Century witness or otherwise advocating against Century directly. Rather, Century's primary "direct adversity" argument is that *any* BSA reorganization will necessarily involve contributions from insurers like Century, and thus *any* involvement by Sidley in such a reorganizing inherently creates direct adversity with insurers (or, for that matter, any party who could conceivably contribute funds to the debtor in connection with a reorganization).

69. For example, Century asserts that the proposed plan is "insurance-driven" and that, in restructurings involving mass tort claims, it is inevitable that any plan will "find insurers and debtors on opposite sides of the ledger." (Objection at 14-15; *see also id.* at 26.) This argument proves too much. There are myriad parties in interest, not just insurers, involved in these bankruptcy cases, including two official committees, a future claimants' representative, and secured and unsecured creditors. BSA also has multiple "assets" that could conceivably be at issue in the bankruptcy proceeding. Disputes regarding those assets may arise in the course of the bankruptcy. Or they may not. But it simply cannot be that a law firm is directly adverse to all parties involved in a bankruptcy case, including those with interests that include assets of the debtor, from the moment it takes on a client in connection with the case. Were it otherwise, a law firm would be unable to represent a debtor if it also represented any person or entity that was a contractual counterparty to the debtor or possessed any other interest that the debtor might conceivably view as an "asset" of the estate. That is not the law.

70. Indeed, Century does not cite a single example in which direct adversity has been found under such a theory, much less resulting in a law firm's disqualification. The lone case Century cites in making its "direct adversity" argument is *In re Thorpe Insulation Co.*, 677 F.3d 869 (9th Cir. 2012). (*See* Objection at 13-15 & nn.70-71.) But *Thorpe* did not even address disqualification, much less include a finding of direct adversity. Rather, the cited discussion stands for the proposition that a plan that may have a substantial economic impact on insurers is not "insurance neutral," and the plan at issue expressly limited otherwise available defenses to the debtors' insurers, thus those insurers were parties in interest with standing to challenge the plan. *Thorpe*, 677 F.3d at 884-88.[26]

71. Moreover, the Standing Committee on Ethics and Professional Responsibility of the American Bar Association, which is charged with issuing formal opinions on ethical issues arising from the Model Rules of Professional Conduct, has made clear that the mere fact that a proceeding might result in payments from an insurer does not create direct adversity under Rule 1.7. ABA Formal Ethics Opinion 05-435 addresses the situation in which a lawyer simultaneously represents a liability insurer and a plaintiff-client who has brought suit against a defendant insured by the liability insurer. ABA Formal Op. 05-435 (Dec. 8, 2004). While acknowledging that the liability insurer has an interest in the litigation, *i.e.*, any damages resulting from the lawsuit could result in payments under the policy, the opinion concluded that

[26] If anything, the requirement of "insurance neutrality"—and Century's ability to assert its rights in that regard—underscores that mechanisms are in place to prevent any confirmed plan from altering Century's legal rights with respect to its policies with BSA (absent its consent). A plan is insurance neutral if it does not "materially alter the quantum of liability that the insurers would be called to absorb." *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 212 (3d Cir. 2011). To be confirmed here, this Court will need to conclude that a plan meets that test. But Haynes and Boone, not Sidley, drafted that part of the plan and will, if needed, address any concerns raised by Century regarding the insurance neutrality provisions in that or any subsequent version of the plan.

"economic adversity alone" between the liability insurer and its lawyer's concurrent client "is not … the sort of direct adversity that constitutes a concurrent conflict of interest under the Model Rules." *Id.*; *see also Stonebridge Cas. Ins. v. D.W. Van Dyke & Co.*, No. 10-cv-81157, 2015 WL 8330980, at *3 (S.D. Fla. Oct. 23, 2015). ("[liability insurer]'s alleged economic interest in the litigation does not create direct adversity, thereby creating a conflict of interest").

72. Century's remaining arguments for direct adversity likewise miss the mark. For example, Century claims as evidence of direct adversity actions taken by Sidley in this bankruptcy *after* Sidley's withdrawal from representing Century, *e.g.*, moving for the appointment of mediators and negotiating the handling of confidential documents. (Objection at 15.) But these have little bearing on whether direct adversity existed at the time Sidley began representing BSA in the fall of 2018. At that point, it was far from certain whether BSA would even file for bankruptcy, and, if it did, what any such proceeding would look like. *See, e.g.*, Corky Siemaszko, *Boy Scouts of America Considering Bankruptcy*, NBC News (Dec. 14, 2018, 8:40 PM), https://www.nbcnews.com/news/us-news/boy-scouts-america-pushed-brink-bankruptcy-battles-insurers-n948181 ("The BSA said filing for chapter 11 bankruptcy is only one option under consideration …."). Even if direct adversity had arisen with Century upon the filing of this case, Sidley had withdrawn as Century's counsel at that point. *See Muma*, 286 B.R. at 587-88 ("We conclude that Rule 1.7(a) is not applicable here, because [law firms]'s representation of the [creditors' committee] was not directly adverse to [party seeking disqualification] from the outset.").[27]

[27] Even if a conflict had arisen after the concurrent representations of Century and BSA began, but before Sidley announced its withdrawal, the ethical rules would have permitted Sidley to continue its representation of BSA. *See* Rule 1.7 cmt. [4] (permitting continued representation of one client if "conflict arises after representation has been undertaken" provided the lawyer can do so consistent with Rule 1.9 and its obligations to the client it continues to represent); *Tipton v.*

b. Sidley's Representation Of Century Was In No Way "Materially Limited" By Its Representation Of BSA.

73. Century further asserts that Sidley's representation of BSA may have "materially limited" its ability to represent Century in reinsurance collection actions. (Objection at 15-17.) That is incorrect. Century fails to describe even a single situation in which Sidley may have been unable to take actions necessary to zealously represent Century's interests in the reinsurance actions themselves because of its responsibilities to BSA. *Cf.* Rule. 1.7 cmt. [8] ("[A] conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out *an appropriate course of action for the client* will be materially limited as a result of the lawyer's other responsibilities or interests.… The conflict in effect forecloses alternatives that would otherwise be available to the client." (emphasis added)). Nor would Sidley's representation of BSA provide any such incentive. BSA had no stake in the reinsurance actions, much less one adverse to Century's interests; BSA had already received payment under its insurance policies with Century. If anything, Century's ability to recover more money from its reinsurers could make future interactions with Century go more smoothly.

74. While Century complains that Mr. Sneed was unable to expressly confirm Sidley's representation of BSA due to obligations of confidentiality Sidley owed to BSA (Objection at 16), it does not explain how that materially limited Sidley's ability to represent Century in the reinsurance collection actions in which Sidley was retained. The same is true of Century's objection to Sidley being involved in discussions with tort claimants without

---

Canadian Imperial Bank of Commerce, 872 F.2d 1491, 1498-99 (11th Cir. 1989) (declining motion to disqualify despite concurrent conflict, because the law firm withdrew from one client, and the attorney who represented that client did not share confidential information about her client with the attorneys who represented the other client adverse to the former client); *In re Star Broad., Inc.*, 81 B.R. 835, 844 (Bankr. D.N.J. 1988) (after finding an actual conflict existed in simultaneous representation of two Chapter 11 estates, permitting law firm to "elect which of the two Chapter 11 estates they will continue to represent") (cited in Objection at 12 n.60).

Century's being present. (*Id.*) Rule 1.7 does not require a lawyer to invite clients to meetings in other matters being handled by their firm in which the client might be interested.

75. Century further asserts that Sidley's prior representation of Century will "handcuff" Sidley in performing certain tasks for BSA and require Sidley to "soft-pedal" certain aspects of that representation. (*Id.* at 16-18.) Not so. For example, Century's Objection includes a list of tasks, such as drafting plan language implicating insurance policies, advising BSA on any adversary proceeding that may arise with Century, or seeking discovery from Century, that Sidley would allegedly be unable to perform. (*Id.* at 16.) To begin with, this list is chock full of events that either have not (and may not) come to pass or post-date Sidley's withdrawal. Moreover, the items on this list fall in the province of Haynes and Boone—BSA's special insurance counsel—not Sidley. Indeed, Haynes and Boone drafted the very insurance language with which Century takes issue at, *e.g.*, pages 10-11 of its Objection. (Boelter Decl. ¶ 7.)[28]

76. Finally, the Court has already approved Haynes and Boone's retention as "special insurance counsel" to continue handling coverage disputes as well as advice on matters regarding general liability insurance, "including the extent of available insurance assets and the treatment of insurance under any chapter 11 plan." (ECF No. 210 ¶¶ 8, 13; ECF No. 463.) The involvement of Haynes and Boone alleviates any concern about BSA being handcuffed in this proceeding. *See, e.g.*, *In re Relativity Media, LLC*, No. 18-11358, 2018 WL 3769967 (Bankr. S.D.N.Y. July 6, 2018) (approving debtor's retention of law firm subject to the debtor retaining

[28] That is not the only time Century conflates Sidley with BSA or BSA's other outside counsel. Elsewhere, Century asserts that "Sidley touts in the disclosure statement that 'it expects the proceeds of [BSA's insurance] policies will comprise a substantial portion of the assets contributed to any victims compensation trust.'" (Objection at 14 & n.69 (quoting ECF No. 16, Whittman Decl. at 24; ECF No. 21, Disclosure Statement at 28).) But what the quoted materials actually say is "*BSA* expects" such proceeds to fund such a trust. By replacing "BSA" with "it," Century has misleadingly misquoted the document to put words in Sidley's mouth.

separate conflict counsel to address disputes with law firm's client where law firm was in process of withdrawing from representation of that client); *see also In re Washington Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("in most cases the use of conflicts counsel solves the problem"); *see also* Rapoport Decl. ¶ 28.[29]

77. Put simply, Century does not provide any examples of how Sidley's representation of BSA as restructuring counsel materially limited its ability to represent Century in the reinsurance proceedings or vice versa; hypotheticals or possibilities do not suffice. *See Hernandez v. Helm*, No. 18-cv-7647, 2019 WL 5922233, at *9 (N.D. Ill. Nov. 12, 2019) ("Vague and general inconsistencies of position giving rise to hypothetical conflicts in the mind of an opposing party will not justify so drastic a measure as disqualification." (quoting *Clay v. Doherty*, 608 F. Supp. 295, 303 (N.D. Ill. 1985))); *Vanguard Sav. & Loan Ass'n v. Banks*, No. 93-cv-4627, 1994 WL 284222, at *2 (E.D. Pa. June 28, 1994) (holding "[a] *possible* conflict does not preclude representation" under Rule 1.7's material limitation standard).

II. Sidley's Disclosures Were Appropriate Under Federal Rule Of Bankruptcy Procedure 2014.

78. Century's assertion that Sidley has failed to comply with Federal Rule of Bankruptcy Procedure 2014(a) (Objection at 29-30) is likewise unfounded. Rule 2014(a) requires that a law firm seeking to be retained disclose all "connections" with "any … party in interest." Sidley satisfied this requirement by appending Schedule 2 to Ms. Boelter's declaration in support of BSA's application to retain Sidley. Schedule 2 plainly lists Sidley's connections to potential parties in interest in the restructuring. Further, Sidley's "connections" to Century were

[29] With respect to ESIS Inc., the Century-affiliated third-party claims administrator mentioned above, Century complains that Sidley took a "direct role" in negotiations concerning renewal of a contract. (Objection at 25.) While Sidley believes that position to be without basis, Haynes and Boone will handle negotiations with ESIS. (Boelter Decl. ¶ 7.)

prominently and expressly disclosed in the body of Ms. Boelter's declaration. Specifically, the declaration described the pertinent details of Sidley's prior representation of Century in the reinsurance collection actions. (Application Ex. B, Boelter Decl. ¶ 22.) Tellingly, Century itself does not disclose and cite to the Court this portion of Ms. Boelter's declaration. (*See* Objection at 29-30.) That Century would have preferred Sidley to go into greater detail or to have described its connections with Century in a pejorative manner that better suits Century's position (*id.*) in no way renders that disclosure invalid. Indeed, Century's position "would make disclosure under Rule 2014 an impossible task subject to endless litigation over what would be enough." *Enron Corp.*, 2002 WL 32034346, at *5 (rejecting argument that law firm failed to comply with Rule 2014 where disclosures provided "any party in interest with adequate information to enable them to take whatever action, if any, deemed necessary regarding [the firm]'s retention").

79. Century faulting Sidley for failing to disclose additional details of its prior representations—which include non-public arbitrations—is particularly ironic because *Century itself* specifically requested that Sidley not disclose that information to third parties. (*See* Sneed Decl. Ex. 10 at 1 ("Sidley is not authorized to talk with any third parties about this conflict issue without our advance written permission.").) Indeed, even the versions of the exhibits Century filed *under seal* in support of this Objection, *i.e.*, documents in a form that would only be seen by the Court, redacted that very information. (*See, e.g.*, Schwartz Decl. Ex. 7.) That Century now complains that Sidley did not disclose on the public docket information that it does not even want the Court to see strains credulity.

III. Sidley Is Prepared To Take Appropriate Steps To Address Any Potential Concerns.

80. For the reasons discussed above, there is no issue that precludes Sidley's retention as BSA's restructuring counsel. Nonetheless, for the avoidance of doubt, without conceding the

need for such steps, and in the interest of efficiency going forward, Sidley is prepared to agree to adhere to the following guidelines should the Court so request:

- Sidley shall continue to maintain an ethical wall between any and all Sidley lawyers that were involved on Century reinsurance matters on the one hand and any and all Sidley lawyers that represent BSA in the bankruptcy on the other hand.
- Sidley shall not take discovery against Century in the bankruptcy; any such discovery will be handled by Haynes and Boone and/or Morris Nichols.
- Sidley shall not prosecute or advise BSA with respect to coverage issues involving Century, including but not limited to responding to any coverage-based objections to a bankruptcy plan raised by Century. Any such matters will be handled by Haynes and Boone and/or Morris Nichols.
- Sidley shall not prosecute or advise BSA in any adversary proceeding that may arise between BSA and Century in the BSA bankruptcy. Any adversary proceeding, should it occur, will be handled by Haynes and Boone and/or Morris Nichols
- Sidley shall not make any presentations to or engage in negotiations with the TCC regarding Century's policies.

BSA has approved these steps, which will not prejudice the estate going forward. As explained in Professor Rapoport's Declaration, this approach is appropriate and customary and should address any possible concerns arising from Sidley's prior work. (Rapoport Decl. ¶¶ 28-31.)

[Remainder of Page Intentionally Left Blank]

CONCLUSION

81. For all of the reasons set forth above, Century's Objection should be overruled and BSA's Application to retain Sidley should be granted.

Dated: April 28, 2020
Wilmington, Delaware

CROSS & SIMON, LLC

/s/ Christopher P. Simon

Christopher P. Simon (No. 3697)
1105 North Market Street
Suite 901
Wilmington, DE 19801
Telephone: (302) 777-4200

– and –

SIDLEY AUSTIN LLP
James W. Ducayet (*pro hac vice pending*)
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
jducayet@sidley.com

Attorneys for Sidley Austin LLP

EXHIBIT A

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)

CENTURY'S REPLY IN FURTHER SUPPORT OF OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

STAMOULIS & WEINBLATT LLC
800 N. West Street
Third Floor
Wilmington, Delaware 19801

—and—

O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036-6537

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, Ace Insurance Group, Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

COUNTERSTATEMENT OF FACTS 3

Sidley represented Chubb on Boy Scouts cases when the bankruptcy started. 3

Sidley represented Chubb on many matters for more than a decade. 4

Chubb's reinsurance is an important asset and is valuable to its overall business. 5

The reinsurance matters that Sidley was handling include forward-looking requests for declaratory relief about future claims. 5

ARGUMENT 6

I. SIDLEY HAD A CONTRACTUAL AND ETHICAL OBLIGATION TO OBTAIN INFORMED, WRITTEN CONSENT FROM ITS CLIENT ABOUT REPRESENTING THE BOY SCOUTS. 6

A. Sidley was obliged to obtain Chubb's written consent before it started representing the Boy Scouts. 6

B. Sidley does not contest that it failed to obtain Chubb's informed, written consent. 8

C. The law does not recognize waiver through delay where there is no pending forum in which to litigate. 10

II. SIDLEY'S CONFLICT MUST BE ASSESSED AS A CONCURRENT REPRESENTATION AND, IN ANY EVENT, EVEN UNDER RULE 1.9, SIDLEY'S REPRESENTATIONS OF THE BOY SCOUTS AND CHUBB ARE SUBSTANTIALLY RELATED. 13

III. SIDLEY HAS NOT CARRIED ITS BURDEN OF DEMONSTRATING THAT THE COURT SHOULD APPROVE THE RETENTION APPLICATION OR THAT IT OBTAINED A VALID WAIVER. 17

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES

Arnett v. Mid-Cont'l Cas. Co.,
No. 8:08-CV-2373-T-27EAJ, 2010 WL 11507481 (M.D. Fla. Apr. 13, 2010)..... 12

Baldasarre v. Butler,
625 A.2d 458 (1993)..... 7

Celgene Corp. v. KV Pharm. Co.,
No. 07-4819SDW, 2008 WL 2937415 (D.N.J. July 29, 2008)..... 7

CenTra, Inc. v. Estrin,
538 F.3d 402 (6th Cir. 2008)..... 8, 9

Chem. Bank v. Affiliated FM Ins. Co.,
No. 87 CIV. 0150 (VLB), 1994 WL 141951 (S.D.N.Y. Apr. 20, 1994)..... 13, 14

Conley v. Chaffinch,
431 F. Supp. 2d 494 (D. Del. 2006)..... 9, 12

Employers Ins. Co. of Wausau v. Munich Reinsurance Am., Inc.,
No. 10 CIV. 3558 PKC, 2011 WL 1873123 (S.D.N.Y. May 16, 2011)..... 15

Enron,
No. 01-16034(AJG), 2002 WL 32034346 (Bankr. S.D.N.Y. May 23, 2002), *aff'd*, No. 02 CIV. 5638 (BSJ), 2003 WL 223455 (S.D.N.Y. Feb. 3, 2003)..... 11

Finmeccanica S.p.A. v. Gen. Motors Corp.,
No. CV0708222SJOPJWX, 2008 WL 11340060 (C.D. Cal. Apr. 29, 2008)..... 12

Glob. Reinsurance Corp. of Am. v. Century Indem. Co.,
No. 13 CIV. 6577 (LGS), 2020 WL 995860 (S.D.N.Y. Mar. 2, 2020)..... 16

In re BH&P, Inc.,
949 F.2d 1300 (3d Cir. 1991)..... 18

In re Congoleum Corp.,
426 F.3d 675 (3d Cir. 2005)..... 6

In re Corn Derivatives Antitrust Litig.,
748 F.2d 157 (3d Cir. 1984)..... 15, 17

In re Devonshire PGA Holdings LLC,
548 B.R. 689 (Bankr. D. Del. 2016)..... 6

TABLE OF AUTHORITIES
(continued)

Page

In re Duvall,
No. 19-112272, 2020 WL 1492769 (Bankr. W.D. Ky. Mar. 25, 2020) 17

In re Fisker Auto. Holdings, Inc. S'holder Litig.,
No. CV 13-2100-DBS-SRF, 2018 WL 3991470 (D. Del. Aug. 20, 2018)..... 6, 17

In re Fleming Cos.,
305 B.R. 389 (Bankr. D. Del. 2004) 18

In re IH 1, Inc.,
441 B.R. 742 (Bankr. D. Del. 2011) 6, 7, 9

In re Marvel Entm't Grp., Inc.,
140 F.3d 463 (3d Cir. 1998)..... 18

In re Philadelphia Athletic Club, Inc.,
20 B.R. 328 (E.D. Pa.1982) 18

In re Pillowtex,
304 F.3d 246 (3d Cir. 2002)..... 17, 18

In re Thorpe Insulation Co.,
677 F.3d 869 (9th Cir. 2012) 19

Int'l Bus. Machines Corp. v. Levin,
579 F.2d 271 (3d Cir. 1978)..... 9

Int'l Longshoremen's Ass'n, Local Union 1332 v. Int'l Longshoremen's Ass'n,
909 F. Supp. 287 (E.D. Pa. 1995) 13

Madukwe v. Delaware State Univ.,
552 F. Supp. 2d 452 (D. Del. 2008)..... 10, 11, 15, 16

Mitchell v. Metro. Life Ins. Co.,
No. 01 CIV. 2112 (WHP), 2002 WL 441194 (S.D.N.Y. Mar. 21, 2002)..... 15

Pennwalt Corp. v. Plough, Inc.,
85 F.R.D. 264 (D. Del. 1980) 9

Reeves v. Town of Cottageville,
No. 2:12-CV-02765-DCN, 2014 WL 4231235 (D.S.C. Aug. 26, 2014)..... 12

Santacroce v. Neff,
134 F. Supp. 2d 366 (D.N.J. 2001) 13

TABLE OF AUTHORITIES
(continued)

Page

Spear v. Fenkell,
No. CIV.A. 13-02391, 2014 WL 6676660 (E.D. Pa. Nov. 25, 2014) 12

Talecris Biotherapeutics, Inc. v. Baxter Int'l Inc.,
491 F. Supp. 2d 510 (D. Del. 2007) 14

United States v. Gordon,
334 F. Supp. 2d 581 (D. Del. 2004) 17

OTHER AUTHORITIES

Model R. Prof'l Conduct 1.0 cmt. [6] 9, 17

Model R. Prof'l Conduct 1.0(e) 6

Model R. Prof'l Conduct 1.7 cmt. 20 7

Model R. Prof'l Conduct 1.7(b) 6

Model R. Prof'l Conduct 1.9(a) 6

Nancy J. Moore, *Revisions Not Revolution,* ABA J., DECEMBER 2002 6

PRELIMINARY STATEMENT

Sidley's lengthy brief and four additional declarations are remarkable for what they do not dispute: (i) that Sidley was obliged under its engagement agreement with Chubb and Rule 1.7(b) to obtain a written conflict waiver; (ii) that Sidley tried to get a written waiver under the guise of seeking a general prospective waiver without disclosing the Boy Scouts engagement, (iii) that Sidley did not obtain such a waiver—or any waiver—before it started representing the Boy Scouts to arrange a reorganization plan centered around Chubb insurance policies; and (iv) that Sidley kept working for Chubb and did not withdraw until ***after*** filing the Boy Scouts' bankruptcy petition. Under the Chubb engagement letter (called the Service Level Agreement or SLA), Rules 1.7 and 1.9, and applicable case law, this Court cannot allow Sidley to represent the Boy Scouts in the face of this breach of the duty of loyalty. This Court can and should decide this matter without getting into irrelevant factual allegations—about the nature of Sidley's work for Chubb—that Sidley belatedly raises on reply.

Sidley has no answer here. It does not mention, let alone quote, the SLA's express statement that "the Client shall not be deemed to have waived any conflict unless the Client provides a waiver in writing."[1] Instead, Sidley focuses on the alleged harm to its preferred client, the Boy Scouts, which is not a relevant consideration here. Sidley goes so far as to call Chubb a client that was not "substantial" (*i.e.*, not lucrative enough). Sidley then ties itself in knots trying to explain its disloyal conduct, relying on self-serving declarations—all immaterial in light of its obligation to obtain written consent to any conflict, an obligation of which Sidley was undeniably aware.

---

[1] April 9, 2020 Declaration of Joshua R. Schwartz ("Schwartz Decl.") Ex. 1 ("Service Level Agreement") at 6.

Sidley's argument boils down to asserting that Chubb is not a current client and that there is no adversity between the two. But Sidley admitted adversity when it requested a prospective waiver from Chubb in January 2019 for bankruptcy engagements, stating that it wished to make clear that "we may be ***directly adverse to you in the bankruptcy proceeding***."[2] Sidley then specifically noted that the adversity may involve "***confirming or supporting a plan over*** creditor or ***insurer objections***."[3]

Sidley obviously understood that it needed to obtain written consent from Chubb to any conflicted representations—even those the firm claims do not reflect adversity. This is evident from Sidley's efforts to obtain waivers in October 2019 for a transactional matter as well as a subpoena it wished to serve on Chubb. Neither representation bore what Sidley claims are the "hallmarks" of adversity, which no case actually speaks about.

Now, instead of offering proof of consent, Sidley pretends that Chubb's opposition to the retention application should be treated as a disqualification motion, and contends that Chubb has not carried the burden—on ***Sidley's*** retention application. Plainly, Chubb has no burden of proof on Debtors' application to retain Sidley. Sidley also tries to escape the strict requirement of Rule 1.7(b) for written consent to any waiver by recasting a current client as a former client—one that it jettisoned just a few weeks before asking the Court to approve its retention. But even that does not help Sidley because Rule 1.9 bars a lawyer from representing a client whose interests are materially adverse to a former client in a matter that is substantially related to the former representation. Indeed, the mere possibility that information obtained in the former representation is relevant to the current representation makes the matters substantially related.

---

2 Janine Panchok-Berry's April 30, 2020 Declaration Ex. 1 (emphasis added).

3 *Id*. (emphasis added).

This is much more than a mere possibility here: Sidley was integral to litigating reinsurance disputes involving Chubb's Boy Scouts policies

The closest Sidley comes to addressing the requirement that Chubb waive any conflicts of interest is by asserting that Chubb sat on its rights. Sidley absurdly contends that Chubb should have prophylactically moved for a declaration from this Court ***before*** Debtors applied to retain Sidley. But until the Boy Scouts filed the bankruptcy petition there was no forum to adjudicate the conflict. And the law does not recognize waiver through delay where there is no pending forum in which to litigate a conflict. In any case, Chubb objected as soon as Sidley made clear that it would plow ahead by filing its retention application. Sidley alone drove the timing. Sidley was free to mediate or seek other proper relief when it became aware of the conflict, which was in December 2018, when it first sought a prospective waiver from Chubb.

Also, there can be no delay where a client is unaware of a conflict, and Chubb did not have any details of Sidley's involvement with the Boy Scouts, other than a press report that Sidley declined to confirm and assurances from Sidley that there would be no problem. In fact, Sidley admits that it did not disclose basic facts about its Boy Scouts representation, which were exclusively in its possession. In response to Chubb's questions about the press report, Sidley wrote that "consistent with its ethical duties to BSA, [it] ***could not confirm its role***."[4]

COUNTERSTATEMENT OF FACTS

Sidley represented Chubb on Boy Scouts cases when the bankruptcy started.

At a pretrial conference on April 29, 2020, Sidley claimed that it withdrew from representing Chubb before the petition. Yet in its brief, Sidley admits that it represented Chubb and its affiliate on the petition date: "the process of communicating that withdrawal to the

---

4 Sidley Reply ¶6; *accord* ¶ 25.

relevant courts and arbitrators was complete as of February 20, 2020, *i.e.*, just ***days after BSA's bankruptcy filing***."[5] It was not until February 26, 2020, that William Sneed advised his client that the withdrawal was complete.[6] While Sidley takes umbrage at the suggestion that it was not candid with this Court in its 2014 filings, Sidley does not dispute that it failed to disclose that Chubb was its client—on Boy Scout matters—on the petition date.[7] And Sidley says nothing about its Rule 2014 disclosures regarding the Boy Scouts other insurers.

Sidley represented Chubb on many matters for more than a decade.

Sidley claims that "it did not have an attorney-client relationship on the date BSA retained Sidley as restructuring counsel."[8] But Sidley represented Chubb on many matters, not just those involving the Boy Scouts.[9] Their relationship goes back more than a decade.[10] Indeed, Sidley was Chubb's counsel in another matter in October 2018, when Sidley first started representing the Boy Scouts.[11] Mr. Sneed admits this in his declaration, stating that that matter started "around May 2017."[12] That matter was not closed in 2018 (though there was not much activity on it), is very much active now, and Sidley only sought to withdraw from it on the eve of the bankruptcy filing in 2020.

---

5 Sidley Reply ¶ 55 (emphasis added).

6 William Sneed's April 27, 2020 Declaration ("Sneed Decl.") ¶ 37.

7 Sidley Reply ¶¶ 78–79.

8 Sidley Reply ¶ 56.

9 Schwartz Decl. ¶¶ 2–3.

10 *Id.*

11 Sneed Decl. ¶ 9; Schwartz Decl. ¶ 8.

12 Sneed Decl. ¶ 9.

Sidley did not disclose to Chubb that it had started representing the Boy Scouts. That is now uncontested. Instead, Sidley claims that its relationship with Chubb lapsed—though it does not quite allege that it ended.[13]

Further, Mr. Sneed now admits that, when asked about a press report, he told Chubb he could not say because he felt bound by confidentiality obligations.[14] Nor does Sidley deny this failure to advise Chubb. Rather, Sidley tiptoes around these stubborn facts.

Chubb's reinsurance is an important asset and is valuable to its overall business.

Sidley tries to downplay the significance of the reinsurance matters it was handling. But they are significant to Chubb. Just as the insurance policies are an important asset to the Boy Scouts, reinsurance is an important asset to Chubb. Nor is Sidley in any position to judge the value of reinsurance to Chubb's business. Mr. Sneed's admissions about his work and the information to which he had access only proves this point.

The reinsurance matters that Sidley was handling include forward-looking requests for declaratory relief about future claims.

The reinsurance matters that Sidley was handling include claims for declaratory relief about future claims (rather than reinsurance for closed, already-paid claims only, as Sidley contends). As these matters are both forward-looking and ongoing, bankruptcy developments could negatively affect the reinsurance litigation. But the Court need not delve into the details of the engagement. Mr. Sneed made the point himself in describing the adversity in an insurance-driven bankruptcy when he tried to get a prospective waiver. If Sidley were approved as bankruptcy counsel, it would invariably be advocating positions that could adversely affect Chubb's reinsurance position.

---

[13] Sidley Reply ¶¶ 21, 57.

ARGUMENT

I. SIDLEY HAD A CONTRACTUAL AND ETHICAL OBLIGATION TO OBTAIN INFORMED, WRITTEN CONSENT FROM ITS CLIENT ABOUT REPRESENTING THE BOY SCOUTS.

A. Sidley was obliged to obtain Chubb's written consent before it started representing the Boy Scouts.

Both parties agree that the SLA—which Mr. Sneed attaches to his declaration—governs the relationship between Sidley and Chubb.[15] The SLA is explicit about Sidley's "***responsibility*** . . . to identify and bring to the attention of the Client, ***in writing***, any circumstances that may create or involve a conflict of interest as herein described."[16] Sidley's obligation was not only to advise the client in writing about a conflict but also to obtain a waiver in writing:

> If the Law Firm identifies a potential conflict after it has begun work for the Client, it shall make all reasonable efforts to resolve that conflict in a manner that will allow the Law Firm's continued representation of the Client. Any request by the Law Firm for the client to waive a real or potential conflict of interest must be in writing and directed to the ACE Liaison. Regardless of the nature or timing of any conflict, ***the Client shall not be deemed to have waived any conflict unless the Client provides a waiver in writing***.[17]

This express requirement mirrors Sidley's obligation under Rules 1.7(b) and 1.9(a), which call for informed consent to any conflict "confirmed in writing."[18] In 2016, Chief Judge Sontchi held that the same provisions in the Delaware Rules of Professional Responsibility "require that a conflicted attorney secure a ***written waiver from the affected clients***."[19]

---

14 Sneed Decl. ¶ 27.

15 Sneed Decl. ¶ 24; see also Ann Rappleye's May 1, 2020 Declaration .

16 Schwartz Decl. Ex. 1 at 6 (emphasis added).

17 *Id*. (emphasis added).

18 Model R. Prof'l Conduct 1.7(b), 1.9(a).

19 *In re Devonshire PGA Holdings LLC*, 548 B.R. 689, 701 (Bankr. D. Del. 2016) (emphasis added); *see also In re Fisker Auto. Holdings, Inc. S'holder Litig.*, No. CV 13-2100-DBS-SRF, 2018 WL 3991470, at *3 (D. Del. Aug. 20, 2018); *In re IH 1, Inc.*, 441 B.R. 742, 746 (Bankr. D. Del. 2011) ("A client may consent to conflicts, whether present or future, by signing a waiver.").

In addition to having an obligation to obtain a written waiver, a lawyer has to make sure that the waiver is based on "truly ***informed consent***," as the Third Circuit requires.[20] For consent to be informed, the client must understand the material risks of waiving the conflict, and it is the attorney's responsibility to ensure that.[21] As Judge Walsh recognized, "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."[22] In fact, the ABA added the written requirement to Rule 1.7 so there would be a record that the client's consent was informed.[23]

It was Sidley's responsibility, as Chubb's lawyer, to ensure that its client's consent would be informed.[24] As counsel, Sidley was "in the best position to ensure that the [informed consent] requirement is met," and Sidley had and has "responsibility for safeguarding the client's interests."[25] But there is no evidence that Sidley told Century how its work for the Boy Scouts overlapped with its ongoing work for Chubb.

A written waiver also makes sense because it avoids exactly the sort of he-said-she-said dispute in which Sidley now wishes to engage. That is precisely how a comment to Rule 1.7 explains it: "the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing."[26] A written waiver frees the court from wading into a messy,

---

20 *See In re Congoleum Corp.*, 426 F.3d 675, 691 (3d Cir. 2005) (emphasis added).

21 *In re IH 1, Inc.*, 441 B.R. at 746; *see also In re Fisker Auto. Holdings*, 2018 WL 3991470, at *4.

22 *In re IH 1, Inc.*, 441 B.R. at 746 (quoting Model R. Prof'l Conduct 1.0(e)).

23 Nancy J. Moore, *Revisions Not Revolution,* ABA J., DECEMBER 2002, at 48, 49.

24 *In re IH 1, Inc.*, 441 B.R. at 746.

25 *Celgene Corp. v. KV Pharm. Co.*, No. 07-4819SDW, 2008 WL 2937415, at *7 (D.N.J. July 29, 2008) (quoting *Baldasarre v. Butler*, 625 A.2d 458, 464 (1993)).

26 Model R. Prof'l Conduct 1.7 cmt. 20.

lengthy, and unnecessary evidentiary contest (much less by video conference in this case). Evidence of what anyone communicated orally—even if it were otherwise admissible—is simply irrelevant. Thus, the Court does not need to evaluate Sidley's claim that "[a]s a factual matter, Sidley did not receive confidential privileged information related to Century that could compromise its representation of BSA in this bankruptcy."[27] While that statement is untrue, it is also irrelevant.

B. Sidley does not contest that it failed to obtain Chubb's informed, written consent.

Sidley does not even contest that it failed to obtain a written waiver. Sidley's hired expert, Professor Rapoport, actually acknowledges "that Century has not provided informed written consent to Sidley with respect to the BSA representation."[28] That should be the end of the matter.

But the admitted facts here are worse. Sidley admits it did not seek or obtain a written waiver for the Boy Scouts representation. Doing so would have required affirmative disclosure of the Boy Scouts engagement and the nature of what was contemplated. Sidley admits that instead it tried to get a waiver under the guise of seeking a general prospective waiver.

Specifically, Sidley requested a prospective waiver from Chubb on January 8, 2019 (without ever mentioning that it was for its Boy Scouts representation).[29] But Chubb refused, and after some back-and-forth, Sidley abandoned the issue two months later. Chubb later confirmed in an email "that the advance waiver is no longer being requested."[30] Later, in October 2019, Mr. Sneed emailed to ask about waivers for a transactional matter and a subpoena

---

27 Sidley Reply ¶ 63.

28 Nancy Rapoport's April 27, 2020 Declaration ("Rapoport Decl.") at 8 n.5.

29 *See* Schwartz Decl. Ex. 2.

30 Janine Panchok-Berry's April 30, 2020 Declaration Ex. 2.

for another matter, thus acknowledging that Sidley knew it needed to obtain written waivers for matters that posed a potential conflict.[31]

Chubb did not have a chance to give its informed consent because Sidley never disclosed that any conflict existed. Sidley even admits that it did not disclose its Boy Scouts representation.[32] Only Sidley possessed the information that Chubb would have needed to grant its informed consent to this conflict.[33] Sidley cannot simply stand aside and wash its hands of its obligations.[34] Neither the engagement agreement nor the rules require a client to conduct its own independent investigation to uncover a lawyer's conflicts of interest.[35]

When Chubb asked in December 2018 about a press report, Sidley said that there was no problem and refused to say anything more.[36] Chubb relied on its attorney's assurances. Chubb had no obligation—or reason—to conduct additional diligence about Sidley's work after that.

---

[31] October 10, 2019 email from W. Sneed to J. Schwartz (document to be submitted later); October 17, 2019 email from W. Sneed to J. Schwartz (document to be submitted later).

[32] *Id.* at 464–65.

[33] *See CenTra, Inc. v. Estrin*, 538 F.3d 402, 415 (6th Cir. 2008) ("[P]roviding to the client anything less than full information runs the risk that the client is inadequately informed, thereby making any consent invalid.").

[34] *Int'l Bus. Machines Corp. v. Levin*, 579 F.2d 271, 282 (3d Cir. 1978) ("Clause (C) of DR 5–105 [of the 1969 ABA Model Code] specifically imposes upon an attorney the burden of affirmatively providing disclosure and obtaining consent. Clearly, full and effective disclosure of all the relevant facts must be made and brought home to the prospective client."); *Pennwalt Corp. v. Plough, Inc.*, 85 F.R.D. 264, 273 (D. Del. 1980) ("[T]he duty is upon the attorney to ferret out such conflicts [of interest], and not upon the client to divulge them."); *see also CenTra, Inc. v. Estrin*, 538 F.3d at 415 ("Courts interpreting the ABA and Restatement rules have made it clear that it is not sufficient to leave the client to infer the full nature of a conflict from only bits and pieces of actual or constructive knowledge.").

[35] Model R. Prof'l Conduct 1.0 cmt. [6] ("The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision."); Schwartz Decl. Ex. 1 at 6 ("In all cases, it is the responsibility of the Law Firm to identify and bring to the attention of the Client, in writing, any circumstances that may create or involve a conflict of interest as herein described.").

[36] Sidley Reply ¶6; *accord* ¶ 25.

C. The law does not recognize waiver through delay where there is no pending forum in which to litigate.

Sidley's complaint about delay is another attempt to flip the burden. Sidley should have disclosed to this Court that it represented Chubb on the petition date and also filed accurate Rule 2014 disclosures. Instead, for its own strategic reasons, Sidley held its retention application, attempted to withdraw, and then reported that Chubb was a former client—without disclosing that its actions were both disputed and post-petition. Now, Sidley is attempting to use its strategic timing decision against Chubb.

But leaving that aside, waiver of the right to object occurs only where a client is aware of a conflict and delays bringing a motion as a litigation tactic.[37] The cases all involve clients that are fully aware of the conflict (in many cases, where the conflict has been disclosed) and there is an unreasonable delay in bringing a motion.[38] Here, Chubb timely filed its objection to a retention motion that Sidley delayed filing. Knowing about the conflict before litigation breaks out is not grounds for a delay-based waiver.[39]

Madukwe is instructive on this issue. There, Delaware State University ("DSU") learned that its former attorneys were representing two employees against the University in employment disputes.[40] When the firm appeared at a meeting on behalf of one of the employees in October 2006, DSU sent a letter objecting to the representation.[41] The former firm denied any

---

[37] *In re IH 1, Inc.*, 441 B.R. at 746; *see also Conley v. Chaffinch*, 431 F. Supp. 2d 494, 498 (D. Del. 2006) (waiver is only a basis to deny a motion to disqualify "when a former client was concededly aware of the former attorney's representation of an adversary but failed to raise an objection promptly ***when it had the opportunity to do so***" (emphasis added) (internal quotation marks and citation omitted)).

[38] *Madukwe v. Delaware State Univ.*, 552 F. Supp. 2d 452, 463 (D. Del. 2008).

[39] *Id.* at 464.

[40] *Id.* at 456–57.

[41] *Id.* at 456.

conflict existed.[42] DSU did nothing when the same firm appeared on behalf of another employee adverse to DSU. It was not until 2008—after the employees sued and DSU answered—that DSU renewed its conflict objections and moved to disqualify.[43] The court found that, though DSU might have done more to assert its rights between October 2006 and January 2008, when it indisputably knew of the conflicted representation, it had not waived its right to object.[44] The court reasoned that DSU had never affirmatively assented to the representation and its former attorneys were aware at the beginning of the litigation that the conflict was an issue.[45] The court also noted that any prejudice to the plaintiff was lessened because the issue was addressed at the outset of litigation.[46]

By Mr. Sneed's own admission, he declined, when asked in late 2018, to tell Chubb what Sidley was doing for the Boy Scouts.[47] Chubb could not then have full knowledge of Sidley's Boy Scouts representation. When Chubb finally learned about Sidley's work for the Boy Scouts in November 2019, Chubb pressed its concerns, pursued the meet and confers contemplated by the SLA, mediated, and then timely objected to the retention application now before the Court.[48] The notion that Chubb objected "on the eve of a hearing on April 15 to address the selection of mediators" is disingenuous. Sidley and the Boy Scouts stipulated with Chubb to extend the time to object while they attempted to mediate.[49]

---

42 *Id.* at 456–57.

43 *Id.* at 457.

44 *Id.* at 463.

45 *Id.* at 464.

46 *Id.* at 464–65.

47 Sidley Reply ¶ 27.

48 Sidley Reply ¶ 25.

49 Sidley Reply ¶¶ 4, 52.

Sidley cites several cases where parties inexplicably or tactically delayed in bringing disqualification motions while litigation was pending. None resembles the facts in this case. *Enron* involved a creditor that remained silent as counsel for a UCC was approved, and then moved to disqualify two months later.[50] The objecting creditor further delayed by looking to push the hearing on its motion by a month.[51] Here, Chubb moved quickly to object as soon as the Boy Scouts filed the application to retain Sidley. In the other cases Sidley cites the courts found waiver where the facts were wildly different from those here, including delays during pending litigation.[52] *Conley* involved a lapse of nine months between when plaintiff learned of a conflict and when it moved to disqualify the attorney—while discovery proceeded and plaintiff's attorney had advised her former attorney that his client did not object to the representation.[53]

Sidley also alleges that in early October 2019 that the claims side of Chubb participated in meetings without objecting to the conflict. Chubb is a large company, and it took a few weeks for the relevant people in the reinsurance group to connect the dots. Of course, it was Sidley's obligation to advise its client about the dual representation, not the client's to figure out.

---

50 *In re Enron Corp.*, No. 01-16034(AJG), 2002 WL 32034346, at *3 (Bankr. S.D.N.Y. May 23, 2002), *aff'd*, No. 02 CIV. 5638 (BSJ), 2003 WL 223455 (S.D.N.Y. Feb. 3, 2003).

51 *Id.* at *4.

52 *See Conley*, 431 F. Supp. 2d at 499 (plaintiff failed to bring a motion or raise the conflict issue while litigation was pending for nine months); *Spear v. Fenkell*, No. CIV.A. 13-02391, 2014 WL 6676660, at *2 (E.D. Pa. Nov. 25, 2014) (defendants failed to object or raise the conflict issue while litigation was pending for six months parties were in regular communication); *Arnett v. Mid-Cont'l Cas. Co.*, No. 8:08-CV-2373-T-27EAJ, 2010 WL 11507481, at *2 (M.D. Fla. Apr. 13, 2010) (defendant successfully moved to disqualify law firm from representing one of two plaintiffs, but inexplicably delayed five months during pending litigation before moving to disqualify the same firm from representation of the second client for the same reason); *Finmeccanica S.p.A. v. Gen. Motors Corp.*, No. CV0708222SJOPJWX, 2008 WL 11340060, at *3 (C.D. Cal. Apr. 29, 2008) (plaintiffs failed to disclose that they believed there was a conflict while litigation was pending and settlement talks were ongoing for six months); *Reeves v. Town of Cottageville*, No. 2:12-CV-02765-DCN, 2014 WL 4231235, at *1 (D.S.C. Aug. 26, 2014) (counsel for the town brought a disqualification motion less than two weeks before trial was set to start after knowing about the conflict for fifteen days).

53 *Conley*, 431 F. Supp. 2d at 500.

II. SIDLEY'S CONFLICT MUST BE ASSESSED AS A CONCURRENT REPRESENTATION AND, IN ANY EVENT, EVEN UNDER RULE 1.9, SIDLEY'S REPRESENTATIONS OF THE BOY SCOUTS AND CHUBB ARE SUBSTANTIALLY RELATED.

Sidley does not dispute that it began representing the Boy Scouts in October 2018, even asserting that the representation started a month earlier.[54] But Sidley did not quit Chubb as a client until more than a year later; that was after Sidley signed the bankruptcy petition in this Court.[55] Because the determination of whether a client is current or former under the ethical rules must be assessed at the time the conflict arises, Sidley's conflict must be assessed as a concurrent representation.[56] That Sidley decided it would prefer to represent the Boy Scouts instead of Chubb does not change its status as a current client.[57] Nor did Sidley have the right to drop Chubb like a hot potato to escape the requirements of Rule 1.7.[58]

Tellingly, Sidley's expert did not opine on the critical question of whether Sidley's conflict should be considered as a current representation. Professor Rapoport simply assumed that Chubb is a former client.[59] That is presumably what Sidley told her.

Sidley now concedes that while representing both the Boy Scouts and Chubb, it was extensively negotiating with the claimants' lawyers on preparing the bankruptcy filings, including the proposed Plan of Reorganization.[60] That plan, which Sidley will try to confirm on the Boy Scouts' behalf, contemplates using Chubb's policies to fund the proposed trust to pay

---

54 Sidley Reply ¶ 11.

55 Sidley Reply ¶ 55.

56 *See* Point I-B in Chubb's opening brief and cases cited there.

57 *See Santacroce v. Neff*, 134 F. Supp. 2d 366, 370 (D.N.J. 2001) ("The Court looks to RPC 1.7 when the movant is an actual, not a former, client during the events pertinent to this motion.").

58 *Int'l Longshoremen's Ass'n, Local Union 1332 v. Int'l Longshoremen's Ass'n*, 909 F. Supp. 287, 293 (E.D. Pa. 1995) ("[A]n attorney may not drop one client like a "hot potato" in order to avoid a conflict with another, more remunerative client.").

59 Rapoport Decl. ¶ 8a.

60 Jessica Boelter's April 28, 2020 Declaration ¶ 8; Sidley Reply ¶ 28.

claimants under distribution procedures that Sidley will help craft (and which claimants will then run).[61] These are the same policies that were at issue in the confidential arbitrations from which Sidley abruptly withdrew after the bankruptcy petition.

The cases Sidley cites to support its claim that these matters are not substantially related do not apply to current conflicts because each involves former or "vicarious" clients.[62] In *Talecris* the court found no substantial relationship between the current action and prior patent infringement actions because the conflict involved a former client on a case that took six months to resolve, starting in 1992.[63] Unlike here, there was no temporal overlap because the current action started in 2005, with the court writing its decision 15 years after the other case commenced and closed. While the actions there involved different patents, this bankruptcy is based on funding a trust with the same Chubb insurance policies (and the same underlying claimants) that are the subject of the representations Sidley had been handling for Chubb.[64]

In *Chemical Bank*, the client relationship was "vicarious" and "attenuated" because the client was a member of a group of corporate entities represented by one firm.[65] Recognizing this, the Second Circuit used the "substantial relationship" test, which it held only applies to former or attenuated clients.[66] Moreover, the party seeking disqualification joined the client group late in the litigation, and through two years of litigation, the firm spent only three hours communicating with the movant individually.[67] Despite technically concurrent representations,

---

61 Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC at Art. IV.F.I, ECF No. 20; Disclosure Statement at 39, ECF No. 21.

62 *Chem. Bank v. Affiliated FM Ins. Co*., No. 87 CIV. 0150 (VLB), 1994 WL 141951, at *10 (S.D.N.Y. Apr. 20, 1994); Sidley Reply ¶ 62.

63 *Talecris Biotherapeutics, Inc. v. Baxter Int'l Inc.*, 491 F. Supp. 2d 510, 515 (D. Del. 2007).

64 *Id.*

65 *Chem. Bank*, 1994 WL 141951, at *17.

66 *Id.* at *10.

67 *Id.* at *3.

the Second Circuit held that the less stringent "substantial relationship" test applied but cautioned that "[w]here the relationship is a continuing one, adverse representation is prima facie improper. . . . Putting it as mildly as we can, we think it would be questionable conduct for an attorney to participate in any lawsuit against his own client without the knowledge and consent of all concerned."[68]

In *Mitchell*, the court disqualified a law firm based on conflicts with a former client, noting that (as here) a screen was not imposed at the start of the current representation.[69] *Wausau* also involved a former client where the first matter closed two years before the second commenced.[70] The court held that the simple fact that both matters involved arbitrations did not make the matters substantially related when there were no other similarities.[71]

Sidley's substantial-relationship discussion misses the point. The standard does not require that the two matters are the same or that they overlap. Under Third Circuit precedent, the mere possibility that confidential information obtained in the first engagement could be relevant to the second makes the matters substantially related.[72] And "any doubts about whether disqualification is appropriate should be resolved in favor of the moving party, in order to ensure protection of client confidences."[73]

But even if the Court were to analyze the conflict under Rule 1.9, the current and former representations are substantially related. Debtors' stated purpose for filing for bankruptcy is to formulate a reorganization plan to address the tort claims against it, with insurance as the asset at

---

68 *Id.* at *10.

69 *Mitchell v. Metro. Life Ins. Co.*, No. 01 CIV. 2112 (WHP), 2002 WL 441194, at *9–10 (S.D.N.Y. Mar. 21, 2002).

70 *Employers Ins. Co. of Wausau v. Munich Reinsurance Am., Inc.*, No. 10 CIV. 3558 PKC, 2011 WL 1873123, at *2–3 (S.D.N.Y. May 16, 2011).

71 *Employers Ins.*, 2011 WL 1873123, at *5–6 (S.D.N.Y. May 16, 2011).

72 *See In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157, 162 (3d Cir. 1984).

its center. Sidley's representation of Chubb on many matters and, in particular, its work related to the Boy Scouts' insurance and reinsurance claims easily meets the mere-possibility test to determine if natters are substantially related.[74]

Sidley asserts that the insurance policies and the reinsurance agreements are totally different and unrelated contracts. That is not so. As Mr. Sneed admits, the reinsurance agreements at issue reinsure the policies in the bankruptcy. The policy coverage determinations drive the reinsurance billing presentation. Particularly in reinsurance matters, the policy-related questions are very much alive. Facultative reinsurance expressly follows form to the policy. Indeed, in *Global Reinsurance Corporation of America v. Century Indemnity Company*, the court held that the underlying policy is part of the integrated reinsurance agreement.[75]

Further, because insurance coverage is a central asset in the reorganization, knowing Chubb/Century's legal analysis, strategy, and positions about this asset is obviously relevant to formulating a plan and negotiating with tort claimants and other insurers.[76] That information would be at risk of being exposed to Debtors if Sidley were allowed to switch sides. And that would materially prejudice Century.

With no case law to rely on, Sidley proffers Professor Rapoport's opinion that "Sidley was reasonable in its belief that the reinsurance work was not substantially related to its work for BSA."[77] But no case holds that whether the lawyer was reasonable in his or her belief is the

---

73 *Madukwe*, 552 F. Supp. 2d at 458.

74 *Supra* Counterstatement of Facts at 10–11.

75 No. 13 CIV. 6577 (LGS), 2020 WL 995860, at *6–7 (S.D.N.Y. Mar. 2, 2020).

76 *See Madukwe*, 552 F. Supp. 2d at 462 (finding substantial relationship where attorney had "specific knowledge" of former client's "interpretation, understanding, and application" of internal policies).

77 Rapoport Declaration ¶ 24; Sidley Reply ¶ 64.

standard for determining whether two matters are substantially related under Rule 1.9. And Professor Rapoport does not say otherwise.

III. SIDLEY HAS NOT CARRIED ITS BURDEN OF DEMONSTRATING THAT THE COURT SHOULD APPROVE THE RETENTION APPLICATION OR THAT IT OBTAINED A VALID WAIVER.

Sidley tries to place the burden of proof on Chubb by claiming that the "Objection is in substance a motion to disqualify."[78] To be clear, this is Debtors' motion to approve Sidley as bankruptcy counsel. Chubb is plainly not the movant here and has not requested disqualification or any other relief. Sidley's theory could apply to every objection to a retention application, which would result in switching the statutory burden to the objector.

Even if the Court were to consider this as a disqualification motion—which it is not—Sidley has the burden of showing that Chubb consented to waive any conflict of interest. In *Corn Derivatives*, the Third Circuit held that "the burden of showing consent is on" the law firm facing disqualification.[79] As discussed in Point I-B above, the requirement to obtain informed consent by its nature puts the burden on the lawyer to disclose information about the conflicted engagement to his or her client. A comment to Rule 1.0 explains as follows:

> The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of

---

78 Sidley Reply ¶ 48.

79 *In re Corn Derivatives Antitrust Litig.*, 748 F.2d at 162 (holding that "the burden of showing consent is on" the law firm facing disqualification"); *In re Fisker Auto. Holdings*, 2018 WL 3991470, at *3 n.5 ("[T]he burden shifts to the attorney seeking permission to pursue an otherwise impermissible dual representation in the context of the informed consent analysis."); *accord United States v. Gordon*, 334 F. Supp. 2d 581, 587 (D. Del. 2004); *see also In re Duvall*, No. 19-112272, 2020 WL 1492769, at *2 (Bankr. W.D. Ky. Mar. 25, 2020) ("While the burden of proof in seeking disqualification of opposing counsel is on the party seeking disqualification, a professional seeking appointment under Section 327 bears the initial burden of proof that they meet all qualifications of the statute in order to obtain appointment.").

> conduct and a discussion of the client's or other person's options and alternatives.[80]

Sidley has come nowhere close to carrying its burden to show that it provided Chubb with information reasonably adequate to make an informed decision.

In this Circuit, Sections 327(a) and (c) require the *per se* disqualification of any attorney who has an actual conflict of interest.[81] That is a statement of law with which Sidley agrees.[82] Under the undisputed facts here, Sidley cannot be approved as Debtors' counsel. This is how the *Pillowtex* court put it:

> [A] conflict is actual, and hence *per se* disqualifying, if it is likely that a professional will be placed in a position permitting it to favor one interest over an impermissibly conflicting interest. . . . [T]he term 'actual conflict-of-interest' is not defined in the Code and has been given meaning largely through a case-by-case evaluation of particular situations arising in the bankruptcy context.[83]

Here, Sidley has already conceded adversity.[84] When Sidley requested a prospective waiver from Chubb—which it never obtained—Sidley proposed the following language:

> It is intended to make clear that we may be directly adverse to you in the bankruptcy proceeding, including, but not limited to, objecting to creditor claims, ***opposing relief sought by creditors and insurers, confirming or supporting a plan over creditor or insurer objections, and prosecuting,***

---

80 Model R. Prof'l Conduct 1.0 cmt. [6].

81 *See In re Pillowtex*, 304 F.3d 246, 251 (3d Cir. 2002); *see also In re Fleming Cos.*, 305 B.R. 389, 393 (Bankr. D. Del. 2004) ("[S]ection 327(a) [of the Bankruptcy Code] imposes a *per se* disqualification on any professional who has an actual conflict of interest."); *In re Philadelphia Athletic Club, Inc.*, 20 B.R. 328, 334 (E.D. Pa.1982) ("professionals engaged in the conduct of a bankruptcy case should be free of the slightest personal interest which might be reflected in their decisions concerning matters of the debtors' estates, or which might impair the high degree of impartiality and detached judgment expected of them.").

82 Sidley Reply ¶ 43 (citing *In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 477 (3d Cir. 1998) and stating that disqualification is mandated where there is "an actual conflict of interest").

83 *Pillowtex, Inc.*, 304 F.3d at 251 (citations omitted) (quoting *In re BH&P, Inc.*, 949 F.2d 1300, 1315 (3d Cir. 1991)).

84 Sidley Reply ¶¶ 6, 14, 59.

> ***objecting to, or supporting motions or taking other actions over creditor or insurer objections***—including where you are the creditor or insurer.[85]

Sidley clearly understood that bankruptcy proceedings would make it adverse to Chubb. This guts Sidley's argument that the bankruptcy is distinct from coverage issues—where Sidley has deep knowledge about Chubb.[86]

Adversity is not always as direct as cross-examining a witness. It can come in the form of knowing your client's strategies and sensitive information, as Sidley does here. That is especially so in a mass-tort bankruptcy, as the *Thorpe* court recognized when it observed that there is inherent adversity between insurers and debtors.[87] Indeed, Mr. Sneed's above-quoted language proves that Sidley well understands this too.[88]

Finally, that Chubb refers to its reinsurance as "non-claims" that are "unrelated to the defense of an insurance claim" in the SLA does not change any of the above or alter the information to which Sidley was privy.[89] Also, that is not language that defines the scope of a lawyer's engagement, as the SLA expressly states that "[n]otwithstanding" that the "SLA pertains to Non-Claims Services, . . . [it] ***should not be taken as any form of instruction to limit your role*** or to reduce the quality of the representation provided." Not only does the non-claims

---

85 Janine Panchok-Berry's April 30, 2020 Declaration Ex. 1 (emphasis added).

86 Sidley Reply ¶¶ 68–72.

87 *In re Thorpe Insulation Co.*, 677 F.3d 869, 885 (9th Cir. 2012) (reversing confirmation and remanding to allow insurers to offer proof in contested hearing that plan impairs their rights).

88 Sidley's citation to Formal Opinion 05-435 is off target. *See* Sidley Reply ¶ 71. That opinion considers whether a firm may represent an insurer and not be conflicted if it represents a plaintiff suing a defendant that is insured by the insurer. But here, Sidley does not represent the tort claimants suing the Boy Scouts. Sidley represents the Boy Scouts, an entity directly making demands against Chubb.

89 *In re Thorpe Insulation Co.*, 677 F.3d 869, 885 (9th Cir. 2012) (reversing confirmation and remanding to allow insurers to offer proof in contested hearing that plan impairs their rights).

definition not affect the scope of engagement, it also does not affect the SLA's requirement for a written conflict waiver.[90]

[90] Sidley Reply ¶ 14 (emphasis added).

CONCLUSION

Century respectfully requests that the Court deny Debtors' application to retain Sidley and grant such other relief as is just and proper.

Dated: May 1, 2020
Wilmington, Delaware

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*)
Janine Panchok-Berry (*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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company

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)

DECLARATION OF JANINE PANCHOK-BERRY IN SUPPORT OF CENTURY'S REPLY IN FURTHER SUPPORT OF OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

I, Janine Panchok-Berry, pursuant to 28 U.S.C. § 1746(2), under penalty of perjury, hereby declare as follows:

1. I am an associate at the firm O'Melveny & Myers LLP, attorneys for 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, Ace Insurance Group, Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company. I submit this declaration based on my personal knowledge of the proceedings in *In re Boy Scouts of America and Delaware BSA, LCC*, and review of the pleadings and documents listed below.

2. Attached as Exhibit 1 is a true and correct copy of an email from William Sneed to Joshua Schwartz dated February 28, 2019.

3. Attached as Exhibit 2 is a true and correct copy of an email from Joshua Schwartz to William Sneed dated March 21, 2019.

Dated: May 1, 2020

Respectfully Submitted,

By: */s/ Janine Panchok-Berry*

JANINE PANCHOK-BERRY

EXHIBIT 1

From: Sneed, William M. <wsneed@sidley.com>
To: Schwartz, Joshua R
Sent: 2/28/2019 8:42:38 PM
Subject: [EXTERNAL] Chubb -- Proposed Advance Waiver

Josh:

Following our discussion with you last week, Mike Goldman and I have worked to flesh out the insolvency/restructuring advance waiver language, in order to respond to your questions.

Here is the language our firm proposes:

> We have numerous clients that rely upon us for general representation, including clients that may be directly or indirectly insured by you, may be indebted to, or may be a creditor of, you or one or more of your affiliates. Current or future clients (collectively, the "Other Clients") may ask us to represent them in connection with potential or actual insolvency or restructuring matters that are adverse to you and may negatively impact your interests. If we are not representing you in such matter, and the matter in which you and an Other Client have adverse interests is not substantially related to our current or past representation of you, you agree that we may represent such Other Client, you waive any alleged conflict of interest arising from such representation, and you agree that you will not seek to disqualify or otherwise prevent us from representing such Other Client. You acknowledge that you have had an opportunity to consult with other counsel (in-house or otherwise) and to raise any questions you may have with us before agreeing to this waiver.
>
> The foregoing advance waiver is not intended to authorize us to bring an action against you alone (in contrast to a group of which you are a member) seeking an affirmative recovery, recovery of a voidable preference or fraudulent transfer, or seeking to void your security. It is intended to make clear that we may be directly adverse to you in the bankruptcy proceeding (including, but not limited to, objecting to creditor claims, opposing relief sought by creditors and insurers, confirming or supporting a plan over creditor or insurer objections, and prosecuting, objecting to, or supporting motions or taking other actions over creditor or insurer objections — including where you are the creditor or insurer).

If you have any questions about this, please give me a call.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
+1 312 853 7899
wsneed@sidley.com
www.sidley.com
SIDLEY

****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.
****

EXHIBIT 2

From:	Schwartz, Joshua R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C108B446449C44F083045CD97132678D-SCHWARTZ, J>
To:	'Sneed, William M.'
Sent:	3/21/2019 3:06:43 PM
Subject:	phone tag

Hi Bill, thanks for your v/m. I left my desk for a second and missed you. I am glad that the advance waiver is no longer being requested. I will endeavor to as quickly as possible address any waiver requests that Sidley makes in the future.
Best regards, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

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)

DECLARATION OF ANN RAPPLEYE

I, Ann Rappleye, pursuant to the provisions of 28 U.S.C. § 1746 declare under the penalty of perjury as follows:

1. I am Operations Counsel in the Global Legal and Compliance group at Chubb, a position I have held since November 2015. In that capacity, I serve as Chief of Staff to the Executive Vice President and Global General Counsel of the Chubb Group of Companies, as well as manage various Global Legal Operations matters. One of the legal operations matters I am responsible for is the oversight and management of the Legal and Compliance group's engagements with outside counsel. This includes oversight of our e-billing tool – T360 or TyMetrix -- through which our outside counsel submit bills for payment.

2. Reporting to me in this capacity are a T360 manager, who handles day-to-day administration of the T360 network, as well as an administrative assistant, who assists with such tasks as onboarding new law firms, setting up new matters, and answering basic questions from both internal stakeholders and outside law firms. I also work with the Vice President, Claims Optimization, who is the product owner of the T360 system and supervises the administration of T360 in the Claims organization at Chubb.

3. Given the number of firms that the Legal and Compliance group engage, we made a decision not to negotiate separate engagement letters with each firm. Rather,

Chubb has a standard Service Level Agreement ("SLA") that the Company uses to memorialize the terms of engagement between Chubb and the law firms.

4. We require new firms to electronically execute, acknowledge, and accept the SLA when they are on-boarded into the T360 network. We also require different office locations of the same firm to acknowledge and accept the SLA when those offices are on-boarded into T360. For example, if the New York office of Firm X has acknowledged and accepted the SLA and then the Chicago office of Firm X is assigned a new matter, the Chicago office of Firm X must also acknowledge and accept the SLA.

5. Acceptance and execution of the SLA is performed electronically through the T360 tool. The acknowledgement requires that the person accepting the SLA affirm that he or she is authorized to act on behalf of the firm. The person accepting the SLA must also acknowledge that acceptance of the SLA is a condition precedent to the firm serving as counsel to Chubb. The Acknowledgement Form as it appears to the law firm in T360 is attached as Exhibit A.

6. Firms are prevented from submitting bills into T360 and, consequently, will not be paid, until they have accepted the SLA.

7. Once the SLA is accepted, it applies to all legal and compliance matters a particular firm and office are assigned from that point forward. Firms are not required to re-execute and accept the SLA with each new matter in the Legal and Compliance network of T360. The SLA is therefore evergreen, i.e., it does not need to be renewed.

8. The law firm Sidley Austin ("Sidley") acknowledged the Chubb SLA on September 4, 2015 in connection with the firm's engagement on a reinsurance matter. A copy of the SLA Sidley acknowledged is attached as Exhibit B. Nicole Talison electronically acknowledged the SLA on behalf of the firm, after representing that she had authority to do so. I

understand that her title was Senior Client Arrangement Analyst at Sidley at the time. The record of this acknowledgment in T360 is attached as Exhibit C.

9. Sidley has been assigned eight (8) matters for the Legal and Compliance group since acknowledging the SLA in September 2015. It billed over $2M and submitted more than 95 invoices through T360 on these matters. It is my understanding that Sidley handled other matters prior to acknowledging the SLA in September 2015.

10. Given my role in overseeing T360, I typically handle issues related to the SLA. For example, I would handle any questions or other issues related to the SLA with outside counsel. I have not been made aware of any issues that Sidley has raised regarding the SLA, nor has anyone at the firm contacted me regarding the SLA. In the December 7, 2018, email attached as Exhibit 1 to the declaration of Bill Sneed, Mr. Sneed confirms that he was aware of the SLA and that Sidley's representation has been pursuant to the SLA.

11. The SLA addresses a host of issues ranging from case management and strategy to data security, reporting practices and billing procedures that are propriety to Chubb. The public disclosure of the SLA would result in an unfair advantage to competitors and adversaries by providing them information as to the specifics of how Chubb manages its law firm relationships, the cases they handle and operations. And, this information, if subject to public disclosure, would unfairly benefit Chubb's competitors and its adversaries in the legal system.

Dated: May 1, 2020

Respectfully submitted,

*/s/ Ann Rappleye*_____

Ann Rappleye

Acknowledgement Form

By clicking this button, I accept all of the terms and conditions of the Service Level Agreement ("SLA") and I represent to ACE INA Holdings Inc., (hereinafter referred to as "Chubb" as further defined in the SLA) that I have authority to act on behalf of my firm. I also acknowledge that my firm's acceptance of the SLA is a condition precedent to serving as Chubb's legal counsel.

SLA Guidelines Acknowledged?: Yes

Acknowledgement Date: 9/4/2015

Is your law firm currently providing, or planning to provide, legal services to Chubb on matters subject to HIPAA privacy requirements?

HIPAA: No

HIPAA Date:

Please refer to the Document Library to view each regions Service Level Agreement ("SLA"), as well as view or print Chubb's HIPAA Business Associate Agreement ("BAA"), if applicable.

EXHIBIT B

SERVICE LEVEL AGREEMENT FOR THE PROVISION OF NON-CLAIMS LEGAL SERVICES

Between

ACE INA Holdings Inc.
(Hereinafter referred to as "ACE")

and

_____
(Hereinafter referred to as the "Law Firm")

Dated: _____

Service Level Agreement for the Provision of Non-Claims Legal Services

Contents

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

[redacted]

[redacted]

[redacted]

[redacted]

4.13 Conflicts of Interest

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

Service Level Agreement for the Provision of Non-Claims Legal Services

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

1.1.1. Definitions: This section defines some capitalized terms used in this Service Level Agreement ("SLA") and certain other terms and conditions.

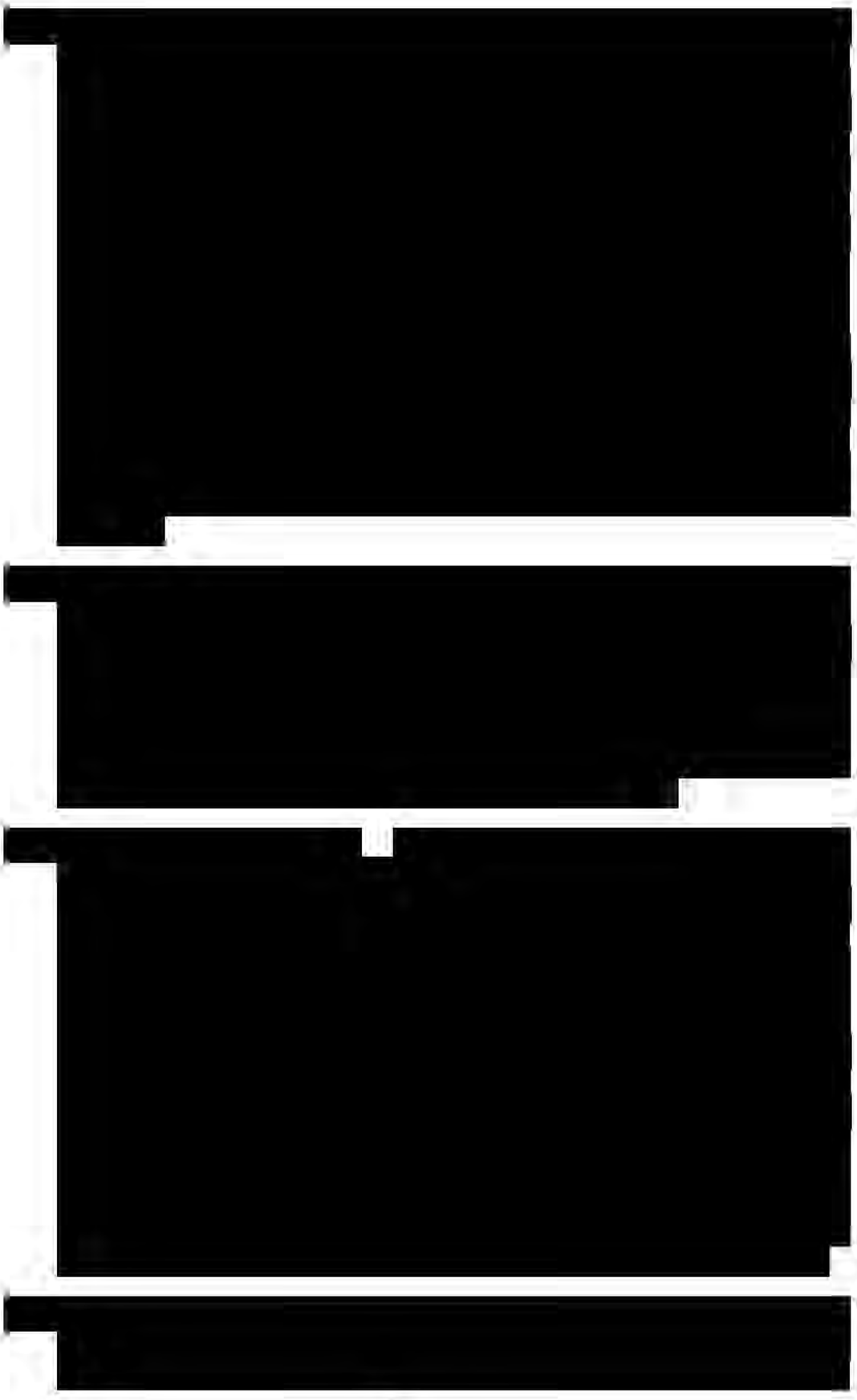
"ACE Group Company"	ACE or any of its parents, subsidiaries or other affiliates (at any time during the period of the Law Firm's representation of the Client)
"ACE Group of Companies"	all ACE Group Companies taken together (at any time during the period of the Law Firm's representation of the Client)
"ACE Liaison"	the Client's in-house lawyer or other principal liaison to the Law Firm
[redacted]	[redacted]
"Client"	any ACE Group Company that retains the Law Firm to provide Non-Claims Services with respect to any matter
"Non-Claims Services"	services performed by the Law Firm for a Client that are unrelated to the defense of an insurance claim or a related insurance coverage claim
[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

1.1.6. Conflicts of Interest: In addition to the Law Firm's ethical responsibilities to avoid conflicts of interest, the ACE Group of Companies generally applies a Group-wide approach to conflict analysis. The interests of all ACE Group Companies must be taken into account in analyzing whether a particular representation of a Client presents a conflict of interest. Updated lists of all ACE Group Companies are filed with ACE Limited's SEC Forms 10-K and may be accessed via the www.acegroup.com and/or www.sec.gov websites. The ACE Group of Companies does not generally consider conflicts to result solely from representation of its business competitors, but specific circumstances can cause conflicts to arise in such situations. In all cases, it is the responsibility of the Law Firm to identify and bring to the attention of the Client, in writing, any circumstances that may create or involve a conflict of interest as herein described. Any Law Firm that is newly retained by an ACE Group Company is requested to confirm the absence of any conflicts of interest to the ACE Liaison. If the Law Firm identifies a potential conflict after it has begun work for the Client, it shall make all reasonable efforts to resolve that conflict in a manner that will allow the Law Firm's continued representation of the Client. Any request by the Law Firm for the client to waive a real or potential conflict of interest must be in writing and directed to the ACE Liaison. Regardless of the nature or timing of any conflict, the Client shall not be deemed to have waived any conflict unless the Client provides a waiver in writing.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

4.13. Conflicts of Interest

4.13.1. The Law Firm is required, without charge to the Client, to conduct or have conducted appropriate searches and inquiries with regard to any actual or potential conflict of interest, and to consult with the Client accordingly (as further directed in section 1.1.6 above).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

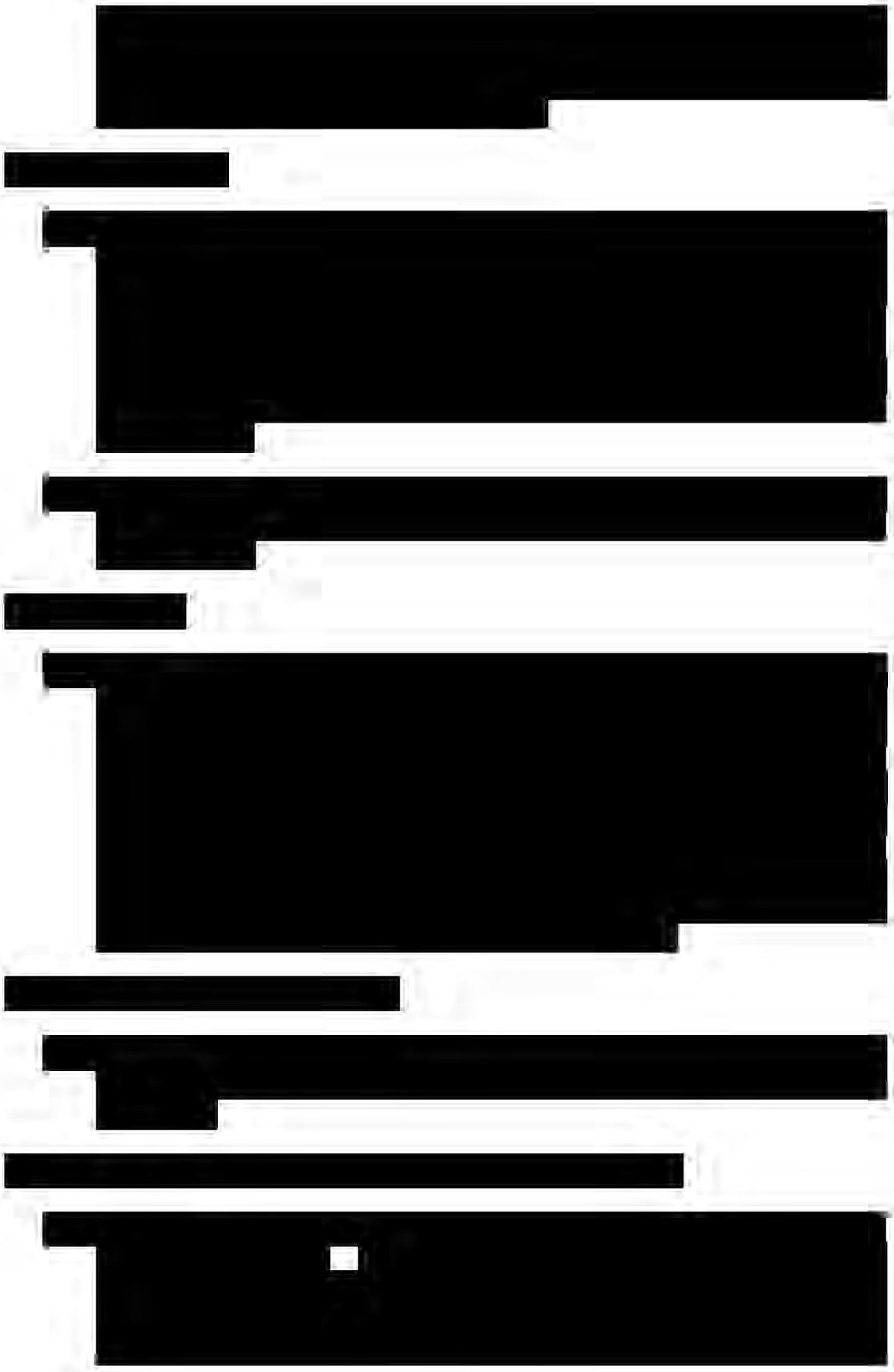
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

7.2. If a dispute arises related to this SLA with respect to any matter handled by the Law Firm for a Client, senior representatives of both parties, vested with authority to settle the dispute, will meet or speak and attempt in good faith to resolve the dispute. The meeting or conversation will be held reasonably promptly (which the parties believe should be achieved within 10 working days) at the request of either party.

7.3. If the parties are unable to resolve a dispute by negotiation as set forth in section 7.2 above, and the dispute relates to a matter handled by the Law Firm within the United States of America ("US Dispute"), either party may submit the dispute to be finally settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, in Philadelphia, Pennsylvania, U.S.A., by a single arbitrator selected in accordance with R-11. All US Disputes related to this SLA shall, if not resolved between the parties as provided under section 7.2, be resolved by arbitration as provided herein, and arbitration shall be the sole means for redressing any dispute. Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees. The parties waive their respective rights to damages for "bad faith," punitive damages, statutory damages or penalties or other exemplary damages. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

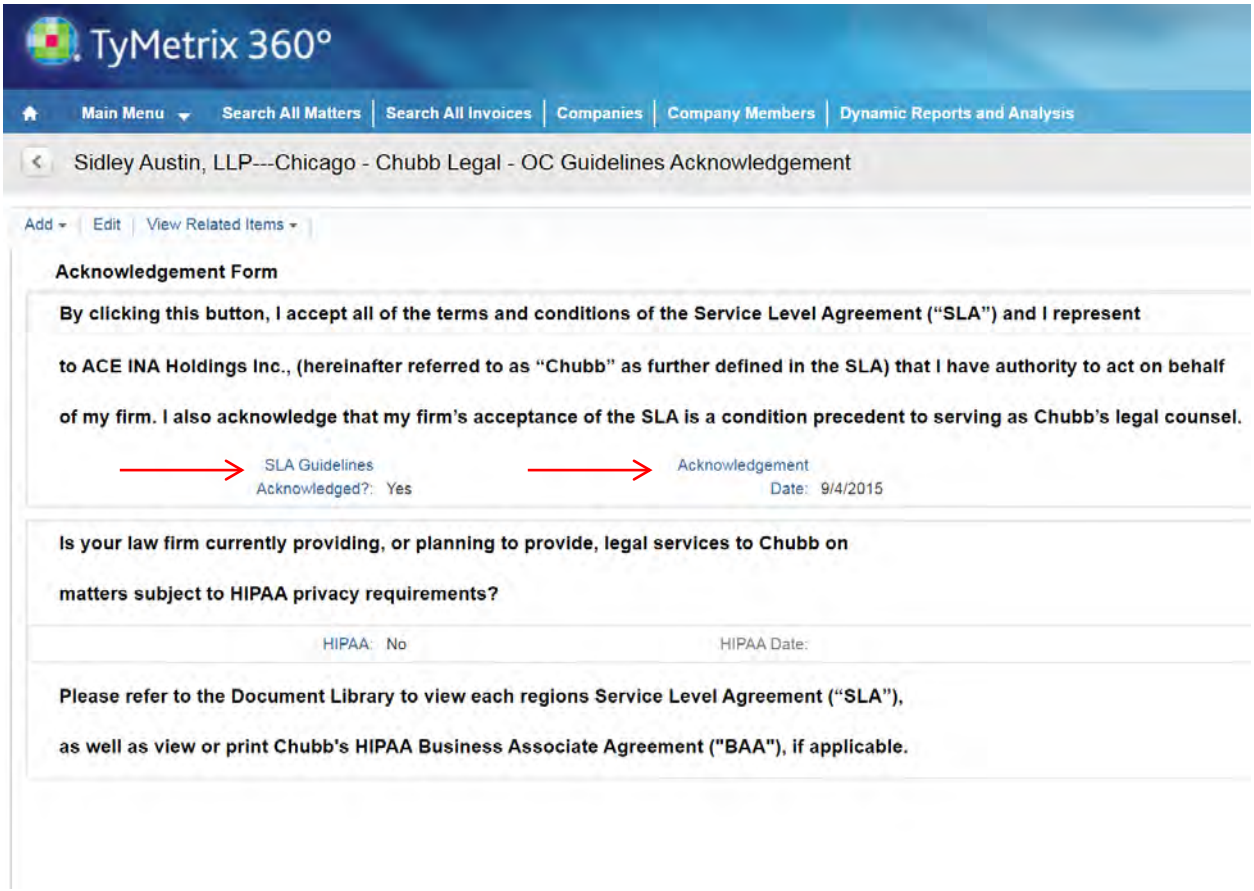
[redacted]
[redacted]
[redacted]
[redacted]

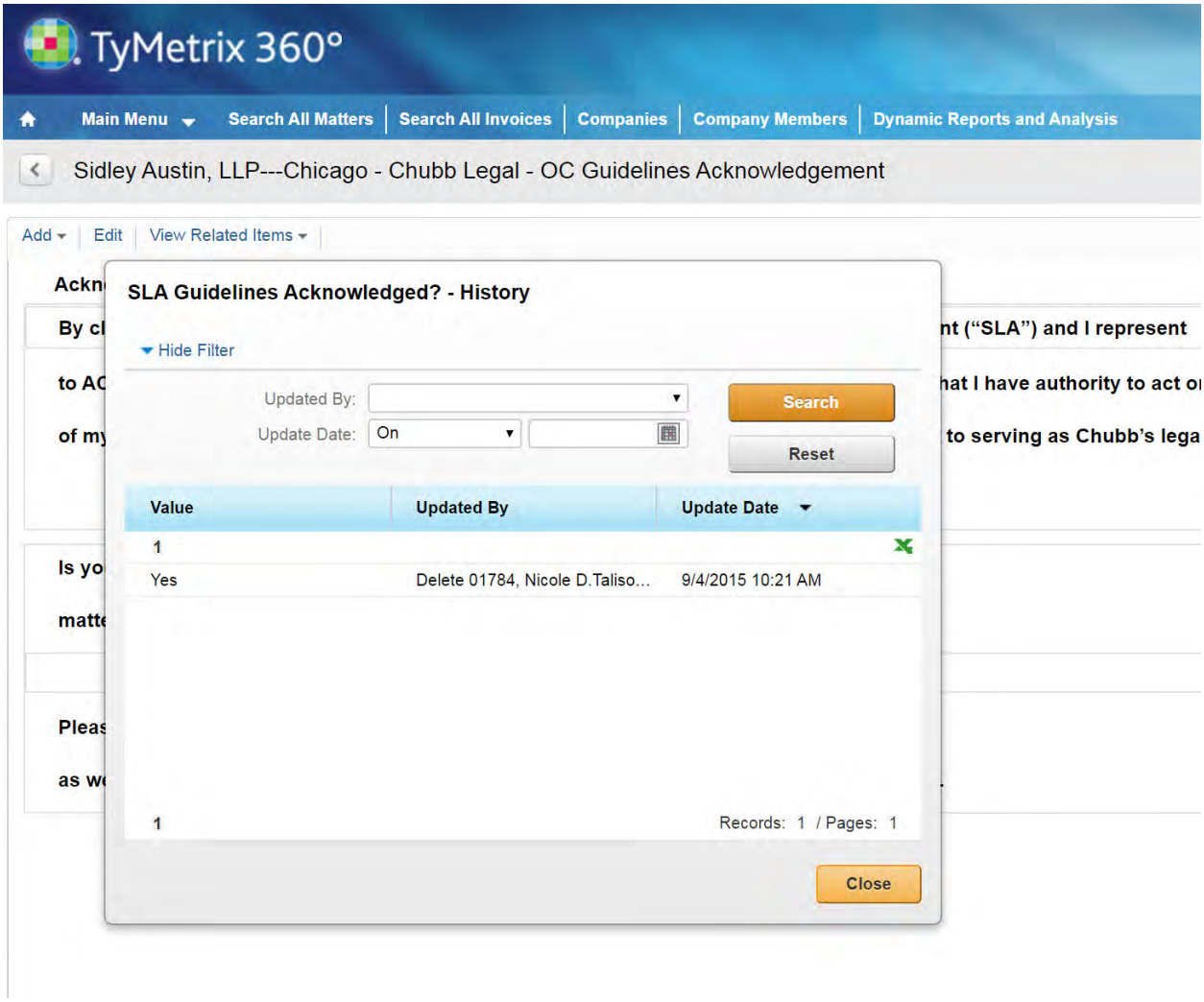
[redacted]

	[redacted]
	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

EXHIBIT C

Clicking on ***SLA Guidelines Acknowledged?*** and/or ***Acknowledgement Date*** will reveal in a pop up window the T360 user who signed off on the SLA.




TyMetrix 360°
Main Menu
Search All Matters
Search All Invoices
Companies
Company Members
Dynamic Reports and Analysis
Sidley Austin, LLP---Chicago - Chubb Legal - OC Guidelines Acknowledgement
Add
Edit
View Related Items
SLA Guidelines Acknowledged? - History
Hide Filter
Updated By:
Update Date:
On
Search
Reset
Value
Updated By
Update Date
1
Yes
Delete 01784, Nicole D.Taliso...
9/4/2015 10:21 AM
1
Records: 1 / Pages: 1
Close

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)

DECLARATION OF WILLIAM M. SNEED IN SUPPORT OF RESPONSE BY SIDLEY AUSTIN LLP IN FURTHER SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

I, William M. Sneed, being duly sworn, state the following under penalty of perjury:

1. I am over 21 years of age and I am fully competent to make this declaration ("Declaration") in support of the *Response by Sidley Austin LLP in Further Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, Nunc Pro Tunc to the Petition Date*. I am a partner in the law firm Sidley Austin LLP ("Sidley") based in its office located at One South Dearborn, Chicago, Illinois, 60603.[2]

2. Except as otherwise stated in this Declaration, all facts set forth herein are based on my personal knowledge or information obtained from my personal review of relevant

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Response by Sidley Austin LLP in Further Support of Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession,* Nunc Pro Tunc *to the Petition Date* filed contemporaneously herewith.

documents. The views asserted in this Declaration are based upon my experience and knowledge of insurance and reinsurance disputes generally, as well as the matters on which Sidley's Reinsurance Team represented Century, specifically. If called upon to testify, I would competently testify to the facts set forth herein.

3. Beginning on October 5, 2018, Sidley was retained by Century to perform consulting work relating to a dispute between Century and certain Lloyd's of London Syndicates (the "Lloyd's Matter"). Joshua Schwartz, Managing Counsel, Director of Reinsurance Litigation for Century, was Sidley's primary point of contact at Century for the Lloyd's Matter.

4. At the time, Century brought Sidley on solely in a consulting capacity to review the record of a prior arbitration between Century and Lloyd's in which Century had been represented by a different law firm, [redacted] with that arbitration hearing taking place from April 30 to May 3, 2018 (the "First Arbitration"). The First Arbitration had involved a claim by Century to Lloyd's for reimbursement for payments made in settling certain abuse cases in which Century had defended and indemnified BSA. *Certain Underwriters at Lloyd's v. Century Indemnity Co.*, 2020 WL 1083360, at *2 (D. Mass. Mar. 6, 2020). Lloyd's had reinsured Century for losses arising from Century's entire book of business in a certain years—*i. e.*, "treaty reinsurance"—which included coverage for eight annual policies of insurance that Century issued to BSA from 1963 to 1970. *Id.* Beginning in or about February 2016, Century notified and billed Lloyd's for a portion of the payments it had made in settling those cases under the reinsurance treaties. Lloyd's refused to pay Century, and in the First Arbitration, the arbitrators resolved that dispute adversely to Century. *Id.* Following the arbitration ruling, Century submitted new reinsurance bills for the same abuse claims in August 2018—this time in conformity with the arbitration ruling—that Lloyd's likewise refused to pay. *Id.* at *3.

5. When Century retained Sidley, the only remaining substantive issue of significance in the Lloyd's Matter was whether Century could permissibly re-issue reinsurance billings to Lloyd's that accumulated separate abuse claims as a single "occurrence" under the reinsurance treaties—an issue that the panel in the First Arbitration had declined to decide. *Id.* In October and November of 2018, Sidley was asked to analyze this accumulation issue, along with certain questions regarding a motion to confirm the First Arbitration award.

6. On November 30, 2018, Mr. Schwartz called and asked me if Sidley would take the role of lead counsel respecting a new arbitration demand against Lloyd's that had been issued by Century's prior counsel, [redacted] on November 9, 2018. This new arbitration demand sought recovery on the August 2018 billings that Lloyd's had refused to pay. *Id.* [redacted] The Lloyd's matter was officially opened in Sidley's system on November 30, 2018. I prepared a petition to compel this arbitration in federal court—this time based on Lloyd's denial of Century's re-submitted bills. This petition was filed in the District of Massachusetts on May 6, 2019. *Id.*[3]

7. The only materials that Sidley received in connection with this work were as follows:

- Filings related to Lloyd's motion to confirm the First Arbitration award;
- The record of the First Arbitration; and
- Placement records respecting negotiations between Century and its reinsurers regarding the reinsurance treaties, dating from the 1950s and 1960s.

[3] Those efforts were successful, and on March 6, 2020, the District of Massachusetts directed that the new arbitration would proceed. *See Lloyd's*, 2020 WL 1083360, at *6.

8. In July of 2019, Century also asked me to represent it in a reinsurance collection dispute with [redacted] and its affiliate (the "[redacted] Matter"). The [redacted] Matter was officially opened at Sidley on August 5, 2019. Joshua Schwartz was also my primary point of contact for the [redacted] matter. Like the Lloyd's Matter, the [redacted] Matter involved efforts to collect reinsurance arising from payments made under Century policies issued to BSA—this time with different reinsurers. In connection with the [redacted] Matter, the only materials that Sidley received were emails between Century and [redacted] relating to claims settlements that Century had reached in 2018 and 2019, along with a deposition transcript [redacted] which was reviewed for purposes of addressing the reinsurer's question on [redacted].

9. Sidley also represented and counseled Chubb and its affiliates in various other matters with no connection to BSA:

- On or around May 23, 2019, Sidley opened a matter in which it represented Chubb in a reinsurance arbitration against [redacted].
- Starting around May 17, 2019, Sidley sporadically counseled Chubb respecting its affiliate [redacted] in connection with questions raised by a reinsurer with respect to certain treaties.
- Starting around May 2017, Sidley reopened a matter in which it sporadically counselled Century in connection with issues respecting the [redacted].

10. I was personally involved in and primarily responsible for Sidley's representation of Chubb or its affiliates in each of the representations listed above. As discussed further below, Sidley did not receive "confidential information about Chubb's insurance coverage for the BSA and agreements concerning it," "privileged information concerning the disputes between Century and the Boy Scouts over its insurance coverage, Century's privileged legal analysis of the BSA's

claims," or "Century's privileged legal strategies and defenses in these matters." (*See* Schwartz Decl. ¶ 5.).

11. Generally, a reinsurance contract dispute arises when an insurer issues a bill to a reinsurer, and the reinsurer fails or refuses to pay. The insurer then tries to determine the reason why the reinsurer has failed or refused to pay and address that reason. For the specific BSA reinsurance matters Sidley was retained on, Century billed the reinsurers for abuse claims against BSA that Century had already defended and settled. The reinsurers refused to pay the bills for two reasons: [redacted]

12. This is a typical scenario in reinsurance contract disputes. The law of reinsurance generally does not permit reinsurers to avoid liability under a reinsurance contract by second-guessing the insurer's claim decisions (*i.e.*, whether to pay a claim and how much to pay). Consequently, reinsurers instead try to avoid liability by arguing that the claim payments should have been allocated to policies they do not reinsure or that the claim payments do not comply with a particular definition in the reinsurance contract (*i.e.*, whether payments made for multiple individual claims arise out of a single "occurrence" under the reinsurance contract).

13. For the Lloyd's [redacted], Century had originally allocated the claim payments to the underlying BSA policies pursuant to what was referred to as the First Encounter

Agreement ("FEA"), which is an agreement that BSA and Century entered into in 1996. It is a mechanical agreement that serves to determine the date of loss for an abuse claim, when that claim involves abuse allegedly happening over multiple policy years. Under the FEA, the date of loss is the date when the first act of abuse took place, even if additional acts of abuse took place under subsequent policy periods. All damages for such a claim are deemed to have been incurred in the policy year when the abuse began. The defense and indemnity for such a claim will be under the policy in effect when the abuse began. One way to describe this mechanism is "telescoping." The FEA is part of the historical record respecting Century and BSA.

14. At no point was the Reinsurance Team asked to advise Century with respect to Century's rights under the FEA. In fact, at the time Century retained Sidley, the FEA was not at issue.

15. With respect to the Lloyd's Matter, the FEA was not at issue due to the ruling in the First Arbitration. Lloyd's had raised three defenses in the First Arbitration: (a) late notice, (b) a challenge to Century's accumulation of multiple individual claims as a single "occurrence" under the reinsurance treaties, and (c) a complaint that Century could not show that it had undertaken a reasonable and businesslike investigation before entering into the FEA. The arbitrators ruled in favor of Lloyd's on the last defense only and set aside the reinsurance billings at issue. Century responded by issuing new bills that spread its defense and indemnity payments for each individual abuse claim across all policy years during which abuse took place and then once again accumulated multiple individual claims as a single "occurrence" under the reinsurance treaties. Sidley's representation of Century in the Lloyd's Matter was limited to pursuing payments of the new bills that that had not been allocated to individual policies according to the FEA.

16. [redacted] Although Sidley was provided with the record of the First Arbitration, it contained only a handful of documents respecting the FEA, almost all of which were letters exchanged between BSA and Century (or Century's predecessor) in the 1990s. None of these documents reveal privileged or confidential information.

17. With respect to the [redacted] Matter, Century's position [redacted].

18. Consistent with the scope of these representations and issues being litigated and arbitrated in the reinsurance context, Sidley did not receive any confidential information with respect to any coverage dispute involving the primary policies issued by Century to BSA during the course of either the Lloyd's Matter or the [redacted] Matter. Sidley did not receive pleadings, motions, or other filings related to any pending insurance coverage litigation, much less confidential information in that regard—which would not have been relevant to the reinsurance disputes. Sidley did not speak with, interview, or have any exchange with any Century representative involved with the abuse claims or coverage litigation or relating to the BSA restructuring. The Reinsurance Team's interactions with Chubb and Century were with representatives responsible for collecting reinsurance.

19. Sidley was not asked to and did not provide any advice to Chubb or Century relating to insurance coverage issued to BSA or insurance disputes with BSA.

20. At no point did any Sidley attorney on the Reinsurance Team perform legal services on behalf of BSA in connection with its restructuring.

21. The only interaction of any sort I had with any insurance coverage dispute came in connection with discovery requests issued in unrelated coverage litigation, examples of which are cited by Century in its Objection at 28 n. 114 (citing Panchok-Berry Decl. at ¶¶ 7-8 & Exs. F-G). Because those requests sought documents pertaining to the Lloyd's Matter, I was required to contact Lloyd's counsel to advise Lloyd's of the requests pursuant to a confidentiality agreement governing the First Arbitration, which I did via email. I did not obtain, review, or produce any materials in that litigation.

22. At the time that Century approached Sidley about consulting on the Lloyd's Matter, there had been a lapse of active Century matters at the firm for about a year.

23. Due to that lapse, I was directed to obtain an engagement letter and open a new matter in keeping with Sidley's standard protocol. Pursuant to that protocol, which had changed since Century had last opened a matter with Sidley, I raised the need for an advance waiver for at least non-contentious (transactional) matters orally with Mr. Schwartz on or about November 30, 2018, and sent a follow-up email in that regard on December 7, 2018. A true and correct copy of the December 7, 2018 email is attached hereto as Exhibit 1. When I initiated these discussions in 2018, I did not know that Sidley represented BSA in any capacity.

24. Discussions regarding the advance waiver continued into March of 2019. Century eventually proposed an advance waiver that included a restructuring waiver to allow Sidley to represent an entity insured by a Century affiliate in a bankruptcy proceeding, with the following conditions:

- There must be a wall between the Sidley bankruptcy team and any attorneys at Sidley who work on any Century matters, which prohibits such Sidley lawyers from working on any bankruptcy or insolvency matter involving Century insurance or reinsurance policies.

- Sidley would have no direct or indirect involvement in any motions to compel arbitration involving Century filed in a bankruptcy or insolvency proceeding, nor in any arbitration that subsequently ensues.

- Sidley would not have any direct or indirect involvement in disputes regarding: a) Century collateral agreements; b) asset purchase agreements in which the debtor sells assets to a third party and there is a dispute between us and the buyer; and c) coverage disputes (including allegations of bad faith/ECO).

A true and correct copy of the email from Joshua Schwartz proposing these conditions, dated March 4, 2019, is attached hereto as Exhibit 2. Ultimately, Sidley determined to proceed with the Century engagement without an advance waiver to avoid imposing myriad individually negotiated obligations on an advance basis. As a result, the engagement was memorialized in a "Service Level Agreement" between Sidley and Century. A true and correct copy of a letter from Robert Turrin, Senior Counsel to Chubb, to Sidley, dated March 16, 2020, identifying the relevant Service Level Agreement is attached hereto as Exhibit 3; the March 16, 2020 letter's attachment, an unredacted copy of the relevant Service Level Agreement, is attached hereto as Exhibit 4.

25. In February 2019, Mr. Schwartz suggested during our advance waiver negotiations that Sidley was seeking an advance waiver only because of its representation of BSA. I explained that was not the case; rather, the waiver request was standard for new engagements.

26. On December 13, 2018, Mr. Schwartz forwarded to me a December 12, 2018 *Wall Street Journal* article reporting that BSA had retained Sidley to assist in a possible bankruptcy filing as an "FYI," without further comment. That email proceeded to discuss the ongoing transition of the Lloyd's Matter to Sidley. A true and correct copy of the emails between me and Joshua Schwartz dated December 13, 2018, is attached hereto as Exhibit 5. A true and correct copy of the *Wall Street Journal* article is attached hereto as Exhibit 6.

27. The following day, on December 14, 2018, I spoke on the phone with Mr. Schwartz regarding the *Wall Street Journal* article and other issues related to the Lloyd's Matter. I told Mr. Schwartz that I had spoken with one of my partners and, pursuant to Sidley's duty of confidentiality, I was not able to expressly confirm or deny what was stated in the *Wall Street Journal* article respecting Sidley's representation of BSA. I also explained Sidley's view that the firm's representation of an insurer with respect to collecting reinsurance due it following payment to an insured does not constitute adversity to the insured; thus, Sidley had no conflict in continuing to represent Century against Lloyd's on the BSA reinsurance dispute. Mr. Schwartz told me that he was pleased to hear that Sidley was not conflicted. At no point did Mr. Schwartz contest Sidley's view that the representation of an insurer with respect to collecting reinsurance due it following payment to an insured does not constitute adversity to the insured. Nor did Mr. Schwartz raise a concern that Century might view Sidley's representation of BSA as a conflict of interest.

28. After my December 14, 2018 phone call with Mr. Schwartz, Century proceeded to transition the Lloyd's Matter to Sidley. At no point during the transition did Mr. Schwartz or any Century representative raise a concern that Century would view Sidley's representation of BSA as a conflict of interest.

29. Additionally, on October 3 or 4, 2019, I spoke with Mr. Schwartz during a coffee break at the ARIAS reinsurance industry conference in New York City. Robert Omrod, an executive at Brandywine Holdings, another Century affiliate, also participated in the conversation. During that exchange, Mr. Schwartz and I discussed the Lloyd's Matter, and Mr. Omrod remarked that Sidley represented BSA in its potential restructuring. At no point in that conversation did Mr. Schwartz or Mr. Omrod state that Sidley's representation of BSA was a conflict of interest or potential conflict of interest.

30. On October 29, 2019, Century first expressed its view that Sidley's role as BSA's restructuring counsel created a conflict. Mr. Schwartz called me and advised me that it was Century's position that Century had "just learned" of Sidley's representation of BSA as restructuring counsel, and that Century did not "waive any conflict" presented by Sidley's "potential representation" of BSA in connection with its restructuring. (*See* Schwartz Decl. Ex. 3.) I disputed Mr. Schwartz's characterization that Century had "just learned" this information, because this was not consistent with my prior interactions with Mr. Schwartz. Mr. Schwartz indicated that Century would discuss the issue internally and circle back to me following those internal discussions. A true and correct copy of that email chain, dated October 29 to November 27, 2019, is attached hereto as Exhibit 7.

31. Following my October 29, 2019 communications with Mr. Schwartz and until mid-December 2019, communications regarding Century's concerns were handled by the Sidley Restructuring Team. (*See* Schwartz Decl. Ex. 4.)

32. At no point on October 29, 2019, or thereafter, did I claim that Sidley possessed a written opinion analyzing the alleged conflict of interest between the representations of BSA and Century. I am aware of no such document. I do not know why Mr. Schwartz repeatedly requested that Sidley send Century a written "General Counsel's Opinion" before it would engage in discussions with Sidley regarding the alleged conflict. (*See, e.g.*, Sneed Ex. 7 (Nov. 27, 2019 Email, "Before we have a discussion, we would like to review Sidley's General Counsel opinion"); Schwartz Decl. Ex. 4 (Dec. 12, 2019 Email, "We will gladly discuss the conflict issue further with you once Sidley has supplied the information requested.")

33. On December 17, 2019, I reached out to Mr. Schwartz to have a call and was able to schedule time on December 18, 2019, to speak with him and Christine Russell, Senior Vice

President for Reinsurance, Brandywine Holdings (a Century affiliate). A true and correct copy of emails scheduling this call, dated December 17 to 18, 2019, is attached hereto as Exhibit 8.

34. On our December 18, 2019 call, I explained that Sidley's Restructuring Team had been trying to understand what Century's concerns were and how they could be addressed, but no progress was being made in that regard. I made clear that Sidley's preference was to continue to represent Century in its reinsurance matters. I also explained that Sidley would not withdraw from representing BSA because no conflict existed, and due to the broad way that Century had framed its conflicts complaint, Sidley might be forced to withdraw from its representation of Century and its affiliates if the issue could not be resolved.

35. I did not "bull[y]" or "threaten[]" my client. (Objection at 8.) I urged Chubb to schedule a management-level conference with Sidley in order to address these concerns. Mr. Schwartz and Ms. Russell indicated that they would think about it and address the proposed conference with various Chubb constituencies. No such conference was scheduled before BSA filed for bankruptcy.

36. In fact, in its next communication, on January 3, 2020, while Sidley's invitation to schedule a management-level meeting or conference was still outstanding, Century sent a letter notifying Sidley that it had consulted with outside ethics counsel and accused Sidley of "shocking and offensive" behavior. (Schwartz Decl. Ex. 5.) At this point, it was clear that no headway would be made, as Century continued to assert that it could not rule out a conflict or potential conflict and would not agree to any waiver. *Id.*

37. On January 16, 2020, I informed Century that as a result of a breakdown in the attorney-client relationship, Sidley was initiating an orderly withdrawal from its current representations of Century and its affiliates. A true, correct, and unredacted copy of my letter to

Joshua Schwartz dated January 16, 2020, notifying Century of Sidley's withdrawal, is attached hereto as Exhibit 9. A true, correct, and unredacted copy of the letter from Joshua Schwartz, dated January 30, 2020, is attached hereto as Exhibit 10. A true, correct, and unredacted copy of my email withdrawing from the [redacted] Matter, dated February 20, 2020, is attached hereto as Exhibit 11. A true, correct, and unredacted copy of my email withdrawing from the [redacted] Matter, dated February 20, 2020, is attached hereto as Exhibit 12. A true and correct copy of my letter to Joshua Schwartz, dated February 26, 2020, discussing Sidley's withdrawal, is attached hereto as Exhibit 13. The withdrawal proceeded as follows:

- The Lloyd's Matter had been fully briefed and awaiting judicial decision since September 2019. Sidley filed an agreed motion to withdraw, which the court granted on February 21, 2020. *See*, Docket Report, *Certain Underwriters at Lloyd's, London v. Century Indem. Co.*, No. 18-CV-12041 (D. Mass.) (designating Sidley as terminated effective February 21, 2020).

- In the [redacted] Matter, no arbitration schedule had been set, and Sidley provided Chubb with a draft submission for an upcoming organizational meeting (which the parties had taken off calendar by agreement on February 7, 2020) before communicating its withdrawal to the arbitrators on February 20, 2020.

- In the [redacted] arbitration, Sidley offered to represent Chubb through the close of discovery (scheduled for February 14, 2020) (Sneed Ex. 9.), but Chubb chose to retain substitute counsel and seek a new discovery schedule. (Sneed Ex. 13.) Sidley communicated its withdrawal to the arbitrators on February 20, 2020, but only after Sidley requested that Chubb and its successor counsel accurately convey to the arbitrators and opposing counsel the fact that Sidley would not have any continuing role in the matter. As Chubb failed to do this and its statements to opposing counsel and the arbitrators about Sidley's continuing role were inaccurate, I sent an email to the arbitrators on February 20, 2020, that reads in its entirety as follows: "Please be advised that Sidley Austin LLP is withdrawing entirely from representation of Chubb in this matter. Please remove us from your service lists." (Sneed Ex. 12.)

- The [redacted] and [redacted] matters had involved only sporadic advice, and the [redacted] matter had been dormant for over two years. Sidley communicated its withdrawal from both matters to Chubb. (Sneed Exs. 9, 13.)

38. As of February 21, 2020, Sidley no longer represented Century or any of its affiliated entities.

Pursuant to 28 U. S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: April 27, 2020
Chicago, Illinois

William M. Sneed

William M. Sneed
Partner
SIDLEY AUSTIN LLP

Sneed Exhibit 1

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Friday, December 7, 2018 2:08 PM
To: Sneed, William M.
Subject: RE: Chubb current SLA

Bill, I am sorry but we are unable to provide a prospective waiver. As you know, our company has been very willing to provide transactional waivers on a case-by-case basis when Sidley or another one of our partner firms makes the request, which I hope provides the necessary comfort to Sidley under the circumstances.

I hope you have a nice weekend.

Best regards, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Friday, December 07, 2018 6:19 AM
To: Schwartz, Joshua R
Subject: [EXTERNAL] RE: Chubb current SLA

Josh:

Thank you for sending the Chubb current SLA.

As I mentioned last week, I shared the current SLA with my firm's Office of General Counsel. Our firm has a standard engagement letter with advance conflict waiver language, and our firm's policy is to seek confirmation of an engagement according to our standard terms. Having said that, we represented legacy ACE Companies for years pursuant to the ACE SLA.

Sidley requests Chubb's consideration of an advance conflicts waiver to be included with the SLA, at least as respects non-contentious (transactional) matters. Our firm is large and growing, Chubb has many affiliates, and the Chubb SLA's Group-wide approach to conflict analysis increases the likelihood of our being unable to represent longstanding clients on routine work that does not involve a true ethical conflict.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Thursday, November 15, 2018 5:03 PM
To: Sneed, William M. <wsneed@sidley.com>
Cc: [redacted]
Subject: FW: Chubb current SLA

Bill, as requested …

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

****

Sneed Exhibit 2

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Monday, March 4, 2019 11:38 AM
To: Sneed, William M.
Subject: Sidley prospective waiver request

Bill,

I've consulted internally regarding the prospective waiver for bankruptcy and insolvency matters. We would be willing to provide a prospective waiver if the following 3 conditions are agreed as well:

1. There must be a wall between the Sidley bankruptcy team and any attorneys at Sidley who work on any Chubb matters, which prohibits such Sidley lawyers from working on any bankruptcy or insolvency matter involving Chubb insurance or reinsurance policies.

2. Sidley would have no direct or indirect involvement in any motions to compel arbitration involving Chubb filed in a bankruptcy or insolvency proceeding, nor in any arbitration that subsequently ensues.

3. Sidley would not have any direct or indirect involvement in disputes regarding: a) Chubb collateral agreements; b) asset purchase agreements in which the debtor sells assets to a third party and there is a dispute between us and the buyer; and c) coverage disputes (including allegations of bad faith/ECO).

Can you please review and get back to us on this as soon as possible? Once we agree to these terms, we can incorporate them into a prospective waiver wording.

Thanks and best regards, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

Sneed Exhibit 5

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Thursday, December 13, 2018 10:33 AM
To: Sneed, William M.
Cc: [redacted]
Subject: RE: [EXTERNAL] Boy Scouts [WW-PHLDMS1.FID4179090]

That would be great – could your assistant circulate a dial in? [redacted]

Thanks, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Thursday, December 13, 2018 11:01 AM
To: Schwartz, Joshua R
Cc: [redacted]
Subject: RE: [EXTERNAL] Boy Scouts [WW-PHLDMS1.FID4179090]

Josh:

If we could plan to speak tomorrow, that would work better for me. I am in information-gathering mode here re BSA, possible bankruptcy, and my firm. I have a number of people I need to speak with, and at least one of them is flying right now and unavailable.

Could we plan to speak tomorrow, say @ 11 am ET? I have other calls tomorrow at 10 am and 3 pm ET, neither of which should go more than a half hour, and otherwise available.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Thursday, December 13, 2018 6:55 AM
To: Sneed, William M. <wsneed@sidley.com>
Cc: [redacted]
Subject: Fwd: [EXTERNAL] Boy Scouts [WW-PHLDMS1.FID4179090]

Hi Bill, FYI below. Also, I told [redacted] yesterday that we are moving Lloyd's to you. Can we talk today or tomorrow about next steps? I'd like for you to notify [redacted] that you are counsel. I'd also like to start thinking about court proceedings. [redacted] I'd also like to get you access to the underwriting documents to get your assessment of them. I'm sure there are other issues we should address also.

Thanks, Josh

Sent from my iPhone

Begin forwarded message:

From: [redacted]
Date: December 13, 2018 at 7:19:50 AM EST
To: [redacted] "Joshua R. Schwartz (joshua.schwartz@chubb.com)" <joshua.schwartz@chubb.com>
Cc: [redacted]
Subject: [EXTERNAL] Boy Scouts [WW-PHLDMS1.FID4179090]

Good Morning,

As you can see from the below article from this morning's *Wall Street Journal*, BSA is considering filing for Chapter 11 bankruptcy. The reasons noted are "dwindling membership and escalating legal costs related to lawsuits over how it handled allegations of sex abuse." It also cites an Idaho molestation case set for trial in May. According to the article, BSA's financial future will "depend on how much of the litigation costs will be covered by insurance" and references 2 coverage suits that have been filed since 2013. BSA has retained Sidley to advise it on the bankruptcy issues.

[redacted]

Boy Scouts of America Considers Bankruptcy Filing Amid Sex-Abuse Lawsuits

The Boy Scouts of America is considering filing for bankruptcy protection as it faces dwindling membership and escalating legal costs related to lawsuits over how it handled allegations of sex abuse.

Leaders of the Boy Scouts, one of the country's largest youth organizations, have hired law firm Sidley Austin LLP for assistance with a possible chapter 11 bankruptcy filing, according to people familiar with the matter.

Founded in 1910, the Boy Scouts group says that more than 110 million people have participated in its educational programs, which promote outdoors skills, character-building and leadership.

The Boy Scouts have been at the center of sexual-abuse scandals in the past, and the organization is facing a number of lawsuits that allege inappropriate conduct by employees or

volunteers in incidents dating back as far as the 1960s. Filing for bankruptcy would stop the litigation and would give the nonprofit a chance to negotiate with those who have sued.

Other organizations facing similar legal pressure have also turned to bankruptcy protection in recent years. More than 20 Catholic dioceses and religious orders have filed for chapter 11 protection to negotiate payouts to thousands of victims. And last week USA Gymnastics, the governing body for the sport, filed for bankruptcy as it faces lawsuits from decadeslong sexual abuse by the national team's former doctor Larry Nassar.

The Boy Scouts released a letter to its employees Wednesday that said it plans to "explore all options available to ensure that the local and national programming of the Boy Scouts of America continues uninterrupted."

Participation in the organization's programs has fallen in recent years, though the group opened some of its programs to girls and transgender boys. The Boy Scouts currently have more than 2.3 million youth members. The Church of Jesus Christ of Latter-day Saints, formerly one of the group's largest sponsors, has said it will withdraw from Boy Scout programs. The church said it would develop its own program for young men.

The Boy Scouts group has drawn scrutiny over its slow pace to become more inclusive, including by lifting a ban in 2015 on gay men and lesbians serving in leadership roles.

The group has also dealt with fallout from its decision last year to expand its recruitment of girls, putting it in competition with the Girl Scouts of the USA, a separate group that offers similar programming and has also seen membership fall.

In November, the Girl Scouts filed a trademark lawsuit against the organization, saying its push for girls to join caused confusion and led to instances in which parents mistakenly signed their children up for Boy Scouts programs.

A Boy Scouts spokeswoman said the group is reviewing the lawsuit and that the expansion came "after years of requests from families who wanted" to participate in its programs.

In recent years, the Boy Scouts group's legal bills for work done by some outside law firms have grown. In 2017, the organization paid $7.6 million to labor and employment law firm Ogletree Deakins, according to public filings. It paid Ogletree $3.5 million in 2016 and $859,347 in 2015, the filings show.

In the group's latest annual report, Boy Scout officials said its future financial situation will partly depend on the outcome of sex-abuse-related litigation and future damages awarded. One lawsuit unfolding in Idaho over alleged abuse by several former leaders is set for a jury trial in May.

The organization has said that it has never knowingly allowed a sexual predator to work with youth members and has put rules in place to strengthen protections.

In the annual report, officials said they were "aware of threatened and expanding litigation of a similar nature." They added that the group's financial health will also depend on how much of the litigation costs will be covered by insurance.

The organization has sued its insurers at least twice since 2013, accusing them of failing to cover costs related to previous sex-abuse lawsuits. In its annual report, organization leaders said the

latest lawsuits could force the group "to pay damages out of its own funds to the extent the claims are not covered by insurance or if the insurance carriers are unable or unwilling to honor the claims."

—Jonathan Randles contributed to this article.

[redacted]

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

****

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)

DECLARATION OF JOSHUA R. SCHWARTZ

I, Joshua R. Schwartz, pursuant to the provisions of 28 U.S.C. § 1746(2) declare under the penalty of perjury as follows:

1. I am Managing Counsel and Director of Reinsurance Litigation for Chubb Group. One of my responsibilities involves retaining and overseeing counsel in reinsurance billing disputes for insurance coverage claims involving Century Indemnity Company as successor to CCI Insurance Company, as successor to Insurance Company of North America ("Century"), and other Chubb entities, including those involved in the Boy Scouts of America (BSA) bankruptcy (collectively, "Chubb").

2. Chubb is a longtime client of the Insurance and Financial Services practice group of Sidley Austin LLP ("Sidley"). Over the last decade, Sidley has represented Chubb in connection with over a dozen matters. Many of those matters were by agreement (or order) privately arbitrated to protect information that was the subject of the disputes. Attorney William Sneed of Sidley is a recognized expert in arbitrations involving reinsurance and the underlying insurance and insurance coverage claims.

3. In the course of its years of work for Chubb, Sidley has developed extensive knowledge of highly privileged information about Century's insurance and reinsurance programs that apply beyond any single policyholder or matter. I know from my attorney-client interactions

with Attorney Sneed, among others, that he has extensive privileged information concerning our reinsurance and insurance programs.

4. On October 5, 2018, Chubb retained Sidley to represent Century in connection with the BSA's insurance for molestation claims and Century's efforts to obtain reinsurance coverage for those claims. The initial matter we asked Sidley to handle involved a reinsurance dispute with Lloyd's of London over policies that Century issued to the Boy Scouts. As of August 2019, Sidley was also advising Century in an arbitration with another reinsurer involving policies Century issued to the BSA and reinsurance for claims under those BSA policies. Throughout this same period, Sidley was also working on other matters for Chubb, including an arbitration against a different reinsurer.

5. As Century's counsel in the BSA matters, Sidley was privy to highly confidential information about Chubb's insurance coverage for the BSA and agreements concerning it. This includes privileged information concerning the disputes between Century and the Boy Scouts over its insurance coverage, Century's privileged legal analysis of the BSA's claims, and Century's privileged legal strategies and defenses in these matters.

6. As a condition of its acceptance of engagements from Chubb, Sidley agreed to abide by the provisions of the companies' Service Level Agreement ("SLA") for law firms. A true and correct copy of the SLA is attached as Exhibit 1.

7. Pursuant to this agreement, Sidley agreed "to identify and bring to the attention of the Client, in writing, any circumstances that may create or involve a conflict of interest." On any newly retained matter, Sidley agreed to "confirm the absence of any conflicts of interest." And Sidley agreed that if it "identifies a potential conflict after it has begun work for [Chubb], it shall make all reasonable efforts to resolve that conflict in a manner that will allow [Sidley]'s

continued representation of [Chubb]." In addition, Sidley agreed to abide by the rules of professional conduct applicable to attorneys.

8. Unbeknownst to Chubb at the time, Sidley appears to have taken on the representation of the BSA sometime after it was engaged by Century on BSA matters and while it was engaged by Chubb on other matters. Sidley did not seek a written waiver from Chubb to do so. At the time of Sidley's concurrent representation of Chubb and BSA, there were pending declaratory judgment actions in Texas and Illinois seeking an adjudication of the parties' rights under the BSA insurance policies issued by Century and other Chubb entities.

9. Prompted by a Wall Street Journal article citing an anonymous source, in mid-December 2018, I asked Attorney Sneed whether Sidley was representing the BSA. Attorney Sneed said he could not comment on press stories and reassured me that Sidley was not conflicted and could work on the BSA matter and other matters. Based on these assurances, Chubb continued to work with Sidley on multiple matters, including the Lloyd's matter involving the BSA sexual molestation claims. Chubb also assigned new matters to Sidley, including a related litigation to compel arbitration against Lloyd's in the District of Massachusetts regarding disputed BSA reinsurance billings.

10. On January 8, 2019, Attorney Sneed told me that Sidley's new leadership was seeking prospective waivers for non-litigation matters and that he could not accept new assignments without the prospective waiver. He followed up with an email regarding this request on January 10, 2019, a true and correct copy of which is attached as Exhibit 2. On February 20, 2019, Attorney Sneed and Mike Goldman, head of Sidley's Insurance and Financial Services group and a member of its Executive Committee, spoke with me. They told me that Sidley had modified its request from a month earlier and was now only seeking a prospective waiver for bankruptcy and restructuring matters, but—crucially—they said nothing in the

proposed waiver request, or in the parties' conversations, about Sidley representing the BSA, even though Sidley had apparently undertaken that representation earlier.

11. On February 28, 2019, Attorney Sneed sent me proposed advanced waiver wording for restructuring matters without requesting a waiver for the Boy Scouts or otherwise mentioning the BSA. On March 4, 2019, Chubb rejected Sidley's proposed advance waiver wording and provided alternative wording. On March 21, 2019, Attorney Sneed advised me that Sidley had dropped the request and would be fine proceeding pursuant to the SLA with regard to conflicts, and Century never granted a prospective waiver or waived any conflict of interest. After this exchange (and as referenced above), in August 2019, Attorney Sneed told Century that he had cleared conflicts for Sidley to represent Century in an arbitration with another reinsurer, again stemming from Century's policies with the BSA and disputes over reinsurance for them.

12. I did not know at the time but have since learned that in late September 2019, the BSA invited the persons handling its insurance coverage at Chubb to a meeting on October 14, 2019, at which Sidley appeared. Since separate groups inside Chubb handle direct insurance and reinsurance, it was not until the end of October that anyone on the reinsurance side learned about the October 14 meeting and realized that Sidley was concurrently representing Century and the BSA.

13. On October 29, 2019, I conveyed Chubb's concerns to Attorney Sneed (orally and in writing) about a conflict of interest with Sidley and Attorney Sneed, and conveyed that Chubb did not consent to the dual representation and was analyzing the issues. I followed up on that email on November 20, 2019, and asked to review Sidley's General Counsel's opinion or other analysis of the conflict. A true and correct copy of these emails to Attorney Sneed, dated October 29, 2019 and November 20, 2019, are attached as Exhibit 3. Attorney Sneed advised me

that he had not thought about this issue since the spring and that his partners told him there is no conflict, but he did not explain to me why.

14. On November 3, 2019, the Chubb representatives handling the BSA coverage separately advised Sidley and the BSA that they had just learned about the concurrent representation, advised them that Chubb had not consented to a dual representation, and proposed adjourning a planned mediation.

15. On December 3, 2019, while denying that a conflict existed, Sidley's bankruptcy counsel for the BSA asked Century to consent to its continued representation of the BSA, while concurrently working on behalf of Century in the reinsurance matters. Sidley also stated on December 3, 2019, that it had instituted a "screen" to ensure that Sidley's BSA bankruptcy team and the Sidley reinsurance lawyers would not share information, but that only raised more concerns since Sidley confirmed that the screen had not been in place before November 4, 2019. A copy of Sidley partner Michael Andolina's email, dated December 3, 2019, is attached as part of Exhibit 4.

16. On December 12, 2019, I emailed Attorney Sneed and other Sidley attorneys to ask for further clarification on Sidley's analysis of the conflict and to clarify information regarding Sidley's screen. A true and correct copy of that email, dated December 12, 2019, is attached as part of Exhibit 4. Sidley's response dismissed our concerns about the conflict as a "distraction." A true and correct copy of Sidley partner Michael Andolina's email, dated December 16, 2020, is attached as part of Exhibit 4.

17. On December 18, 2019, I spoke with Attorney Sneed together with Christine Russell of Chubb about the conflict. In that call, Attorney Sneed told us that Sidley would continue to represent the BSA and that if Chubb could not "live with" the situation, Sidley would

unilaterally terminate the attorney-client relationship between Chubb and Sidley for all pending matters, including the BSA reinsurance matters.

18. In a letter dated January 3, 2020, I informed Sidley partner Michael Andolina that Chubb would not waive the conflict and rejected Sidley's attempt to withdraw. A true and correct copy of my letter of January 3, 2020, is attached as Exhibit 5.

19. On January 16, 2020, Sidley's General Counsel Linton Childs sent me a letter confirming that a formal "wall" had only been in place since November and advising that Sidley would be withdrawing from its representations of Chubb. Sidley's General Counsel expressed that view that there had been no contact between Sidley's lawyers working for Chubb on BSA reinsurance matters and for BSA before November but without a wall being in place before then we had no way to confirm that was the case. A true and correct copy of that letter is attached as Exhibit 6. Also on January 16, 2020, Attorney Sneed sent me a letter setting out Sidley's intention to withdraw and the schedule and manner in which it intended to do so. A true and correct copy of that letter is attached as Exhibit 7.

20. In a letter dated January 30, 2020, I explained to Attorney Sneed in detail why the firm's abrupt withdrawal would prejudice Century's interests in each pending matter. I also instructed Sidley not to discuss the conflict issue with arbitrators or opposing parties without Chubb's written permission. Despite these objections, and without allowing Century to better position itself for the withdrawal of its counsel, Sidley went forward with its unauthorized attempt to withdraw from the pending matters. A true and correct copy of my letter of January 30, 2020, is attached as Exhibit 8.

21. Shortly before the BSA bankruptcy filing, on January 27, 2020, Sidley filed a motion to withdraw from litigation related to the Lloyd's BSA reinsurance arbitration pending in the District of Massachusetts and requested that the court expedite Century's response time from

14 to 7 days. Chubb subsequently consented to the withdrawal after it secured replacement counsel and reached an agreement with Sidley that the withdrawal would be on a without prejudice basis to Chubb's rights pursuant to the SLA and to Chubb's rights regarding Sidley's desire to continue representing the BSA.

22. On February 18, 2020, the BSA filed for bankruptcy. The following day, Attorney Sneed advised me that he was going to tell the panel in one of the arbitrations that Sidley is withdrawing. Despite my request that he not do so, Attorney Sneed proceeded to notify the Panel in that arbitration the following day that Sidley would withdraw. Also on February 20, 2020, Attorney Sneed also contacted the Panel in another arbitration and advised that Panel that he was withdrawing, even though we did not have alternative counsel ready to take over the matter, our counterparty had expressed a desire to talk settlement and the parties had agreed to a stay of the arbitration to talk settlement. True and correct copies of my emails requesting that Sidley not notify the Panels that Sidley was withdrawing are attached as Exhibits 9 and 10. True and correct copies of Attorney Sneed's withdrawal emails are attached as Exhibits 11 and 12. On February 24, 2020, without notice to Chubb or its consent, Sidley called the arbitrators in the Lloyd's matter and advised that he was withdrawing.

23. On March 10, 2020, I wrote a letter reiterating Chubb's objection to Sidley's conduct, explaining some of the ways in which it was prejudiced by Sidley's attempt to unilaterally withdrawal, and gave notice that Sidley's behavior breached the parties' SLA. A true a correct copy of this letter is attached as Exhibit 13.

24. On March 16, 2020, Century invited Sidley to a pre-arbitration discussion per paragraph 7.2 of the SLA. The following day, March 17, 2020, Sidley filed its retention application.

25. It would be highly detrimental to Chubb for Debtors' counsel to be party to its privileged information concerning the BSA and its insurance coverage in the negotiation of the terms of a plan and a host of other issues core to the role of Debtors' counsel to BSA.

26. As Century's counsel, I know that Sidley received privileged information concerning the disputes between Century and the BSA over its insurance coverage, Century's privileged legal analysis of the Boy Scouts' claims, and Century's privileged legal strategies and defenses. As insurance coverage is a central asset around which a reorganization is planned, knowledge of Century's legal analysis, strategy, and positions with regard to this asset is of obvious relevance to formulating a plan and negotiating with tort claimants and insurers about the terms of a plan.

27. Information obtained by Sidley attorneys during the course of its representations of Chubb, generally and with respect to matters concerning the BSA specifically, would be at risk of exposure to Debtors if Sidley is allowed to advocate for the Debtors. The risk to Chubb is exacerbated by the sheer weight, complexity, and duration of Sidley's interactions with Chubb over the years—and the continuation of this relationship into 2020—not to mention the immediately relevant body of highly privileged and confidential information that Sidley possesses about Chubb's insurance for the BSA from its handling of reinsurance matters concerning the same policies that are at issue in the bankruptcy.

28. Chubb attempted to resolve these conflicts amicably, in a way that would facilitate a smooth transition of the BSA engagement, right up until Sidley unilaterally contacted arbitrators in the pending matters to withdraw. I made repeated requests for Sidley to provide its General Counsel's opinion or other analysis as to why it claimed there was no conflict of interest. Sidley did not do so. When these efforts failed, Chubb sought the advice of a leading

ethics expert in Delaware, Charles Slanina, to get his independent perspective. Mr. Slanina's advice is reflected in his declaration.

29. Century is filing this Objection as a last resort, only after all efforts to resolve this matter with Sidley have failed.

Dated: April 9, 2020

Respectfully submitted,

/s/ Joshua R. Schwartz

JOSHUA R. SCHWARTZ

EXHIBIT 1

Acknowledgement Form

By clicking this button, I accept all of the terms and conditions of the Service Level Agreement ("SLA") and I represent to ACE INA Holdings Inc., (hereinafter referred to as "Chubb" as further defined in the SLA) that I have authority to act on behalf of my firm. I also acknowledge that my firm's acceptance of the SLA is a condition precedent to serving as Chubb's legal counsel.

SLA Guidelines Acknowledged?: Yes

Acknowledgement Date: 9/4/2015

Is your law firm currently providing, or planning to provide, legal services to Chubb on matters subject to HIPAA privacy requirements?

HIPAA: No

HIPAA Date:

Please refer to the Document Library to view each regions Service Level Agreement ("SLA"), as well as view or print Chubb's HIPAA Business Associate Agreement ("BAA"), if applicable.

SERVICE LEVEL AGREEMENT FOR THE PROVISION OF NON-CLAIMS LEGAL SERVICES

Between

ACE INA Holdings Inc.
(Hereinafter referred to as "ACE")

and

_____
(Hereinafter referred to as the "Law Firm")

Dated: _____

Service Level Agreement for the Provision of Non-Claims Legal Services

Contents

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

[redacted]

[redacted]

[redacted]

[redacted]

4.13 Conflicts of Interest

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Service Level Agreement for the Provision of Non-Claims Legal Services

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

1.1.1. Definitions: This section defines some capitalized terms used in this Service Level Agreement ("SLA") and certain other terms and conditions.

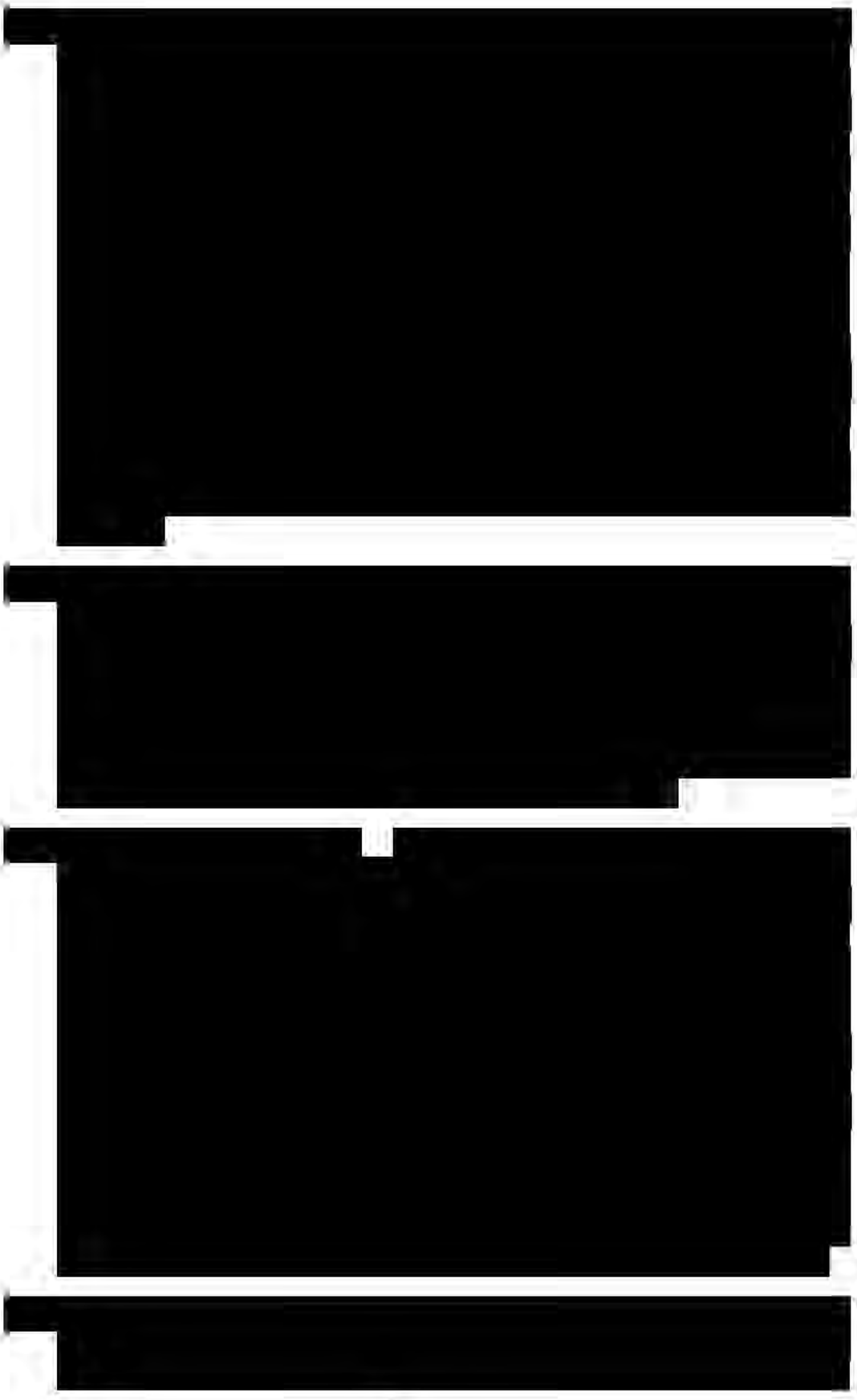
"ACE Group Company"	ACE or any of its parents, subsidiaries or other affiliates (at any time during the period of the Law Firm's representation of the Client)
"ACE Group of Companies"	all ACE Group Companies taken together (at any time during the period of the Law Firm's representation of the Client)
"ACE Liaison"	the Client's in-house lawyer or other principal liaison to the Law Firm
[redacted]	[redacted]
"Client"	any ACE Group Company that retains the Law Firm to provide Non-Claims Services with respect to any matter
"Non-Claims Services"	services performed by the Law Firm for a Client that are unrelated to the defense of an insurance claim or a related insurance coverage claim
[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

1.1.6. Conflicts of Interest: In addition to the Law Firm's ethical responsibilities to avoid conflicts of interest, the ACE Group of Companies generally applies a Group-wide approach to conflict analysis. The interests of all ACE Group Companies must be taken into account in analyzing whether a particular representation of a Client presents a conflict of interest. Updated lists of all ACE Group Companies are filed with ACE Limited's SEC Forms 10-K and may be accessed via the www.acegroup.com and/or www.sec.gov websites. The ACE Group of Companies does not generally consider conflicts to result solely from representation of its business competitors, but specific circumstances can cause conflicts to arise in such situations. In all cases, it is the responsibility of the Law Firm to identify and bring to the attention of the Client, in writing, any circumstances that may create or involve a conflict of interest as herein described. Any Law Firm that is newly retained by an ACE Group Company is requested to confirm the absence of any conflicts of interest to the ACE Liaison. If the Law Firm identifies a potential conflict after it has begun work for the Client, it shall make all reasonable efforts to resolve that conflict in a manner that will allow the Law Firm's continued representation of the Client. Any request by the Law Firm for the client to waive a real or potential conflict of interest must be in writing and directed to the ACE Liaison. Regardless of the nature or timing of any conflict, the Client shall not be deemed to have waived any conflict unless the Client provides a waiver in writing.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

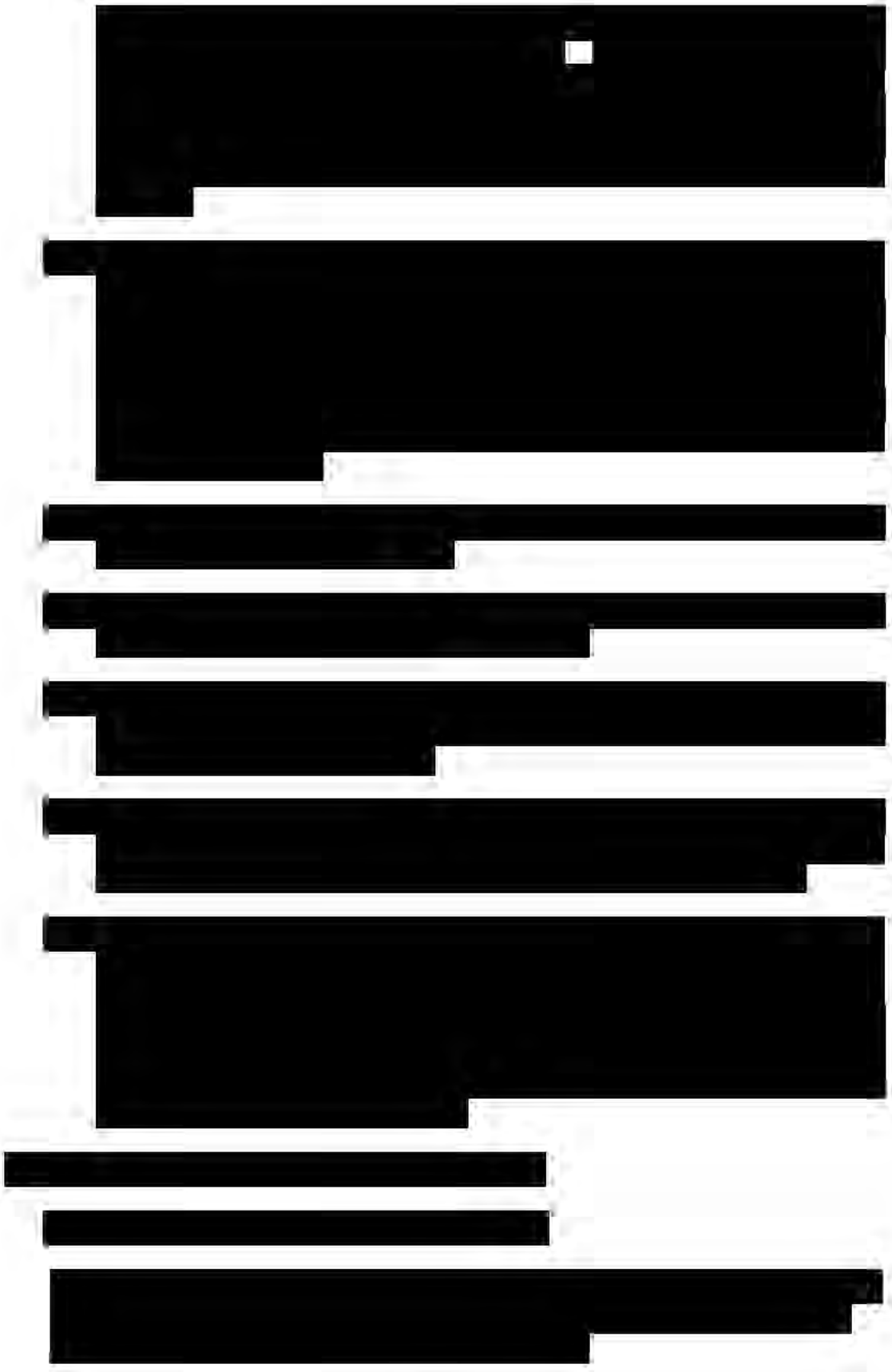
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

4.13. Conflicts of Interest

4.13.1. The Law Firm is required, without charge to the Client, to conduct or have conducted appropriate searches and inquiries with regard to any actual or potential conflict of interest, and to consult with the Client accordingly (as further directed in section 1.1.6 above).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

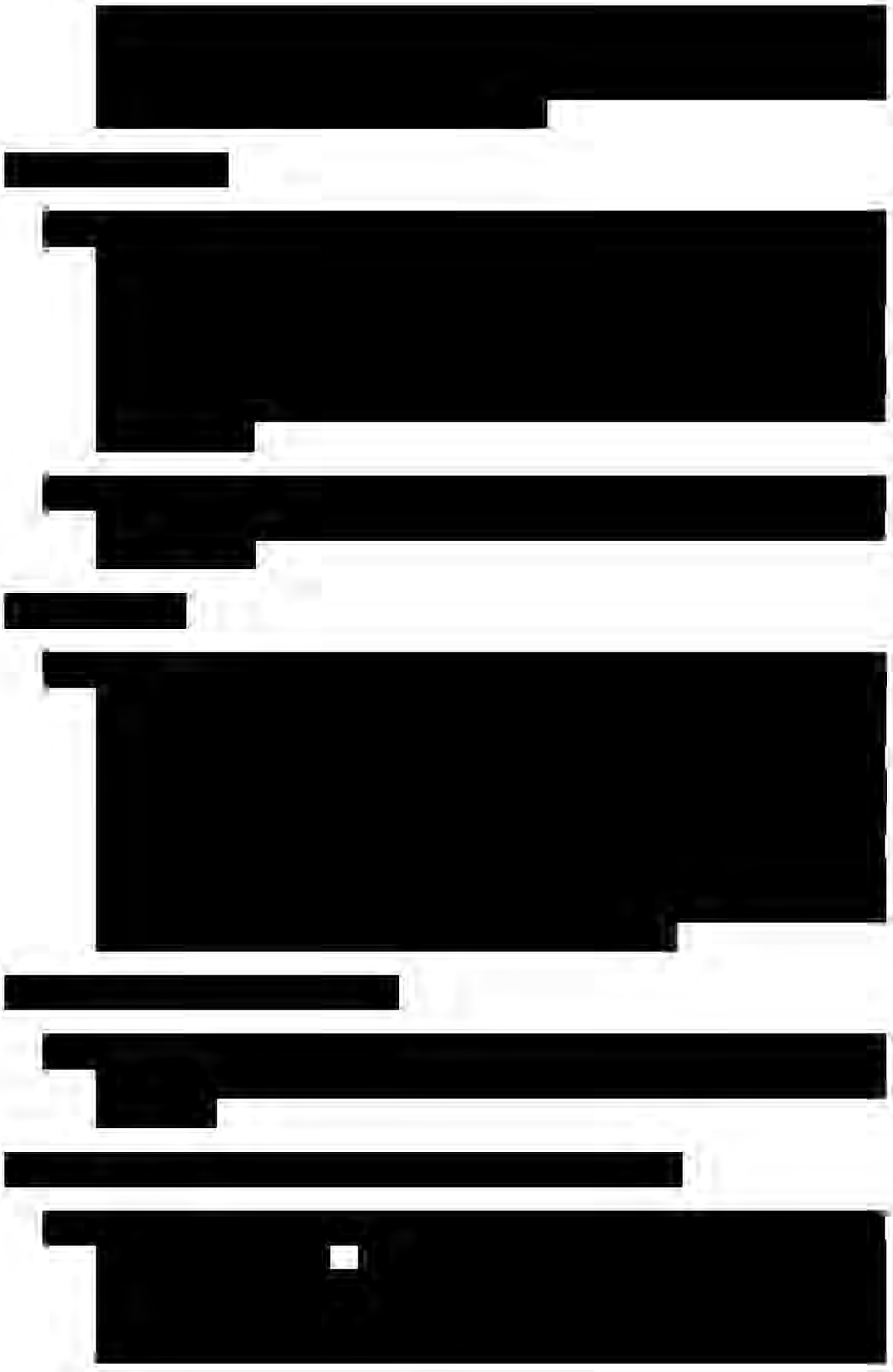
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

7.2. If a dispute arises related to this SLA with respect to any matter handled by the Law Firm for a Client, senior representatives of both parties, vested with authority to settle the dispute, will meet or speak and attempt in good faith to resolve the dispute. The meeting or conversation will be held reasonably promptly (which the parties believe should be achieved within 10 working days) at the request of either party.

7.3. If the parties are unable to resolve a dispute by negotiation as set forth in section 7.2 above, and the dispute relates to a matter handled by the Law Firm within the United States of America ("US Dispute"), either party may submit the dispute to be finally settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, in Philadelphia, Pennsylvania, U.S.A., by a single arbitrator selected in accordance with R-11. All US Disputes related to this SLA shall, if not resolved between the parties as provided under section 7.2, be resolved by arbitration as provided herein, and arbitration shall be the sole means for redressing any dispute. Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees. The parties waive their respective rights to damages for "bad faith," punitive damages, statutory damages or penalties or other exemplary damages. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

	[redacted]
	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

EXHIBIT 2

[redacted]

[redacted] [redacted]

[redacted]

From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Thursday, January 10, 2019 9:20 AM
To: Schwartz, Joshua R
Subject: [EXTERNAL] Chubb Engagement

Josh:

Per our conversation on Tuesday, here is the advance conflicts waiver Sidley is seeking. I am unable to open Chubb matters until I get this resolved.

> Other current or future clients (collectively, the "Other Clients") may ask us to represent them in matters, such as business transactions, investigations, regulatory, insolvency, restructuring or other matters that are adverse to you and may negatively impact your interests. If we are not representing you in such a matter, and the matter in which you and an Other Client have adverse interests is not substantially related to our current or past representation of you and does not involve our use, to your disadvantage, of confidential information you have provided to us, you agree that we may represent such Other Client, you waive any conflict of interest arising from such representation, and you agree that you will not seek to disqualify or otherwise prevent us from representing such Other Client. You acknowledge that you have had an opportunity to consult with other counsel (in-house or otherwise) and to raise any questions you may have with us before agreeing to this waiver.
>
> The above advance waiver does not apply to any litigation, arbitration, or formal dispute resolution proceeding that is adverse to Chubb. With respect to any litigation, arbitration, or formal dispute resolution proceeding that is adverse to Chubb, we will seek your consent before accepting the representation of an Other Client.

I appreciate your assistance in this.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
+1 312 853 7899
wsneed@sidley.com
www.sidley.com

SIDLEY

****
****

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

****
****

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

EXHIBIT 3

[redacted]

[redacted] [redacted]

From: Schwartz, Joshua R
Sent: Wednesday, November 20, 2019 1:41 PM
To: 'Sneed, William M.'
Subject: RE: Boy Scouts

Bill,

I am writing regarding our communication on October 29 discussing the Boy Scouts conflict issue and the subsequent communications between your bankruptcy partners and Chubb's Claims team. Sidley has told us that there is no conflict with Sidley's simultaneous representations of BSA in bankruptcy-related matters and Chubb in the BSA reinsurance matters. We would like to review Sidley's explanation for why there is no conflict. Please send us Sidley's General Counsel's opinion or any other analysis that led to the no conflict position so that we can further evaluate this issue.

Best regards, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Schwartz, Joshua R
Sent: Tuesday, October 29, 2019 5:48 PM
To: Sneed, William M.
Subject: Boy Scouts

Bill,

Thank you for the discussion earlier today. As we discussed, I just learned that Sidley is representing Boy Scouts of America (BSA) in a potential bankruptcy filing. Chubb does not agree to waive any conflict presented by this potential representation and your representation of Chubb in the Lloyd's and [redacted] reinsurance matters. I will discuss this issue internally and circle back to you after we conclude those discussions. Please let me know if you have any questions in the interim.

Best regards, Josh

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

EXHIBIT 4

[redacted]

[redacted] [redacted]

From: "Andolina, Michael C." <mandolina@sidley.com>
Date: December 16, 2019 at 8:31:53 PM EST
To: "Schwartz, Joshua R" <Joshua.Schwartz@chubb.com>, "Sneed, William M." <wsneed@sidley.com>, "Celentano, Christopher" <Christopher.Celentano@Chubb.com>, "Wadley, Chris (cwadley@walkerwilcox.com)" <cwadley@walkerwilcox.com>, "Schiavoni, Tancred" <tschiavoni@omm.com>
Cc: "Labuda, Jr., Thomas" <tlabuda@sidley.com>, "Boelter, Jessica C.K." <jboelter@sidley.com>
Subject: RE: [EXTERNAL] RE: BSA - Chubb

Thanks for your email Josh.
We believe we have been clear in expressing our view regarding the conflict issue you have raised, and at this point it does not seem productive to go back-and-forth on legal analysis of hypothetical scenarios. We had asked for a call to discuss your concerns, and so that the BSA restructuring team could continue to move forward without this distraction, including coordination on various issues with your bankruptcy counsel.

As you know, BSA reached out to Chubb for a meeting with Sidley in September and our bankruptcy team met with Chubb in Sidley's Chicago offices on October 14. It was not until November 3, the day before our mediation with the Plaintiffs, that Chubb raised any issue. In addition, as we previously mentioned, Chubb communicated with Sidley about our role in BSA's potential restructuring in December 2018. Given these facts, we are concerned that Chubb's motive here is to interfere with BSA's restructuring efforts and somehow gain an advantage in that process. Our concerns are further heightened by the fact that that you waited 9 days to respond to my emails, despite our explaining how your delay will prejudice BSA. As I told Tanc when Chubb canceled our call before Thanksgiving, our team is working hard to put BSA in the best position possible, and we were hoping for Chubb's good faith cooperation.

Regarding the ethical screen, it was established on November 4, immediately after an issue was raised by Chubb. The contours of the screen are outlined below. As a practical matter, there has been complete separation between the BSA team and the Century Indemnity Company (CIC) team since the matters were opened. No member of the BSA restructuring team has received any information from the CIC team, and vice versa.

- No member of the BSA Team shall work on the CIC Matters, and no member of the CIC Team shall work on the BSA Matters.
- No member of a Team shall (i) discuss the substance of such Team's Matter with any member of the other Team or (ii) disclose any confidential information about such Team's Matter to any member of the other Team.

- Each member of each Team shall take reasonable steps to ensure that the files and other materials relating to such Team's Matter will not be shared with the members of the other Team.

- No member of a Team shall obtain from any source within the Firm any confidential information relating to the other Team's Matter. For example, no member of a Team shall engage in discussions with any Firm personnel if such discussion could lead to the transmission to such member of confidential information relating to the other Team's Matter.

- Each member of each Team shall take reasonable steps to ensure that staff members do not share or communicate any substantive information or materials relating to one matter with those members of the Team working on the other matter.

I understand that Bill Sneed intends to follow-up with you directly regarding your matter.
Regards,

Mike

MICHAEL C. ANDOLINA

SIDLEY AUSTIN LLP
+1 312 853 2228 (O)
+1 773 531 0712 (M)
mandolina@sidley.com

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Thursday, December 12, 2019 2:15 PM
To: Sneed, William M. <wsneed@sidley.com>; Andolina, Michael C. <mandolina@sidley.com>; Celentano, Christopher <Christopher.Celentano@Chubb.com>; Wadley, Chris (cwadley@walkerwilcox.com) <cwadley@walkerwilcox.com>; Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Labuda, Jr., Thomas <tlabuda@sidley.com>; Boelter, Jessica C.K. <jboelter@sidley.com>
Subject: RE: [EXTERNAL] RE: BSA - Chubb

Dear Bill and Mike,

Thank you for your emails of December 3, 2019 regarding Sidley's representation of BSA as restructuring counsel and its concurrent representation of Chubb in connection with reinsurance issues.

Despite your effort to alleviate our concerns, they remain. As you know, a lawyer or law firm that represents a client in a matter cannot be adverse to its own client in another matter, even if the two matters are completely unrelated, absent a written waiver. You have asserted that Sidley's work as BSA's restructuring counsel is "unrelated" to Sidley's work for Chubb on BSA reinsurance issues. Although, as noted, the two matters need not be related to trigger a conflict, putting that aside please tell us exactly why you think the two matters are unrelated and there is no adversity given that both matters concern BSA and affect Chubb's financial interests as insurers/cedents on various (in fact the same) insurance policies issued to BSA. For example, what happens if Chubb is not in agreement as to a restructuring plan that Sidley has prepared?

Second, even if the two matters are arguably "unrelated," as you contend, please tell us why that matters in the ethics context where concurrent conflicts can arise regardless of the relationship between the cases if the interests differ, and will thus require a written waiver in any case?

Third, please explain your conclusion that the Chubb entity represented in the reinsurance matters is an "affiliate" and not the same entity from whom BSA is seeking insurance coverage. Also, please explain the basis for your conclusion that Chubb knew about the Sidley

representation in December 2018. We were very surprised to see this allegation in your second email to us on December 3, 2019.

Finally, you have described an "ethical" screen that Sidley has established in an "abundance of caution" and to further allay Chubb's concerns about sharing confidential information. Please tell us when the screen was established in relation to the inception of Sidley's representation of BSA in any potential bankruptcy proceeding, the express terms of the screen, and exactly which lawyers and staff at Sidley have been walled off from one another.

We will gladly discuss the conflict issue further with you once Sidley has supplied the information requested here. In the meantime, Chubb expressly reserves all of its rights, claims, and defenses in connection with these matters. In addition, neither this communication nor any actions taken by Chubb and/or its employees, agents or attorneys in relation to the above-referenced matters shall be construed as a waiver or estoppel of any of Chubb's rights, claims, and defenses.

Best regards, Josh

<image001.png>

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Andolina, Michael C. [mailto:mandolina@sidley.com]
Sent: Wednesday, December 11, 2019 9:05 AM
To: Celentano, Christopher; Wadley, Chris (cwadley@walkerwilcox.com); Schiavoni, Tancred
Cc: Labuda, Jr., Thomas; Boelter, Jessica C.K.; Sneed, William M.; Schwartz, Joshua R
Subject: [EXTERNAL] RE: BSA - Chubb

Just following-up on my emails from December 3 below. When can we get on a call to discuss?

Mike

MICHAEL C. ANDOLINA

SIDLEY AUSTIN LLP
+1 312 853 2228 (O)
+1 773 531 0712 (M)
mandolina@sidley.com

From: Andolina, Michael C. <mandolina@sidley.com>
Sent: Tuesday, December 3, 2019 6:17 PM
To: Celentano, Christopher <Christopher.Celentano@Chubb.com>; Wadley, Chris (cwadley@walkerwilcox.com) <cwadley@walkerwilcox.com>; Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Labuda, Jr., Thomas <tlabuda@sidley.com>; Boelter, Jessica C.K. <jboelter@sidley.com>; Sneed, William M. <wsneed@sidley.com>;

Joshua.Schwartz@chubb.com
Subject: RE: BSA - Chubb

I have been informed that Chubb may not have been aware of our retention by BSA in connection with a potential restructuring until the reports in the media in December 2018.

Please let us know when the Chubb team is free for a call.

Thanks,

Mike

MICHAEL C. ANDOLINA

SIDLEY AUSTIN LLP
+1 312 853 2228 (O)
+1 773 531 0712 (M)
mandolina@sidley.com

From: Andolina, Michael C. <mandolina@sidley.com>
Date: Tuesday, Dec 03, 2019, 2:13 PM
To: Celentano, Christopher <Christopher.Celentano@Chubb.com>, Wadley, Chris (cwadley@walkerwilcox.com) <cwadley@walkerwilcox.com>, Schiavoni, Tancred <tschiavoni@omm.com>
Cc: Labuda, Jr., Thomas <tlabuda@sidley.com>, Boelter, Jessica C.K. <jboelter@sidley.com>, Sneed, William M. <wsneed@sidley.com>, Joshua.Schwartz@chubb.com <Joshua.Schwartz@chubb.com>
Subject: BSA - Chubb

All,

Following-up on my call with Tanc last week, and a recent email to Bill Sneed from Josh Schwartz , we would like a call to discuss Chubb's recent suggestion that Sidley's ongoing representation of BSA as restructuring counsel raises a potential conflict because of other work that Sidley lawyers are doing for Chubb affiliates in connection with re-insurance issues.

As we have explained, for a number of reasons, we do not believe any conflict exists. First, Sidley's work as BSA's restructuring counsel is unrelated to Sidley's work for Chubb affiliates on reinsurance issues. In addition, BSA has separately retained Haynes & Boone as BSA's counsel to handle all coverage issues with Chubb. Second, Sidley's representation of Chubb affiliates in connection with disputes with Chubb's reinsurers regarding certain reinsurance that Chubb has for certain BSA claims does not create a conflict. BSA is not a party to those reinsurance matters and Sidley has no contact with BSA regarding any such matters. Nonetheless, we understand from our discussion at the mediation session in NYC that Chubb has concerns that Sidley lawyers may have access to certain confidential Chubb information in connection with the reinsurance matters. In an abundance of caution, we have instituted a screen to insure the team working on that matter and the Sidley BSA restructuring team are completely screened from the respective matters. Finally, Chubb was well aware of Sidley's representation of BSA in connection with a potential restructuring when the reinsurance retention began. In addition to discussions at the time, our BSA representation was reported in the press.

We think all parties understand the critical role that Chubb plays in connection with a successful BSA restructuring, and our client is anxious to put this issue behind us so that the Sidley restructuring team can continue to work cooperatively with Chubb's lawyers. Further delay in engaging with us on this issue will prejudice BSA, so please let us know when we can have a call so we can understand Chubb's position and move forward.

Thanks,

Mike Andolina

MICHAEL C. ANDOLINA

SIDLEY AUSTIN LLP
+1 312 853 2228 (O)
+1 773 531 0712 (M)
mandolina@sidley.com

****
****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

****
****

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

EXHIBIT 5

CHUBB

Managing Counsel-Director of Reinsurance
436 Walnut Street
Philadelphia, PA 19106

O 215-640-2107
M 267-449-6058
E Joshua.Schwartz@chubb.com

January 3, 2020

Michael Andolina, Esq,
Sidley & Austin LLP
787 7th Ave
New York, NY 10019

Dear Michael,

Your firm represents and has represented the Chubb companies continuously in multiple matters since before 2018. These matters include Sidley's representation of the Chubb companies, including Century Indemnity Company ("Century"), in connection with reinsurance disputes arising from claims made by the Boy Scouts of America under certain insurance policies issued by Century and other Chubb companies, and other highly confidential reinsurance matters. We raised the conflict issue in October 2019 and were assured that Sidley's General Counsel had examined the issue and given an opinion that no conflict exists. We requested Sidley's General Counsel opinion or other analysis that led Sidley to conclude that there is no conflict. Despite requests made on November 20, November 27, and again when we spoke with Bill Sneed on December 18, 2019, we received no response to these requests other than the conclusory assertion that there is no conflict and the acknowledgment that an ethical wall was not put into place by Sidley until well after the fact in November 2019.

Sidley's representation of the Chubb companies involves highly confidential information. In willingly taking on these engagements, Sidley owes the Chubb companies a duty of loyalty. In the absence of your provision of any substantive information in response to our inquiries, we are unable to rule out that your firm's representation of Boy Scouts of America constitutes a conflict or potential conflict of interest with the duties that Sidley owes to the Chubb companies. Accordingly, we are unable to provide a conflict waiver at this juncture, nor can we consent to Sidley's unilateral withdrawal from its representation of Chubb in favor of what the firm apparently perceives to be a more appealing engagement with Boy Scouts of America.

We are attempting to address an unfortunate situation that is entirely Sidley's creation. It is both shocking and offensive that Sidley would suggest that Chubb has an improper motive in trying to address the conflict issue. Nothing could be further from the truth. In view of the fact that Sidley has not gotten back to us yet in response to the question posed in our October inquiry and subsequent emails, coupled with the fact that Sidley told our counsel before Thanksgiving that nothing was pressing requiring immediate decision on the Boy Scouts of America bankruptcy, your complaints about the time we took to respond to you are ill founded. You are complaining about a 9 day delay in our reply to your email, while providing a grossly inaccurate history of our communications. In that regard, we note that you are no longer suggesting that Chubb knew in December 2018 that Sidley had a preexisting relationship with Boy Scouts of America. And,

to date, you have not advised Chubb when Sidley's representation of Boy Scouts of America commenced.

We take our ethical responsibilities seriously and have endeavored to address this matter carefully. We sought information from you and gave you time to respond. We also consulted with outside ethics counsel. If there are facts that you feel that we have not taken into consideration, please let us know.

Very Truly Yours,

Joshua Schwartz (LB)

Joshua R. Schwartz

EXHIBIT 6

SIDLEY

SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036 FAX

+1 312 853 2211
LCHILDS@SIDLEY.COM

AMERICA • ASIA PACIFIC • EUROPE

January 16, 2020

By Email

Joshua Schwartz
Managing Counsel – Director of Reinsurance
Chubb
436 Walnut Street
Philadelphia, PA 19106

Dear Mr. Schwartz:

I am writing on behalf of Sidley Austin LLP ("Sidley") and its Office of General Counsel in response to your letter to my partner Mike Andolina dated January 3, 2020. Your letter does not respond to or address a number of the points in Mr. Andolina's December 16, 2019 email, and at this point Sidley does not believe it would be fruitful to rehash points made in our previous correspondence. However, we do think it is important to note that Chubb reached out to Sidley regarding Sidley's role on behalf of Boy Scouts of America ("BSA") as early as December 2018 and that Chubb attended a meeting at our offices on October 14, 2019 to discuss the potential BSA restructuring without raising any issue regarding Sidley's role. In addition, although it is correct that a formal wall was instituted on November 4, 2019, immediately after Chubb raised a complaint about Sidley's representation of BSA, the Sidley team representing BSA on restructuring issues and the Sidley team representing Chubb in reinsurance matters are and have been entirely separate. There has been no sharing of Chubb confidential information with the BSA restructuring team at any time. Thus, we do not believe Chubb's professed concern about the handling of confidential information related to the representation of Chubb is well-taken.

As Bill Sneed has previously advised you, Sidley has decided that under the circumstances, we will withdraw from the matters in which we currently represent Chubb and its affiliates. Bill Sneed will be sending you a separate letter setting forth in detail the steps we intend to take in this regard.

Very truly yours,

Linton J. Childs

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships.

ACTIVE 253425701

EXHIBIT 7

SIDLEY

SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036

AMERICA • ASIA PACIFIC • EUROPE

January 16, 2020

By Email

Joshua R. Schwartz
Chubb
Managing Counsel - Director of Reinsurance Litigation
436 Walnut Street
Philadelphia, PA 19106

Re: Sidley Representation of Chubb Companies

Dear Josh:

As I discussed with you and Christy Russell last month, since your call with me on October 29, the relationship between our firm and the Chubb Companies has become unreasonably difficult to the point of break down.

We intend to proceed with an orderly withdrawal from our current representations of Chubb and Century Indemnity Company ("Century"). This letter provides you with the status of each matter and the steps that Sidley intends to take to ensure that Chubb's and Century's interests are not harmed in the process.

First, Sidley has represented Century in litigation in the Massachusetts federal court against Lloyd's Underwriters, *Lloyd's v. Century*, No. 18-cv-12041 (D. Mass.), and *Century v. Lloyd's*, No. 19-cv-11056 (D. Mass.), both before Judge Casper ("the Lloyd's Litigation"). The Lloyd's Litigation is fully briefed, was argued on September 13, 2019, and now awaits a decision by Judge Casper respecting whether Lloyd's must arbitrate. Thus, Sidley's substantive work on the Lloyd's Litigation is concluded. Please be advised that our firm will move on January 24, 2020, to withdraw its appearance in the Lloyd's Litigation. In accordance with U.S. District Court for the District of Massachusetts Local Rule 7.1(a)(2), we ask that Century let us know no later than January 23, 2020, whether it will object to the withdrawal. We note that [redacted], Century's original counsel in *Lloyd's v. Century*, No. 18-cv-12041 (D. Mass.), continues to have an appearance on file in the case.

This letter serves as notice that Sidley will not represent Century in any new matters that may arise following the Court's decision in the Lloyd's Litigation, such as future appeals or arbitrations.

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships.

SIDLEY

Joshua R. Schwartz
January 16, 2020
Page 2

Second, Sidley represents Century in an arbitration against [redacted], before a panel chaired by [redacted]. The [redacted] Arbitration has no schedule, but there will be an Organizational Meeting on February 25, 2020, to obtain a schedule. Submissions in advance of that Organizational Meeting are due February 11 and 18. We have provided you with a draft of the submission due February 11. We will notify the arbitrators on January 31, 2020, that we no longer represent Century in the matter. This letter should provide Century with ample time to engage new counsel.

Third, we represent Chubb & Sons, Inc. ("Chubb") in an arbitration against [redacted] before a panel chaired by [redacted] The [redacted] Arbitration is set for hearing during the week of May 18, 2020, with discovery ending on February 14 and pre-hearing briefs due April 10 and May 8. Four depositions need to be scheduled and taken by February 14 (though [redacted] counsel has indicated that the February 14 date will be pushed back to February 28). We propose to continue our representation through the discovery close and then notify the arbitrators the day after that we no longer represent Chubb in the matter. Of course, we are amenable to working with successor counsel respecting the transfer of this case, in the event you want us and successor counsel involved in the depositions.

Finally, we have provided occasional advice respecting [redacted], in connection with issues raised by reinsurers [redacted] The [redacted] Matter involves no formal dispute, a different firm is lead counsel on the matter, and our involvement has been sporadic. We have no pending work regarding the [redacted] Matter and will provide no future advice respecting it.

I believe this has been confirmed by others before, but I will reiterate that no confidential information regarding the above matters has been shared with any attorney representing the Boy Scouts of America. We will continue to hold any nonpublic information you have supplied to Sidley in confidence in accordance with applicable rules of professional responsibility. We will cooperate fully in providing any files and information to new counsel.

If you wish to have any documents delivered to you, please advise us. We reserve the right to transfer or destroy documents in accordance with our records retention procedures.

We are amenable to reasonable modifications of these plans in order to ensure that Century and Chubb are not prejudiced by our withdrawal or to assist in a transfer to successor counsel. For example, if Century or Chubb want us to withdraw from a matter sooner than outlined above, we will do so.

SIDLEY

Our goal is to protect Century's and Chubb's interests during this process. I am copying this letter to Tom Wamser, as he has been our direct report in the [redacted] Arbitration.

Very truly yours,

William M. Sneed

William M. Sneed

cc: Thomas J. Wamser

ACTIVE 253024611

EXHIBIT 8

CHUBB®

Managing Counsel-Director of Reinsurance
436 Walnut Street
Philadelphia, PA 19106

O 215-640-2107
M 267-449-6058
E Joshua.Schwartz@chubb.com

January 30, 2020

Bill Sneed, Esq.
Sidley & Austin LLP
One South Dearborn Street
Chicago, IL 60603

Dear Bill:

I am writing in response to the letter from Sidley's General Counsel, Linton Childs, and your letter, both dated January 16, 2020, as well as Sidley's motion to withdraw from the "Lloyd's Litigation" dated January 27, 2020.

At the onset, Chubb would like to make one thing clear: Sidley is not authorized to talk with any third parties about this conflict issue without our advance written permission. This includes communication with arbitration panels and with counsel representing our adversaries.

With respect to Mr. Childs' letter, we do not see the utility in further correspondence regarding the conflict issue. We have been asking, for some time now, to review Mr. Childs' legal advice, or other analysis, which led Sidley to conclude that there is no conflict. That request remains extant, and Sidley's unwillingness to share it speaks volumes. Needless to say, Mr. Childs' recitation of what Chubb purportedly knew, and when, about Sidley's representation of the Boy Scouts is inaccurate, misleading and belied by the record.

In your January 16 letter, Sidley purports to withdraw from its current representations of Chubb entities and provides an incorrect description of the pending matters and their status. As an initial matter, Chubb retained Sidley to serve as arbitration counsel against Lloyd's in September 2018 regarding the disputed Boy Scouts reinsurance billings. That representation has included, *inter alia*, providing analysis and evaluation on [redacted] This remains an open matter, and Chubb does not consent to Sidley withdrawing from the pending Lloyd's arbitration(s), which Lloyd's is seeking to enjoin in the Lloyd's Litigation. (We will address Sidley's motion to withdraw from the Lloyd's Litigation at the conclusion of the letter.)

Second, we do not consent to Sidley's withdrawal from the "[redacted] Arbitration" and do not authorize Sidley to send a notification to the Panel that you no longer represent Chubb in this matter. As you reported to us on January 27, 2020, [redacted] just reached out to you to see if a deal can be brokered to settle the matter and/or stay the arbitration. In this circumstance, Chubb would be prejudiced if Sidley were to notify the Panel (and [redacted] that it is seeking to withdraw. We also do not understand the arbitrary deadline of January 31st that Sidley has placed on its desire to notify the Panel that it does not want to work for Chubb any longer, especially since Sidley is willing to continue working on the "[redacted] Arbitration" into March. Given your expressed willingness to make "reasonable modifications" to Sidley's plans to seek

withdrawal, we trust that it will not be a problem to accommodate this request. If this is a problem for Sidley, we would need to address under the dispute resolution mechanism in the Service Level Agreement (SLA) your desire to withdraw now.

With respect to the [redacted] Arbitration, your attempt to withdraw in the middle of discovery is particularly challenging for us. We are still deliberating internally on whether Sidley should continue on as counsel through the close of discovery. We will let you know once we reach our conclusion, which we hope to reach shortly given the upcoming deposition dates.

Regarding the [redacted] matter, we will not oppose Sidley withdrawing because, as you note, there is no formal dispute and we have other counsel on the matter. The same is not true with respect to the [redacted] matter in which Sidley provided counsel on a complex set of historic documents and contracts. While that matter has been dormant recently, it remains an open, unresolved matter. We assume Sidley is seeking to withdraw from the [redacted] matter as well. Please confirm.

Finally, with respect to the Lloyd's Litigation, Sidley's substantive work on the matter has not concluded. The parties have competing motions *sub judice*, and it is very likely that there will be further motion practice after the court issues its ruling. Moreover, the court proceedings are ancillary to the arbitration matter that Sidley was retained to handle, which could proceed quickly following a ruling by the court. Chubb will incur a great deal of cost in finding new counsel and having that new counsel prepare to take over the Lloyd's Litigation. As you already know, [redacted] only worked on the motion to confirm the prior arbitration award and has had no involvement in the present dispute. Accordingly, Chubb reserves all of its rights at law, in equity and pursuant to the SLA with respect to Sidley's conduct in the Lloyd's Litigation.

Nonetheless, Chubb would be willing to consent to Sidley's withdrawal from the Lloyd's Litigation if the following conditions are agreed:

1. The parties agree that Chubb's consent is on a without prejudice basis with respect to the allegations in Sidley's motion to withdraw, which Chubb disputes.

2. The parties agree that Chubb will have 30 days from the date of entry of an order granting the motion to withdraw to assign new counsel to the Lloyd's Litigation, and Sidley will remain as counsel during this 30 day period.

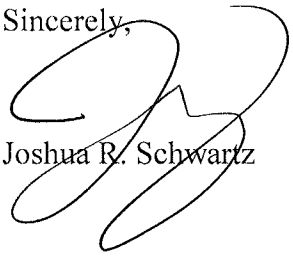
3. The parties agree that Chubb's consent to Sidley's withdrawal is on a without prejudice basis to Chubb's positions under the rules of professional conduct and the SLA regarding the conflict issue, and all of Chubb's rights in this respect are reserved.

Please advise whether Sidley is agreeable to these conditions.

You have made clear Sidley's intent to terminate Chubb's work midstream in order to do work for another client. We have objected and reserved our rights, but we are now faced with

managing the consequences of your actions. For the avoidance of any doubt, this is not our choice.

Sincerely,



Joshua R. Schwartz

EXHIBIT 9

[redacted]

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Wednesday, February 19, 2020 5:58 PM
To: Sneed, William M.
Subject: RE: Arb: Century Indemnity & [redacted] - (PLEASE CONFER & GET BACK TO PANEL RE POSSIBLE OM AT MAY ARIAS MEETING)

Bill, as mentioned in my prior letter, we do not agree that you are allowed to withdraw from this case. Given that we are in the midst of settlement negotiations, it would be very prejudicial to Chubb and destabilizing to the negotiations if you were to notify the panel and opposing counsel that you are withdrawing from the case. We also have not secured replacement counsel. Given that we are in a standstill period in the matter as we try to negotiate a settlement, we are at a loss to understand why you are unwilling to maintain the status quo while we negotiate with [redacted] Please refrain from notifying the panel and opposing counsel.

Chubb reserves all rights.

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

-----Original Message-----
From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Wednesday, February 19, 2020 5:45 PM
To: Schwartz, Joshua R
Subject: [EXTERNAL] FW: Arb: Century Indemnity & [redacted] - (PLEASE CONFER & GET BACK TO PANEL RE POSSIBLE OM AT MAY ARIAS MEETING)

Josh:

This email went to the Panel this afternoon after [redacted] agreed that we should target late Thursday at the ARIAS conference (May 7) for the re-scheduled OM, if it is necessary.

We will be informing the Panel and opposing counsel that our firm is withdrawing from representation of Century in this matter.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

-----Original Message-----
From: Sneed, William M.
Sent: Wednesday, February 19, 2020 2:26 PM

To: [redacted]
Cc: [redacted]
Subject: RE: Arb: Century Indemnity & [redacted] - (PLEASE CONFER & GET BACK TO PANEL RE POSSIBLE OM AT MAY ARIAS MEETING)

Dear Arbitrators:

The two sides have conferred respecting this OM scheduling issue in connection with the ARIAS Spring Conference. If scheduling the OM before the ARIAS conference begins is not feasible, then both sides suggest that it be scheduled Thursday afternoon, between the end of the sessions and any cocktail reception.

I did not find a program schedule on the ARIAS website, but we understand that the post-conference time on Wednesday afternoon has committee meetings.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

-----Original Message-----
From: [redacted]
Sent: Monday, February 17, 2020 7:32 PM
To: Sneed, William M. <wsneed@sidley.com>
Cc: [redacted]
Subject: Re: Arb: Century Indemnity & [redacted] - (PLEASE CONFER & GET BACK TO PANEL RE POSSIBLE OM AT MAY ARIAS MEETING)

Dear Counsel:

One of the arbitrators does not plan to arrive in Florida until shortly after noon on Wednesday, May 6th (the opening day of the meeting). I have not seen the program for the May meeting. Please confer and let us know if you see a time or times starting in the afternoon of May 6th that would be both convenient and sufficiently long for the OM meeting. Please try to get back to us by Wednesday. Thanks for your help.

> On Feb 14, 2020, at 10:53 AM, Sneed, William M. <wsneed@Sidley.com> wrote:
>
> Dear Arbitrators:
>
> This is a joint email from both sides. After checking schedules and conferring, we report that a re-scheduled OM at the ARIAS conference in May works for both sides. Given an ARIAS Board meeting taking place on the Friday afternoon (May 8), our preference is that the OM be scheduled before rather than after the conference.
>
> WILLIAM M. SNEED
>
>
> SIDLEY AUSTIN LLP
> +1 312 853 7899
> wsneed@sidley.com
>
> -----Original Message-----

> From: [redacted]
> Sent: Tuesday, February 11, 2020 1:19 PM
> To: [redacted]
> Cc: [redacted] Sneed, William M. <wsneed@sidley.com>; [redacted]
> Subject: Re: Arb: Century Indemnity [redacted]
>
> Dear Counsel:
>
> Assuming the matter remains unresolved, would setting the OM at a time during the Spring ARIAS meeting in Florida (May 6-8th) work for the Parties? Please confer and let us know by the end of the week. If meeting in Florida would not be convenient for the Parties, we will get back to you with other possible dates.
>
> [redacted] (for the Panel)
>
>> On Feb 8, 2020, at 10:57 AM, [redacted] wrote:
>>
>> Dear Counsel:
>>
>> We acknowledge the joint request to stay the Century/[redacted] proceeding. The Panel will get back to you with possible new OM dates.
>>
>> [redacted] (for the Panel)
>>
>>> On Feb 7, 2020, at 1:21 PM, [redacted] wrote:
>>>
>>> Dear Panel -
>>>
>>> We are writing jointly to seek a 60 day extension on this matter as the parties are meeting in good faith to discuss potential resolution of this matter. We jointly request that the Panel cancel the OM currently scheduled for February 25 and extend and reset this date roughly 60 days out. We also request that the Panel reset the dates for the position statements and the counsel meet and confer date so as to correspond with the new OM date. In the meantime, both sides will consider the matter stayed. We greatly appreciate the Panel's patience and will keep it apprised of all developments.
>>>
>>> Respectfully,
>>> [redacted]
>>> Bill Sneed
>>>
>>>
>>> [redacted]
>>>
[redacted]
>>>
>>>
>>>
>>> -----Original Message-----
[redacted]
>>> Sent: Wednesday, January 15, 2020 3:21 PM
[redacted]
>>> Cc: William M. Sneed <wsneed@Sidley.com>; [redacted]

[redacted]
>>> Subject: Re: Arb: Century Indemnity & [redacted]
>>> -
>>>
>>> Thanks. We look forward to seeing you on 2/25. [redacted]
>>>
>>>> On Jan 15, 2020, at 9:38 AM, [redacted] wrote:
>>>>
>>>> All -
>>>>
>>>> We are confirmed for 11 AM on Feb. 25th at Veritext (1801 Market Street, Philadelphia, PA 19103). They will supply the court reporter.
>>>>
>>>> Respectfully,
>>>> [redacted]
>>>>
[redacted]
>>>>
>>>>
>>>>
>>>> -----Original Message-----
>>>> From: [redacted]
>>>> Sent: Wednesday, January 15, 2020 11:09 AM
>>>> To: William M. Sneed <wsneed@Sidley.com>; [redacted]
>>>> Subject: Re: Arb: Century Indemnity & [redacted]
>>>> - Organizational Meeting - Feb. 25, 2020 (HAS A VENUE BEEN
>>>> SELECTED?) (PLEASE ACKNOWLEDGE RECEIPT)
>>>>
>>>> DEAR COUNSEL:
>>>>
>>>> HAS A VENUE BEEN SELECTED FOR THE FEBRUARY 25TH ORGANIZATIONAL MEETING?
>>>>
>>>> [redacted]
>>>>
>>>>> On Dec 31, 2019, at 3:27 PM, [redacted] wrote:
>>>>>
>>>>> <Pre OM Ltr.docx>Dear Counsel:
>>>>>
>>>>> Best wishes for 2020!!
>>>>>
>>>>> The attached is a proposed agenda for the February 25th Organizational Meeting and a list of steps the Panel requests be taken prior to the Org Mtg. PLEASE ACKNOWLEDGE RECEIPT.
>>>>>
>>>>> Please confer and let us know the venue for the Feb. 25th meeting that will start at 11:00 a.m. Also, let us know if you have any questions.
>>>>>

>>>>> We look forward to working with you on this matter.
>>>>>
>>>>> [redacted] (for the Panel)
>>>>
>>>>
>>>> _____
>>>>
>>>>
>>>>
>>>> STATEMENT OF CONFIDENTIALITY:
>>>> The information contained in this electronic message and any
>>>> attachments to this message are intended for the exclusive use of
>>>> the
>>>> addressee(s) and may contain confidential or privileged information.
>>>> If you are not the intended recipient, or the person responsible
>>>> for delivering the e-mail to the intended recipient, be advised you
>>>> have received this message in error and that any use,
>>>> dissemination, forwarding, printing, or copying is strictly
>>>> prohibited. Please notify [redacted] immediately at either
>>>> [redacted] or at [redacted], and destroy all copies
>>>> of this message and any attachments. You will be reimbursed for
>>>> reasonable costs incurred in notifying us.
>>>>
>>>
>>
>
>
>
>
> **********
> ********** This e-mail is sent by a law firm and
> may contain information that is privileged or confidential.
> If you are not the intended recipient, please delete the e-mail and
> any attachments and notify us immediately.
>
> **********
> **********

EXHIBIT 10

[redacted]

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Wednesday, February 19, 2020 5:51 PM
To: Sneed, William M.
Cc: Wamser, Thomas J; [redacted]
Subject: RE: Chubb/[redacted] Arbitration

Bill,

We do not agree that you are allowed to unilaterally withdraw from this case because we will not waive the conflict regarding Boy Scouts. We also do not agree that you can notify the panel about your desire to withdraw. The panel does not have authority to adjudicate the issue, and your notifying the panel in such a manner will prejudice us before the panel. Please do not do so.

We reserve all of our rights on this issue.

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Wednesday, February 19, 2020 5:41 PM
To: Schwartz, Joshua R
Cc: Wamser, Thomas J; [redacted]
Subject: [EXTERNAL] RE: Chubb/[redacted] Arbitration

Josh:

We saw [redacted] email to the Panel this afternoon. It is does not inform the Panel that Sidley is withdrawing from the matter entirely. Consequently, as explained in my email yesterday, we will be informing the Panel that Sidley is withdrawing from the matter entirely.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

From: Schwartz, Joshua R <Joshua.Schwartz@chubb.com>
Sent: Tuesday, February 18, 2020 1:09 PM
To: Sneed, William M. <wsneed@sidley.com>

Cc: Wamser, Thomas J <Thomas.Wamser@Chubb.com>; [redacted]
Subject: RE: Chubb/[redacted] Arbitration

Bill:

Thanks for your email. Chubb and [redacted] will clear up the confusion caused by [redacted] email.

CHUBB

Joshua R. Schwartz
Managing Counsel - Director of Reinsurance Litigation

436 Walnut Street, Philadelphia, PA 19106
O 215-640-2107 M 267-449-6058 F 215-640-4020

ACE and Chubb are now one.

From: Sneed, William M. [mailto:wsneed@sidley.com]
Sent: Tuesday, February 18, 2020 12:36 PM
To: Schwartz, Joshua R
Cc: Wamser, Thomas J; [redacted]
Subject: [EXTERNAL] FW: Chubb/[redacted] Arbitration

Josh:

As you know, we informed Chubb on January 16, 2020 of our intention to withdraw from this case, subject to our willingness to complete the depositions then scheduled in February. Given that those dates were taken off calendar at the request of [redacted] (acting on behalf of Chubb), we do not think there is any reason for us to continue other than ensure an orderly transition to [redacted].

While we do not agree that you have the right to prohibit us from communicating our withdrawal to the Panel, we have nevertheless refrained from doing so. However, based on the communication below, it appears that [redacted] and the Panel may have an inaccurate understanding of the situation. Accordingly, we request that Chubb or [redacted] promptly inform the Panel that Sidley will be withdrawing from the matter entirely.

Should this not happen by close of business tomorrow, we will notify the Panel directly. Thank you for your attention to this matter.

From: [redacted]
Sent: Tuesday, February 18, 2020 11:10 AM
To: [redacted]
Cc: Sneed, William M. <wsneed@sidley.com>; [redacted]
Subject: Re: Chubb/[redacted] Arbitration

Dear Panel Members:

The agreed schedule in this Arbitration called for the completion of fact discovery by Friday, February 14, 2020, with the hearing scheduled for the week of May 18. Two days before deposition discovery was scheduled to begin (and just one day after Chubb sent our last status report to the Panel), Chubb requested to postpone discovery, as well as the hearing. At that time, we were advised that Chubb needed to replace Sidley Austin as

counsel of record because of conflict issues. Although [redacted] would have thought any such conflicts would have been known to Chubb and/or Sidley at the start of this case, [redacted] agreed to the postponement.

However, while drafting what was to be a joint message to this Panel notifying you of this change in schedule, [redacted] requested that the message clearly state that [redacted] is "replacing" Sidley as Chubb's counsel, not just "joining" as additional counsel. [redacted], however, refuses to reply to our request and appears to insist that the message merely state that [redacted] is "joining" as counsel. If true, this not only contradicts the original reason given for delaying discovery but also is not a valid justification for a continuance of the discovery or final hearing demanded by Chubb. [redacted] has sought clarification but has heard nothing further from Chubb or its lawyers. Unfortunately, as we have waited, the original deadline for completing fact discovery has passed.

[redacted] has been hesitant to approach the Panel to request its assistance in this matter. However, with Chubb and its lawyers apparently unwilling to proceed with discovery as scheduled or provide a clear and valid justification for the delay caused by its change and/or addition of counsel, [redacted] is left with no choice but seek guidance from this Panel.

We specifically request two things: first, that the Panel require Chubb to immediately confirm which lawyers are representing it in this arbitration; and second, require Chubb and its lawyers to confirm potential hearing dates which might be available for it and its lawyers. [redacted] has sought the answer to both questions directly and Chubb has, to date, offered no response.

Best Regards,

[redacted]

[redacted]

[redacted]

[redacted]

On Feb 3, 2020, at 11:44 AM, [redacted] wrote:

CAUTION: This email originated outside of the organization.

Dear Counsel:

Thank you for the update. The Panel agrees the schedule change the parties have proposed.

for the Panel

[redacted]

==========
==========

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me by replying to this message and permanently delete the original and any copy of this e-mail and any printout thereof.

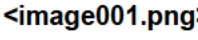
[redacted]

[redacted]

On Mon, Feb 3, 2020 at 10:46 AM Sneed, William M. <wsneed@sidley.com> wrote:

> Dear Arbitrators:
>
> This is a Joint Status Report submitted in accordance with the schedule in this Arbitration. Since the last status report, the parties have scheduled four depositions, which are to take place this month. Due to scheduling conflicts, the parties jointly request that the Panel amend the End of Fact Discovery deadline in the schedule from February 14 to February 28, with no other deadlines changed.
>
> **WILLIAM M. SNEED**
>
> **SIDLEY AUSTIN LLP**
> One South Dearborn
> Chicago, IL 60603
> +1 312 853 7899
> wsneed@sidley.com
> www.sidley.com

<image001.png>



****
****

This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

****
****

CONFIDENTIALITY NOTICE:
This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication and any files transmitted with it may contain confidential and privileged material for the sole use of the intended recipient, including confidential attorney client communications and/or attorney work product. Receipt by anyone other than the intended recipient is not intended to and does not constitute a loss of the confidential or privileged nature of the communications. Any review or distr bution by others is strictly prohibited. If you are not the intended recipient you must not read, use, copy, retransmit or disseminate this communication and you are directed to immediately notify the sender by return electronic mail and delete all copies of this communication. To reply to our email directly, send an email to: [redacted]

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

EXHIBIT 11

[redacted]

From: Sneed, William M. <wsneed@sidley.com>
Sent: Thursday, February 20, 2020 8:19 AM
To: Schwartz, Joshua R; Wamser, Thomas J
Cc: [redacted]
Subject: [EXTERNAL] FW: Chubb/[redacted] Arbitration

Josh, Tom:

FYI

If you or [redacted] have any requests re the case (*i.e.*, witness files), please let me know.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

From: Sneed, William M.
Sent: Thursday, February 20, 2020 7:16 AM
To: [redacted]
Cc: [redacted]
Subject: RE: Chubb/[redacted] Arbitration

Dear Arbitrators:

Please be advised that Sidley Austin LLP is withdrawing entirely from representation of Chubb in this matter. Please remove us from your service lists.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
+1 312 853 7899
wsneed@sidley.com

From: [redacted]
Sent: Wednesday, February 19, 2020 3:52 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Chubb/[redacted] Arbitration

Dear Panel:

We have no need for further comment on [redacted] message. We understand that [redacted] will be counsel of record for Chubb for at least the discovery efforts in this proceeding and will coordinate all scheduling with them. We appreciate learning now that the reason for Chubb's failure to respond for over a week to our proposed joint message informing the Panel of the substantial change in schedule was due to Chubb's apparent continuing efforts to finalize the status of its counsel. We will await further information from Chubb when it has made its final selection of counsel for the hearing.

In the meantime, we look forward to the Panel identifying its available dates for a possible final hearing in July through September. We will endeavor to work promptly with Chubb to finalize a hearing date as soon as we are able.

Best Regards,

[redacted]

[redacted]

From: [redacted]
Sent: Wednesday, February 19, 2020 3:00 PM
To: [redacted]
Cc: [redacted]
Subject: Re: Chubb/[redacted] Arbitration

CAUTION: This email originated outside of the organization.

Dear Counsel:

Thank you both for your messages to the Panel.

[redacted]: do you wish to comment on [redacted] message? if so please provide your response to the Panel by COB tomorrow. Otherwise please advise the Panel in order that we may address counsel's requests.

for the Panel
[redacted]

==========
==========

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally

privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me by replying to this message and permanently delete the original and any copy of this e-mail and any printout thereof.

[redacted]

[redacted]

On Wed, Feb 19, 2020 at 2:46 PM [redacted] wrote:

Dear Panel Members,

We write in response to [redacted] email to the Panel below. [redacted] was asked by Chubb to serve as co-counsel and take the lead on discovery matters in this arbitration because a conflict issue has arisen between itself and Sidley Austin that remains unresolved. I advised [redacted] of the conflict issue by telephone on February 3 and requested that the arbitration schedule be adjusted because [redacted] could not be available for the depositions as scheduled. I confirmed the contents of my call with [redacted] in an email to him on February 4.

While it is true [redacted] responded that he had not realized during our February 3 telephone conversation that [redacted] had been retained as co-counsel, he nevertheless confirmed [redacted] willingness to consider adjustments to the schedule to accommodate Chubb and [redacted] and suggested we advise the Panel. Since those emails, [redacted] and I have exchanged draft proposed emails to the Panel. In his drafts, however, [redacted] has included language stating that [redacted] was Chubb's only counsel in the case. For this reason, we had not arrived at a joint email to the Panel. (Chubb hopes to resolve the conflict issue amicably, failing which it would be resolved pursuant to an arbitration agreement between Chubb and Sidley Austin.)

As for new hearing dates, Chubb respectfully requests that the Panel advise which weeks would work best for a final hearing in July, August and September of this year. Once the parties hear back from the Panel, we will work promptly with [redacted] to finalize the hearing date and also to propose interim dates for the completion of discovery and other pre-hearing matters.

Respectfully submitted,

[redacted]

[redacted]

[redacted] | [redacted]

From: [redacted]
Sent: Tuesday, February 18, 2020 11:10 AM
To: [redacted]
Cc: Sneed, William M.; [redacted]
Subject: Re: Chubb/[redacted] Arbitration

Dear Panel Members:

The agreed schedule in this Arbitration called for the completion of fact discovery by Friday, February 14, 2020, with the hearing scheduled for the week of May 18. Two days before deposition discovery was scheduled to begin (and just one day after Chubb sent our last status report to the Panel), Chubb requested to postpone discovery, as well as the hearing. At that time, we were advised that Chubb needed to replace Sidley Austin as counsel of record because of conflict issues. Although [redacted] would have thought any such conflicts would have been known to Chubb and/or Sidley at the start of this case, [redacted] agreed to the postponement.

However, while drafting what was to be a joint message to this Panel notifying you of this change in schedule, [redacted] requested that the message clearly state that [redacted] is "replacing" Sidley as Chubb's counsel, not just "joining" as additional counsel. [redacted] however, refuses to reply to our request and appears to insist that the message merely state that [redacted] is "joining" as counsel. If true, this not only contradicts the original reason given for delaying discovery but also is not a valid justification for a continuance of the discovery or final hearing demanded by Chubb. [redacted] has sought clarification but has heard nothing further from Chubb or its lawyers. Unfortunately, as we have waited, the original deadline for completing fact discovery has passed.

[redacted] has been hesitant to approach the Panel to request its assistance in this matter. However, with Chubb and its lawyers apparently unwilling to proceed with discovery as scheduled or provide a clear and valid justification for the delay caused by its change and/or addition of counsel, [redacted] is left with no choice but seek guidance from this Panel.

We specifically request two things: first, that the Panel require Chubb to immediately confirm which lawyers are representing it in this arbitration; and second, require Chubb and its lawyers to confirm potential hearing dates which might be available for it and its lawyers. [redacted] has sought the answer to both questions directly and Chubb has, to date, offered no response.

Best Regards,

[redacted]

[redacted]

[redacted]

On Feb 3, 2020, at 11:44 AM, [redacted] wrote:

CAUTION: This email originated outside of the organization.

Dear Counsel:

Thank you for the update. The Panel agrees the schedule change the parties have proposed.

for the Panel

[redacted]

==========
==========

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me by replying to this message and permanently delete the original and any copy of this e-mail and any printout thereof.

[redacted]

[redacted]

[redacted]

[redacted]

On Mon, Feb 3, 2020 at 10:46 AM Sneed, William M. <wsneed@sidley.com> wrote:

> Dear Arbitrators:
>
> This is a Joint Status Report submitted in accordance with the schedule in this Arbitration. Since the last status report, the parties have scheduled four depositions, which are to take place this month. Due to scheduling conflicts, the parties jointly request that the Panel amend the End of Fact Discovery deadline in the schedule from February 14 to February 28, with no other deadlines changed.
>
> **WILLIAM M. SNEED**

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
+1 312 853 7899
wsneed@sidley.com
www.sidley.com

<image001.png>

****
****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

****
****

CONFIDENTIALITY NOTICE:
This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication and any files transmitted with it may contain confidential and privileged material for the sole use of the intended recipient, including confidential attorney client communications and/or attorney work product. Receipt by anyone other than the intended recipient is not intended to and does not constitute a loss of the confidential or privileged nature of the communications. Any review or distribution by others is strictly prohibited. If you are not the intended recipient you must not read, use, copy, retransmit or disseminate this communication and you are directed to immediately notify the sender by return electronic mail and delete all copies of this communication. To reply to our email directly, send an email to: [redacted]

If our account details change, we will notify these to you by letter, telephone or face-to-face and never by email.

This email message and any attachments may contain legally privileged and/or confidential information intended solely for the use of the individual or entity to whom it is addressed. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution or copying of this message or its attachments is strictly prohibited. If you have received this email message in error, please immediately notify us by telephone, fax or email and delete the message and all attachments thereto. Thank you. [redacted] is a Delaware limited liability law partnership affiliated with [redacted], a multinational partnership regulated by The Law Society of England and Wales.

Disclosure: To ensure compliance with requirements imposed by the IRS in Circular 230, we inform you that any tax advice contained in this communication (including any attachment that does not explicitly state otherwise) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

EXHIBIT 12

[redacted]

From: [redacted]
Sent: Thursday, February 20, 2020 11:18 AM
To: William M. Sneed
Cc: [redacted] Schwartz, Joshua R
Subject: [EXTERNAL] Re: Century/[redacted] Arbitration

Dear Mr. Sneed:
I acknowledge your withdrawal notification.

[redacted] (for the Panel)

On Feb 20, 2020, at 5:17 AM, Sneed, William M. <wsneed@sidley.com> wrote:

Dear Arbitrators:

Please be advised that Sidley Austin LLP is withdrawing from representation of Century Indemnity Company in this matter. Please remove us from your service lists.

The proper contact for Century at this stage is Josh Schwartz, in-house counsel, who is copied on this email.

WILLIAM M. SNEED

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
+1 312 853 7899
wsneed@sidley.com
www.sidley.com
<image001.png>

****
****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.
****
****

EXHIBIT 13

CHUBB®

Managing Counsel-Director of Reinsurance
436 Walnut Street
Philadelphia, PA 19106

O 215-640-2107
M 267-449-6058
E Joshua.Schwartz@chubb.com

March 10, 2020

Bill Sneed, Esq.
Sidley & Austin LLP
One South Dearborn Street
Chicago, IL 60603

Dear Bill:

I am writing in response to your February 26, 2020 letter. There are a number of inaccuracies in it that letter, which need to be addressed.

First, we retained you in September of 2018 to provide legal advice and counsel on the Boy Scouts reinsurance dispute against Lloyd's. You have consistently represented us in that matter up until you called our party appointed arbitrators in January 2020 to tell them that you have unilaterally withdrawn from the pending arbitration. There is zero relevance to the fact that [redacted] issued an arbitration demand on our behalf shortly after we retained you and you provided your advice on whether to arbitrate and a plethora of other issues.

Second, we are not sure what rules of professional conduct you are following, but Chubb is not aware of any rule that allows a law firm to fire its client so that it can continue on with a more lucrative engagement with another client. While a client is able to fire its lawyer at any time, the same does not hold true for a law firm. Accordingly, we rejected your unilateral attempt to withdraw from the pending arbitrations. Thereafter, you advised that Sidley Austin planned to notify arbitration panels of its "withdrawal," and we requested that you refrain from doing so because it would prejudice Chubb in those matters. Nonetheless, you contacted two arbitration panels and advised them that Sidley Austin has "withdrawn." In addition, you contacted Chubb's party appointed arbitrators in the BSA/Lloyd's arbitration and told them that you have "withdrawn." This was all unauthorized and improper.

Moreover, your suggestion that Chubb's interests are "fully protected" and has suffered no "material prejudice" is grossly inaccurate. As our lawyer, you know [redacted] Your "withdrawal" notice destabilized those efforts at a consensual resolution and impacted us before the panel. We also did not have replacement counsel for the matter, and we are in the middle of the audit in which issues are being raised that under normal circumstances we would have sought your guidance on how to address. There are unique issues in this case, with which you are intimately familiar, and there should have been no need to retain new counsel on the matter. We will incur significant costs in bringing new counsel up to speed and cannot replicate the situation we had by engaging you as counsel.

We have also suffered other prejudice including, but not limited to, the disruption of clearing conflicts and retaining new counsel on multiple pending matters, together with the time and expense associated with these law firms ramping up to put them in the same position that Sidley Austin was in when you improperly attempted to withdraw from the pending matters. Chubb did not create this regrettable situation, and the rules of professional conduct and the terms of the parties' Service Level Agreement (SLA) expressly prohibit Sidley Austin's improper conduct.[1]

Further, with regard to the SLA, Sidley Austin's conduct in its concurrent representation of Chubb and Boy Scouts and its subsequent actions to try to withdraw, constitute material breaches of the contract. Chubb has incurred, and continues to incur, damages based upon this improper conduct. The SLA contains an arbitration provision, as well as a requirement that the parties meet prior to commencing arbitration to try to resolve any disagreements. Our December 18, 2019 conference satisfied this requirement. Please confirm that Sidley Austin views it the same way. If not, we should schedule that meeting promptly.

This is a very unfortunate situation that has been thrust upon Chubb. We have not been treated with the loyalty that a law firm owes its client, and we have suffered material prejudice and significant damages, which continue to accrue, because Sidley Austin breached its ethical and contractual obligations to Chubb. We look forward to a response regarding satisfaction of the pre-arbitration meeting requirement in the SLA dispute resolution provision, and continue to reserve all rights

Sincerely,

Joshua R. Schwartz /AMC

Joshua R. Schwartz

---

[1] We also are compelled to address Sidley Austin's comments regarding the Lloyd's and [redacted] matters. While we agreed that your firm could withdraw from the D. of Mass. proceeding, we expressly told you on January 30, 2020 that we are not authorizing your withdrawal from the Lloyd's arbitration. After Boy Scouts filed for bankruptcy, you contacted our arbitrators without notice or our permission to advise them that you have "withdrawn." Similarly, it is quite far from optimal to have one law firm take discovery and to have another law firm try the case. Thus, for [redacted] we instructed our new co-counsel to handle the depositions and seek new deadlines for discovery, as well as the final hearing. This delay is Sidley Austin's doing, based upon its improper conduct. Moreover, given Sidley Austin's unwilling to answer our questions regarding the conflict, your purported "standing invitation" to discuss the conflict issue rings hollow.

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)

DECLARATION OF CHRISTOPHER CELENTANO

I, Christopher Celentano, pursuant to the provisions of 28 U.S.C. § 1746 declare under the penalty of perjury as follows:

1. I am Senior Vice President, Coverage & Complex Claims, at Chubb. Together with Catherine "Shelly" Williams, Vice President, Coverage & Complex Claims, we are responsible for the oversight and handling of direct insurance claims made under policies issued by Chubb and its predecessor companies to the Boy Scouts of America.

2. In her April 28, 2020 declaration, Jessica Boelter refers to a meeting that took place at Sidley's Chicago office on October 14, 2019, and conference calls that followed on October 31 and November 1, 2019. I attended the October 14, 2019, meeting and the two calls although the audio was cut for the first call so we could not be heard and the call had to be rescheduled.

3. In paragraphs 12 and 15 of her declaration, Ms. Boelter states that at the October 14, 2019 meetings and the October 31 and November 1, 2019 calls, no one who attended raised concerns about Sidley's participation.

4. As noted above, Ms. Williams and I work on the direct claims side of Chubb. We do not have responsibility for hiring counsel for reinsurance matters or overseeing litigation with respect to reinsurance, which is handled by a separate dedicated reinsurance department within Chubb. Thus, we had no idea that Sidley represented Chubb in reinsurance matters at the time we attended the October 14, 2019 meeting and two subsequent calls.

5. Ms. Boelter and her Sidley colleague did not disclose to us that Sidley represented Chubb at the October 14, 2019, meeting and the subsequent conference calls described in Ms. Boelter's declaration. Ms. Boelter states in paragraph 19 of her declaration that she was unaware of Sidley's role in the reinsurance matters until shortly before the mediation in November, which corroborates that she did not disclose to us at the October 14, 2019, meeting or the subsequent calls that Sidley was concurrently engagement by Chubb on reinsurance for the Boy Scouts coverage.

6. As Joshua Schwartz indicates in paragraph 12 and 13 of his declaration, it was two weeks after the October 14, 2019, meeting before it was put together internally that Sidley was seeking to negotiate a prepack for the Boy Scouts with Chubb while at the same time representing Chubb on reinsurance for the Boy Scouts coverage.

7. As soon as we learned of this, I promptly made our concerns known to Sidley. On November 3, 2019, I wrote to Michael Andolina of Sidley about Chubb and Century's concern and objected to Sidley's participation in a meeting the following day.

8. Sidley then wrote us to say that the Boy Scouts intended to go ahead with the meeting regardless of our objection and that we should attend the meeting on November 4, with Sidley's express agreement that it would not contend that our attendance in any way waived

Chubb's right to object its representation of Boy Scouts. I attach as Exhibit 1 correspondence reflecting Sidley's express acknowledgement and agreement that Chubb's rights were preserved.

9. Ms. Boelter omits from her declaration that Sidley expressly agreed to Chubb attending the meeting on November 4 without waiving its rights to object to the conflict. Specifically, in paragraph 18, she states only that "Century agreed to participate in the mediation without waiving its rights," but says nothing about Sidley also agreeing. In fact, this is what Ms. Boelter wrote on November 4:

> Following our discussion, BSA and Sidley acknowledge that Chubb's continued presence at the BSA mediation on November 4–5 will not constitute a waiver of Chubb's argument that Sidley has a conflict of interest. As stated several times previously, however, we maintain that Sidley does not have a conflict and we reserve all rights.

10. Based on this commitment, I attended the meeting on November 4, which carried over to November 5, 2019. On the morning of November 4, 2019, we met with Ms. Boelter and Mr. Andolina, conveyed our concern and told them that we did not consent to Sidley's concurrent representation of Chubb and Boy Scouts. We asked Ms. Boelter and Mr. Andolina whether Sidley has an opinion from its general counsel or any other written analysis concluding that Sidley's simultaneous representation of Chubb and Boy Scouts is proper. They told us that they had run the issue by their general counsel.

11. While I met at one point with a Boy Scouts representative on November 4, we were left by ourselves in a conference room segregated from the other attendees for essentially the entirety of both days.

12. Ms. Boelter also refers to a meeting that took place in Chicago the week after the October 14, 2019 meeting. My colleague, Ms. Williams, attended that meeting which was with the Boy Scout's defense counsel in the underlying tort cases. As Ms. Boelter acknowledges in paragraph 14 of her declaration, no one from Sidley attended this meeting.

13. At issue in the bankruptcy are policies that Century Indemnity Company's predecessor Insurance Company of North America ("INA") is alleged to have issued from 1963 to 1970 and certain other years.

14. There are three lawsuits presently pending in Illinois and Texas involving the Boy Scouts insurance coverage. These actions are *Nat'l Surety Corp. v. Boy Scouts of Am.*, No. 2017-CH-14975 (Ill. Cir. Ct., Chancery Div. filed Nov. 9, 2017); *Boy Scouts of Am. v. The Hartford Accident and Indemnity Co.*, No. DC-18-07313 (Tex. Dist. Ct. filed June 5, 2018); and *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018).

15. In these actions, relief is sought with respect to a host of issues including allocation and number of occurrences. April 14, 2020 Panchok-Berry Decl. Ex. D at 20.

16. In prosecuting *Boy Scouts of Am. v. Ins. Co. of N. Am.*, No. DC-18-11896 (Tex. Dist. Ct. filed Aug. 24, 2018), the Boy Scouts served written discovery on Century asking for information about on the reinsurance arbitrations in which Sidley represents Chubb with respect to reinsurance for Boy Scout claims. The Boy Scouts sought the following:

1. Documents and communications between Century and its **Reinsurers** on the Boy Scouts' policies, including but not limited to submissions in connection with the Lloyd's arbitration and the related litigation in the District of Massachusetts, in which Sidley represented Century. April 14, 2020 Panchock-Berry Decl., Ex. F at 8–9, ECF No. 437.
2. Documents and communications between Century and its **reinsurers** regarding the Boy Scouts, their insurance policies, abuse claims against the Boy Scouts, and claims for coverage of those claims or any other insurance claims made by the Boy Scouts. *Id.* Ex. F at 12.
3. Identify all litigation involving Century and the **Reinsurers** of the Subject Insurance Policies involving the Sexual Abuse Claims, including but not limited to (1) the arbitration between Century and the Reinsurers and (2) litigation with Lloyd's in the District of Massachusetts, in which Sidley represented Century. *Id.* Ex. G at 8–9.
4. Identify all communications with the **Reinsurers,** dating back to 2008, regarding the relevant abused claims against the Boy Scouts. *Id.* Ex. G at 9.

17. In paragraphs 3 and 6 of her declaration, Ms. Boelter states that she is leading the Boy Scouts team regarding strategic options for reaching a global settlement of abuse claims against the Boy Scouts, including restructuring, and that her restructuring team crafted the Boy Scout's reorganization plan. The disclosure statement for that reorganization plan identifies insurance as a key asset in the reorganization and the plan impairs Chubb/Century's (and other insurers') right to defend and settle claims, and adversely affects the corresponding obligation of the Debtors to cooperate and assist in the defense of claims, by transferring the rights to the policies to a claimant-controlled trust.

18. The role that Ms. Boelter acknowledges that Sidley has taken in her declaration puts Sidley at the opposite side of the table in negotiating with Chubb over the term of a plan and prosecuting confirmation of a plan. I saw this at the meeting on October 14, 2019, where Ms. Boelter and Mr. Andolina of Sidley led the discussion, presented Chubb with plan terms implicating Chubb's rights, pressed that those terms be offered to the tort claimants and then did so over our objection. They have since conveyed their intent to go forward with a motion to mandate that Chubb participate in a mediation of its bankruptcy plan which Ms. Boelter confirms in paragraphs 6 and 20 of her declaration,

Dated: May 3, 2020

Respectfully Submitted,

By: */s/ Christopher Celentano*

CHRISTOPHER CELENTANO

EXHIBIT 1

From: Boelter, Jessica C.K. <jboelter@sidley.com>
Sent: Monday, November 4, 2019 3:58 PM
To: Celentano, Christopher
Cc: Andolina, Michael C.; Steve.McGowan@Scouting.org; Schiavoni, Tancred; Wadley, Chris (cwadley@walkerwilcox.com); Martin, Ernest
Subject: RE: [EXTERNAL] RE: BSA - Confidential

Chris,

Following our discussion, BSA and Sidley acknowledge that Chubb's continued presence at the BSA mediation on November 4-5 will not constitute a waiver of Chubb's argument that Sidley has a conflict of interest. As stated several times previously, however, we maintain that Sidley does not have a conflict and we reserve all rights.

Jessica

Sent with BlackBerry Work
(www.blackberry.com)

From: Celentano, Christopher <Christopher.Celentano@Chubb.com>
Date: Monday, Nov 04, 2019, 8:58 AM
To: Boelter, Jessica C.K. <jboelter@sidley.com>
Cc: Andolina, Michael C. <mandolina@sidley.com>, Steve.McGowan@Scouting.org <Steve.McGowan@scouting.org>, Schiavoni, Tancred <tschiavoni@omm.com>, Wadley, Chris (cwadley@walkerwilcox.com) <cwadley@walkerwilcox.com>, Martin, Ernest <Ernest.Martin@haynesboone.com>
Subject: RE: [EXTERNAL] RE: BSA - Confidential

Jessica - following our discussion this morning, Chubb maintains the objections raised in our email yesterday.

Under a full reservation of rights, we will attend and observe the mediation session.

Chris

From: Celentano, Christopher
Sent: Sunday, November 03, 2019 6:37 PM
To: Boelter, Jessica C.K.
Cc: Andolina, Michael C.; Steve.McGowan@Scouting.org; Schiavoni, Tancred; Wadley, Chris (cwadley@walkerwilcox.com); Martin, Ernest
Subject: Re: [EXTERNAL] RE: BSA - Confidential

Jessica - we will meet you at your offices tomorrow at 8 am to discuss further.

Chris

On Nov 3, 2019, at 5:31 PM, Boelter, Jessica C.K. <jboelter@sidley.com> wrote:

> Chris,
>
> We were extremely disappointed to receive your email below. BSA's coverage counsel may send a more fulsome response but we wanted to send a brief response given that the mediation is scheduled to start tomorrow morning.
>
> As Chubb and its advisors are aware, Sidley is restructuring counsel to BSA. Haynes & Boone is coverage counsel to BSA. Sidley does not have a conflict that prevents it from representing BSA in this capacity.
>
> As was explained to Chubb and its advisors approximately a month ago, the mediation scheduled for November 4 and 5 is extraordinarily important to BSA's efforts to reach a global resolution of alleged abused claims and is

critical to the future of the organization. BSA and its advisors have been planning for this meeting for more than a month, including numerous calls and meetings updating Chubb and it's advisors. The BSA team spoke to your legal teams last Thursday and Friday. BSA will be proceeding with the mediation tomorrow as planned.

If you would like to discuss this further, Mike Andolina and myself (and potentially other members of the team) will make ourselves available at 8am eastern tomorrow at Sidley's offices. Please let us know if you would like to meet at that time. BSA and its advisors also reserve all rights.

Jessica

Sent with BlackBerry Work
(www.blackberry.com)

From: Celentano, Christopher <Christopher.Celentano@Chubb.com>
Date: Sunday, Nov 03, 2019, 3:40 PM
To: Andolina, Michael C. <mandolina@sidley.com>, Boelter, Jessica C.K. <jboelter@sidley.com>
Cc: 'Steve.McGowan@Scouting.org' <Steve.McGowan@Scouting.org>, Schiavoni, Tancred <tschiavoni@omm.com>, Wadley, Chris (cwadley@walkerwilcox.com) <cwadley@walkerwilcox.com>, Martin, Ernest <Ernest.Martin@haynesboone.com>
Subject: BSA - Confidential

Mr. Andolina and Ms. Boelter,

It has come to my attention that the Chubb companies (including Century Indemnity Company, as successor to Insurance Company of North America) are current and historical clients of Sidley Austin, and that Sidley Austin represents the Chubb companies in disputes arising from the direct insurance Chubb issued to BSA. Chubb has not waived any conflicts arising from Sidley's representation of BSA.

While the Chubb companies continue to evaluate this matter, we are concerned that Sidley Austin's engagement as bankruptcy counsel for BSA has or will put it in an adverse position to us – both as a result of the positions that they have asserted on BSA's behalf, or will assert, in connection with arranging and seeking confirmation of a plan of reorganization, and claims and positions that have been or will be asserted in connection with a bankruptcy. Under these circumstances, representing BSA in mediation of a prepackaged bankruptcy would lead to the perceived or actual compromise of Sidley Austin's duties to one or both of its clients. Numerous courts have held that dual representation of a debtor and a party that may be liable to the debtor is an actual conflict that disqualifies the professional since it permits the possibility of favoring one client's interests over another.

Given Sidley's representation of both BSA and Chubb in related matters, it is Chubb's view that allowing the mediation session scheduled for Monday to go forward with Sidley Austin as a participant threatens to taint the entire process. Accordingly, the Chubb companies object to Sidley Austin's participation in Monday's mediation, and we ask that the mediation session be adjourned until this conflict is resolved.

We propose that we discuss this matter with you on Monday morning. Chubb continues to reserve all rights.

Chris

<image001.png>

Christopher J. Celentano
Senior Vice President, Coverage & Complex Claims

10 Exchange Place, 9th Floor, Jersey City, NJ 07302, US
O 201.479.6398 M 201.273.3228

E christopher.celentano@chubb.com

<image002.png>

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

****
This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

****

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.	.	May 4, 2020 10:00 A.M.

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

APPEARANCES:

For the Debtor: Derek C. Abbott, Esquire
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899

Audio Operator: Ginger Mace

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.

APPEARANCES (Continued):

For the Debtors: James Ducayet, Esquire
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603

For the U.S. Trustee: David Buchbinder, Esquire
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
844 King Street, Suite 2207
Lockbox 35
Wilmington, Delaware 19801

For Century Indemnity: Tancred Schiavoni, Esquire
Gary Svirsky, Esquire
O'MELVENY
7 Times Square
New York, New York 10036

- and -

Stamatios Stamoulis, Esquire
STAMOULIS & WEINBLATT LLC
800 North West Street, Third Floor
Wilmington, Delaware 19801

INDEX

#1) Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, Nunc Pro Tunc to the Petition Date (D.I. 204, Filed 3/17/20).

DEBTOR'S WITNESS(s)

WILLIAM SNEED

Direct Examination by Mr. Ducayet 16

Cross Examination by Mr. Schiavoni 47

Redirect Examination by Mr. Ducayet 76

Recross Examination by Mr. Schiavoni 82

JESSICA BOELTER

Cross Examination by Mr. Schiavoni 86

Redirect Examination by Mr. Ducayet 101

Recross Examination by Mr. Schiavoni 103

NANCY RAPOPORT

Cross Examination by Mr. Schiavoni 110

Redirect Examination by Mr. Ducayet 119

CENTURY'S WITNESS(s)

CHRISTINE RUSSELL

Direct Examination by Mr. Schiavoni 128

Cross Examination by Mr. Ducayet 157

Redirect Examination by Mr. Schiavoni 183

JOSHUA SCHWARTZ

Direct Examination by Mr. Schiavoni 184

Cross Examination by Mr. Ducayet 203

CHRISTOPHER CELENTANO

Cross Examination by Mr. Ducayet 229

Redirect Examination by Mr. Schiavoni 232

Recross Examination by Mr. Ducayet 234

CHIP SLANINA

Direct by Mr. Svirsky 238

Cross by Mr. Ducayet 245

WILLIAM SNEED

Redirect Examination by Mr. Ducayet 252

Recross Examination by Mr. Schiavoni 257

Redirect Examination by Mr. Ducayet 263

Recross Examination by Mr. Schiavoni 263

EXHIBITS	**I.D.**	**REC'D**
Debtors Exhibits attached to Declarations		65
Century's Exhibit 2/21 Email String		65
Century's Exhibit 2/28 Email String		66
Declaration of Nancy Rapoport		109
Declaration of Brian Whittman		126
Declaration of Ann Rappleye		127
Declaration of Joshua Schwartz		203
Declaration of Chip Slanina		245
Declaration of William Sneed		267

(Telephonic hearing commenced at 10:24 a.m.)

THE COURT: Good morning, counsel, this is Judge Silverstein. We're here in the case of Boy Scouts of America, case number 20-10343.

My apologies for the delay in starting. There were several matters, several documents that were filed, filings made Friday and over the weekend that, notwithstanding my prep yesterday, I did not see. So, I've only just quickly read this morning what was filed Friday and over the weekend.

So, let's turn it over to debtor's counsel.

MR. ABBOTT: Thank you, Your Honor. Derek Abbott here from Morris Nichols on behalf of the debtors.

We did outline those additional documents, Your Honor, in a fourth amended agenda this morning that I assumed the court may have seen.

THE COURT: Didn't see it, but that's okay.

MR. ABBOTT: I just want to make sure, the last item that I'm aware of that was filed, and I just wanted to make sure Your Honor had a chance to look at it was late last evening, it was a declaration of Chris Celentano. I don't know if that is among the documents that you had a chance to look at.

THE COURT: It is.

MR. ABBOTT: That was filed by Century, Your

Honor. Okay. Fair enough. I just wanted to make sure that the court had, at least the latest.

Your Honor, I'm obviously here for the debtors. We appreciate the court making the time for this important hearing. Mr. Ducayet from the Sidley firm is going to handle the bulk of this argument from the Sidley perspective. So, if I may, Your Honor, cede the podium to him. He's got some thoughts about how we ought to proceed this morning, obviously, subject to Your Honor's comments.

THE COURT: Thank you. Mr. Ducayet.

MR. DUCAYET: Good morning, Your Honor. Good morning, Your Honor. Jim Ducayet on behalf of Sidley Austin, LLP. Can you hear me okay?

THE COURT: I can but that reminds me, we should probably go over the rules. So, Ginger, can you please inform everyone how we're proceeding.

MS. MACE: It is extremely important that you put your phones on mute when you are not speaking. When speaking, please do not have your phone on speaker as it creates feedback. This also helps with the background noise so that we can hear the person that is speaking and get an accurate record.

Also, it is very important that you state you name each and every time you speak for an accurate record. Your cooperation in this matter is greatly appreciated. Thank

you.

THE COURT: Thank you. Mr. Ducayet.

MR. DUCAYET: Thank you, Your Honor. And let me just echo Mr. Abbott's in expressing my appreciation for making yourself available and for doing this hearing under these unusual circumstances. This is, obviously, a very important matter for our firm and we appreciate your taking the time to hear us today.

Your Honor, in terms of how we would propose to proceed today, Your Honor, as I told the court last Wednesday at the status conference, there are essentially three witnesses that we would propose to put on. The way we would intend to proceed, Your Honor, if it's acceptable, would be to go in the order that we indicated in the witness list that we filed on Wednesday. And we would propose to have Mr. Sneed testify in direct. We'll try to make that as brief as possible, but I do think it's important that Your Honor hear from Mr. Sneed.

And then we would propose, Your Honor, to proffer the declaration of Ms. Boelter who is my restructuring partner, as well as the declaration of Professor Rapoport's who is our expert. Obviously, both of them are available for any questions that Your Honor may have or any cross-examination that counsel for Century may want to conduct.

Mr. Abbott, as he said, is representing the

debtors here. I anticipate at that point, we would have Mr. Abbott put in the declaration of Mr. Whittman who is the financial advisor to Boy Scouts, and that would then conclude, essentially, the presentation of evidence with respect to the application.

THE COURT: Okay. Let me hear from Mr. Schiavoni to see if that's acceptable. Let me note that I do not see Professor Rapoport on Zoom.

MR. DUCAYET: Yes, Your Honor. She is standing by and ready to dial in when we get to her.

THE COURT: Very good. Thank you.

MR. SCHIAVONI: Your Honor, this is Tancred Schiavoni for Century and the Chubb Companies.

We spoke about the witnesses earlier in the week. Your Honor was told at that time that there is significant privilege and confidentiality issues at stake here about our client, information that our clients provided to Sidley. This is a situation where the debtor and, in a sense, Sidley carry the burden.

They made the application. They submitted on reply, and they had a full opportunity to reply an extensive declaration for Mr. Sneed. There is nothing that's been offered that suggests he needs to go outside the scope of that declaration.

I would submit, Your Honor, that they should go

forward on the declaration. We face, otherwise, significant questions about whether or not further privileges and further confidences in connection with our work for Mr. Sneed will be disclosed.

We're essentially here being put in a position where Mr. Sneed, Chubb's lawyer, is disclosing and wants to disclose the details of his work with Chubb. That work and the nature of it is highly contested. We very much seriously contest the accuracy of Mr. Sneed's description of his work but it puts us, Chubb, in the position of client. And the only way we can cross -- we can impeach him or cross-examine him is to reveal further details of his work for Chubb. It puts us in an absolutely impossible situation and it's not one envisioned by the rules.

Sidley will make that worse by putting this gentleman on the stand and offering testimony beyond what's in his declaration. There is no reason why after weeks and weeks, you know, in fact, over a month Sidley needs to put in anymore testimony than what they decided, they needed to put into a very length declaration for which there was extensive back and forth about what was appropriate for them to disclose.

We very much contest that they disclose appropriate matters in what they disclosed and we're extremely concerned that if he takes the stand in an open-

ended matter that we have no idea where the hearing is going to go and we're in a sort of extra problem because of this video that it's very difficult to sort of address the situation on an ongoing basis.

So as I indicated earlier in the week, I think Sidley ought to go forward on its case, the prima facie case it made on its papers, on its declaration from Mr. Sneed.

MR. DUCAYET: Your Honor, if I could be heard on that.

THE COURT: Yes.

MR. DUCAYET: Your Honor, as I represented to the court on Wednesday and as I will further represent to you this morning, we do not intend to have Mr. Sneed testify beyond the scope of his declaration. We have addressed successfully the objections that Century has raised about the substance of what it is that Mr. Sneed put into his declaration.

But, Your Honor, the reality is that Century is accusing my partner, Mr. Sneed, some fairly serious things. You just heard it right now. He's accusing Mr. Sneed of not having accurately represented the work that he did.

I do think it would be useful for Your Honor to hear from Mr. Sneed directly as you assess his credibility. And, you know, we will endeavor, Your Honor, to, you know, work with Century in connection with this examination. But I

can tell you right now, the examination will be relatively brief and it will be limited to what has been agreed to in terms of what would be disclosed. It will be within the corners of the declaration.

THE COURT: Okay. I reviewed the declaration. I do think it's important that I hear some extent from Mr. Sneed. I recognize the difficulty that the video, the nature of the video hearing has on the hearing process.

So what I would like to happen is that Mr. Ducayet, you ask your questions. Mr. Sneed, you pause before answering the question so that I can entertain any objection that Chubb has to the question.

Mr. Schiavoni, are you going to be defending this or is one of your partners going to be -- not defending -- I'm sorry; is going to be handling this witness or is one of your partners going to be handling this witness?

MR. SCHIAVONI: Your Honor, Tancred Schiavoni. I will be handling the witness.

THE COURT: Okay. So, we need to give Mr. Schiavoni an opportunity to object prior to any answer, Mr. Sneed, so please pause to we see if there's an objection.

Mr. Ducayet.

MR. DUCAYET: Very well, Your Honor. We will do that.

MR. BUCHBINDER: Your Honor, this is Dave

Buchbinder on behalf of the U.S. Trustee. I'm hoping to take a moment here and save the court and the parties sometime this morning.

Despite all the discussions about sealed documents, the parties did that with our office the various pleadings that have been filed partially sealed. They filed seal objections. We are satisfied with the proposed redactions and we will minimize our comments to the extent that these issues come up further. But in terms of the redactions, we've reviewed them and we're satisfied, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Sneed, I'm going to swear you in.

MR. DUCAYET: Your Honor, I'm sorry to interrupt you. If I could, before we get started. I'm not quite sure who Century intends to call in their case. But to the extent that they do intend to offer any of the declarants, I just request at this point that they be excluded under Rule 615 while we go into testimony.

THE COURT: Mr. Schiavoni.

MR. SCHIAVONI: Your Honor, we have an expert witness here. I don't think he should be excluded. We also have our client representative is here, Christine is, in essence, the client. I think it's entirely where under the rules it's entirely appropriate for her to be present.

I see no reason why Mr. Schwartz who is the director of litigation ought not also to be present. I have no way to consult with them about whether or not attorney/client privileges are being disclosed unless they're aware what Mr. Sneed is doing.

MR. DUCAYET: Your Honor, I don't have an objection to Ms. Russell remaining on the line, as well as their expert. I do believe that's appropriate. However, I think if Mr. Schwartz is going to be providing evidence here, it would be appropriate for him to be excluded.

MR. SCHIAVONI: Mr. Schwartz is our director of litigation for reinsurance matters. He's the one who hired Mr. Sneed. I need him to know what's being said so that I can consult with him about privileges and attorney/client privilege.

It's one of the problems about --

MS. MACE: Excuse me, Your Honor. Can we have people say who they are before they speak so we can get an accurate record?

THE COURT: Thank you. That was Mr. Schiavoni.

MR. SCHIAVONI: I apologize. Tancred Schiavoni.

I have no way to consult because Mr. Schwartz is the fellow who is going to, director of litigation for reinsurance who hired Mr. Sneed. I need to be able to consult with him about what's being disclosed.

It's one of the problems about presenting here, Your Honor, and if I could just again, you know, make a pitch to you here that substantively the facts are not really in dispute here. And, you know, hearing argument before these witnesses take the stand, I actually think would be helpful because it's really the legal standards that apply to these facts that are in dispute.

You know, a lot of papers were submitted to Your Honor in the forty-eight hours going into the weekend, and I apologize that we submitted papers on Friday, but we only got Sidley's submission mid-week. But in that submission, it's a lengthy submission, are really key admissions that really narrow the factual issues in dispute.

There is not a reason to put on the stand a lawyer, our lawyer, to talk about his work his work for his client. I think if the court heard argument on what facts are actually still in dispute and what the legal standards here are, they would significantly narrow what the testimony needs to be that the court needs to hear.

THE COURT: I have quickly, while I've read the submissions that were made and quickly read what was submitted Friday and I agree that the parties often talk past each other on what the relevant legal standards are. But I still think there's an aspect of this case that, at least, at this moment appears to me to require some evidence as to the

scope of the representations, the representation of Chubb in the reinsurance.

And there was in Mr. Sneed's declaration some discussion of reinsurance litigation and, in particular, what was done here. So, I still regardless of the argument, I'm going to need to understand the scope of the reinsurance litigation representation. So, I'm going to hear Mr. Sneed. But under these circumstances, I am not going to prevent -- I'm not going to exclude Mr. Schwartz.

Okay. Mr. Ducayet -- I'm Mr. Sneed. Please raise your right hand.

WILLIAM SNEED, WITNESS, SWORN

THE WITNESS: (indiscernible).

THE COURT: I did not hear that.

THE WITNESS: I'm sorry, Your Honor. I was on mute. I apologize.

THE COURT: Okay.

THE WITNESS: Your Honor, William Sneed, and I do.

THE COURT: Thank you. Can you please state your full name and spell your last name for the record?

THE WITNESS: William N. Sneed; spelled S-N-E-E-D.

THE COURT: Thank you. Mr. Ducayet.

DIRECT EXAMINATION

BY MR. DUCAYET:

Q Mr. Sneed, just before we get started, can you confirm

for us that no one is in the room with you where you're providing testimony this morning?

A That's correct; no one is in the room with me.

Q Okay. And where are you physically right now?

A I'm in my office in Chicago.

Q Okay. So, Mr. Sneed, let's start with just a couple of background questions. What's your current occupation, sir?

A I'm an attorney, a partner at Sidley Austin.

Q And when did you join Sidley?

A 1995.

Q And do you have an area of specialty of practice at Sidley?

A Reinsurance contract disputes is my specialty.

Q Okay. And for those of us who have, you know, a passing familiarity with reinsurance, let me just start with the basic question which is what's the difference between reinsurance and insurance?

A Well insurance is an issue, sort of a policy to a direct policyholder, state farm insurer or John Smith auto driver. The insurance is insurance of an insurance company respecting the liabilities it incurs under its policies.

There's different kinds of reinsurance, a policy specific reinsurance. There's programs, wide reinsurance. There's catastrophe reinsurance. But, in the event, the basic views that reinsurance is insurance covering insurance

companies.

Q Okay. And you said that you have a specialty in reinsurance contract disputes. Can you describe what you mean by that?

A Well, I've been working in the area since 1987, since I started. Reinsurance contracts disputes arises when an insurance company has settled a loss with direct policyholder involving a direct policyholder and then tries to recover its reinsurance. So usually there's an issuance of a bill or the reinsurer fails to pay or refuses to pay. There's some exchanges and eventually the insurer has to decide whether to put that in dispute.

Most reinsurance contract disputes are arbitrated, but some are litigated. I'd say about 80 percent in my experience are arbitrated. And the goal of the insurer, and I typically represent the insurer, is to understand why the reinsurer isn't paying and then address it. And convince the arbitrators or the judge or the jury that the reinsurance contract requires payment. It's a dispute under a reinsurance contract.

Q Okay. And, Mr. Sneed, is it usually the case that the underlying insurers are parties to that reinsurance dispute?

A Never. I've been doing it for thirty-three years. I've never seen a policyholder involved in a reinsurance contract dispute. It's between the reinsurer and the

insurer, under our court decisions that -- there's no privity with the policyholder. They're not a party to the reinsurance contract. It's a contract between the insurer and its reinsurer.

Q And, Mr. Sneed, is it common for insurance companies to have separate and distinct groups that address direct claims versus reinsurance claims?

A Yes. It's really basically in the industry an article of faith that the folks who handle direct insurance are defensive claims and coverage disputes, if any, are not assisted or supplemented by people who deal with reinsurance contract disputes. They're separate.

The insurance lawyers inside a client and the outside counsels aren't involved in the direct insurance. In fact, they're purposely kept out of the direct insurance disputes because companies want to handle their claims, their direct claims without regard for reinsurance. There's basic reasons, vis-à-vis, the policyholder for that, and there's vis-à-vis the reinsurers for that.

So the reinsurance lawyers, inhouse or outside, are not advising or dealing with the direct insurance disputes. It's kept separate.

I had a client who testified --

MR. SCHIAVONI: Your Honor -- actually, Bill, Mr. Sneed, I'm going to ask you to stop there. I don't want you

to get into anything that may be privilege.

THE WITNESS: Oh, I'm sorry. I'm sorry. I won't. I was just referring to a different client of mine who testified in his deposition that it's church and state.

BY MR. DUCAYET:

Q Okay. So, Mr. Sneed, let's turn now to the specific work that you were asked to undertake on behalf of Century that's at issue here.

Did you handle certain matters, certain reinsurance disputes for Century beginning in the fall of 2018?

A Yes.

Q And when were you actually retained?

A The first conversation I had about reinsurance contact was on October 5, 2018 and the first time I recorded a bill to the client was October 9, 2018.

Q And as of that time, Mr. Sneed, did you have any active matters for Century or Chubb?

A No.

Q When was the last time that you had done any work for Century or Chubb?

A It had been about ten months, the nine, ten months prior was the last activity involving Century or Chubb?

Q Okay. And did any of the matters that you were asked to undertake in October of 2018 involve or relate to payments that Century had made under its policy issues to the Boy

Scouts?

A Yes.

Q And let me ask you to identify those matters consistent with the agreement that we have with Century about disclosing the names of, at least, one of the reinsurers?

A Okay. The call and my involvement in October of 2018 was specific to reinsurance contract to speak with Lloyds of London Syndicate. And about nine, ten months later, Century engaged us on a separate dispute with another reinsurer that related to a Boy Scout settlement. So in October of 2018, it was just Lloyd's.

Q Okay. And let's focus the testimony now just on the Lloyd's matter. We can deal with the second matter afterwards.

But with respect to this Lloyd's engagement, when you were retained in early of 2018, what was the scope of the representation that you were asked to undertake?

A I was asked to consult, to review an arbitration record, a past arbitration and to advise Century on remaining issues. There had been an arbitration between Century and Lloyd's about a Boy Scout settlement billing. The arbitrators had ruled for Lloyd's.

I and my firm had no involvement whatsoever in that arbitration. The award was issued in May of 2018. But they issued a narrow ruling. And it allowed Century to rebill the

same claims that it already paid but to package them up a little differently and rebill them to the same reinsurance contract. That had happened and there was going to be a dispute about whether Lloyd's paid those.

And there was a large issue that wasn't ruled on in the first arbitration as I was asked to look at that issue because the thought was it was going to come up in a second arbitration which, at the time, they first talked to me hadn't been demanded yet.

Q Okay. And now, Mr. Sneed, in connection with the representation that you just described what materials were you provided? And when you describe this please, limit it to just the categories of information. I don't want you to reveal the content of any information that you received.

A There were three categories. There was a paper that Lloyd's had filed in the Federal Court of Massachusetts to confirm the result in that first arbitration. There was the record of the first arbitration, the hearing transcripts, for instance.

Later on, not at this stage in October or the fall or November of 2018, but later on I was provided with what I call placement records, historical records regarding negotiations of the reinsurance treatise between Century and Lloyd's dating back to the 1950's, 1950's and 1960's documents; those three categories.

Q Okay. Did there come a point in time, Mr. Sneed, where the scope of the work that you were doing in the Lloyd's matter extended?
A Yes.
Q And when was that?
A November 30, 2018.
Q And how did it expand?
A Josh Schwartz called me and said that they wanted to retain me and our firm to handle the second arbitration with Lloyd's which they had, in fact, demanded. Another firm had demanded it on November 9. And Lloyd's had responded in some fashion to that demand later in November. And on November 30, Josh Schwartz called and said we want you to handle this second arbitration. There's probably going to need to be litigation to get it to go forward. And that was the scope of the engagement.
Q Okay. Any connection with that expanded scope did you receive any categories of additional materials?
MR. SCHIAVONI: Your Honor, I would just -- Your Honor, respectfully. This is Tancred Schiavoni for Century. I would object to Mr. Sneed lifting or describing the substantive communications he had with multi reinsurance lawyers or Chubb.
If he's only going to list the papers that's fine, the categories of papers. But I would, at least, want notice

in advance if he's going to describe the various lawyers that he spoke to and the privilege information that they conveyed to him.

THE COURT: Okay. At this point, I think the question was the category of documents, is that right, Mr. Ducayet?

MR. DUCAYET: Yes, ma'am.

THE COURT: Okay. So, let's restrict it to that. And let me comment my experience is that lawyers are notoriously bad witnesses because they anticipate questions and where it's going. But, Mr. Sneed, I think you're doing a very good job of just answering the question that's asked, so I would ask you to continue to do that.

THE WITNESS: Yes, Your Honor.

Can I get the question again, please?

BY MR. DUCAYET:

Q Sure, I just wanted to know if in connection with the expanded scope of the Lloyd's representation at the end of November whether there were any additional categories of documents that you received?

A The answer to that is no; nothing additional.

Q Okay. Did the work that you were doing for Century in connection with the Lloyd's reinsurance dispute involve any past or present insurance coverage disputes between Century and Boy Scouts?

A It did not.

Q Did you ever obtain any information relating to the substance of any insurance coverage disputes between Century and Boy Scouts?

A I did not.

Q Did you need that information in order for you to do the work that you've been asked to do?

A I did not.

Q And why not?

A The dispute between Century and Lloyd's was narrow and it was a classic reinsurance contract dispute. The reinsurer, Lloyd's, was saying the way you prevented these (indiscernible) to me violates a definition in my reinsurance contract, a definition that deals with people in this area called accumulation.

Century had paid multiple molestation claims; the defendants settled them. How do you package it and present it to the reinsurer? Century said I can combine different claims together as one loss and get into the reinsurance that way. The reinsurer said, you can't. It violates the definition in the reinsurance contract, a particular term about occurrences arising out of an event. And that was the dispute.

This particular term has been disputed between reinsurers and insurers for thirty years. And this is what

our work was about was that definition in the reinsurance contract.

Q Okay. And, Mr. Sneed, if I'm understanding you correctly, did the claims at issue here, did those involve payments that had already been made by Century on behalf of Boy Scouts?

A Yes. Past settlement.

Q Okay. And by the way, you mentioned I think at the outset when you were describing what reinsurance is that there are different kinds of reinsurance. Can you explain, you familiar with the term treatise reinsurance versus facultative reinsurance?

A Yes.

Q Can you explain the difference between those two?

A I can. Treatise reinsurance is a treaty. It's like a treaty between nations. It's basically defines the overall relationship between the insurer and the reinsurer and typically runs for a year and covers a whole gamut, a whole book of business like all auto policies you issue in 1966 or all medical malpractice you issue in 1995. And those are broad agreements. They're not policy specific. They cover everything that's described in the scope. They're entered into at the beginning of the year and they cover what the insurer, or rights throughout the year.

Facultative reinsurance and contracts are policy

specific. So State Farm wants to insure John Smith who wants high limits. So, it doesn't want to retain all of that risk, so it goes and it buys specific reinsurance to cover that policy. That's known as facultative reinsurance. It's different than Treaty. It's policy specific.

Q Okay. And was the Lloyd's reinsurance policy, was that a treaty policy or was it facultative?

A Lloyd's is all treaty.

Q Okay. Let's turn briefly then, if we could, to the second reinsurance matter. And, again, I caution you, don't reveal the name of the reinsurer in connection with any of the answers that you're going to give me.

But did there come a time when Century asked you to become involved in a reinsurance dispute with a second reinsurer?

A Yes, it did.

Q And when did that happen?

A It was in July of 2019.

Q Okay. And in connection with your engagement in that matter, again keeping it limited to sort of the categories and not getting into any of the substance of the communications or the information that you were provided, what are the categories of documents that you were given?

A It was exchanges between Century and that reinsurer about some particular billings Century had issued for

particular settlements that had happened in 2018 and 2018. And I think at one stage, I also got a deposition transcript of an abuse claimant because there was an issue being raised about when --

Q Bill, let me stop you there and you don't need --

A Okay. The categories were the exchanges between Century and the reinsurer and a deposition transcript.

Q Okay. Thank you.

Did the dispute with that second insurer, like the Lloyd's dispute, involve claims that had already been paid by Century on behalf of Boy Scouts?

A It did.

Q And did the dispute with the second reinsurer involve any question about the underlying coverage that was provided by Century to Boy Scouts?

A The answer to that is no.

Q Okay. All right and in connection with the work on that second matter did you ever receive any confidential or privileged information relating to the payment of any of those claims that were at issue in the reinsurance matter?

A No.

Q Okay. Mr. Sneed, let me change topics here and I want to ask you some questions about some communications that you had with Century in late 2018 and into the 2019.

I think you mentioned earlier that at the time that you

were asked to get involved in the Lloyd's matter, you didn't have any other active matters for Century. Did that have any impact on the practice that you went through internally at Sidley's to open up a matter?

A It did.

Q How was that?

A When I tried to open the matter on Lloyd's and a separate one involving a different Chubb entity unrelated to Boy Scouts, the people I submitted the papers to at the firm to get the matters open responded to me that Century and Chubb had been identified in the system as inactive or former. And I had to go do things in order to get these matters signed up.

Q And what were the things you needed to do?

A I had to go get advance waiver, get an engagement letter with Chubb.

Q And at the time that you were asked to do this -- well, let me strike that.

Did you, in fact, reach out to Century about an engagement letter including an advanced waiver provision?

A I did.

Q And do you recall when that was?

A It was in November of 2018.

Q And at the time that you reached out to Century about that advanced waiver, were you aware of the fact that Sidley

had been retained by the Boy Scouts?
A I was not.
Q Let me ask you, Mr. Sneed -- well, Mr. Sneed, you said you reached out in late November of 2019. What exactly did you communicate to Century?
A It was November of 2018. And when Josh Schwartz called and say we want you to handle this Lloyd arbitration, I said my firm's requiring me to get an advanced waiver and a standard engagement letter. I need to go through that process.
Q And does Century typically give engagement letters; do they do engagement letters?
A No. They do not.
Q And does Century typically define the relationship between itself and the law firm that it retains?
A Century issues what's called a service level agreement or an SLA to the firm with a variety of provisions. And that's what they say governs the relationship.
Q Okay. So going back to my original question, what is it that you communicated to Mr. Schwartz at the end of November of 2018?
A My firm was requiring me to negotiate an engagement letter on the terms that Sidley typically wanted now being the protocol we were under. And so, I was going to send him through waiver language, and I did in December of 2018 and

non-contentious, I think transactional.
Q Okay. And did Mr. Schwartz respond?
A He did.
Q And how did he respond?
A Pretty immediate rejection.
Q Notwithstanding Mr. Schwartz's rejection did the discussions with Century about an advanced waiver continue?
A It did.
Q And when did those discussions after the initial rejection when did those continue, respectively?
A They continued throughout the beginning of the next year, January, February, March of 2019.
Q Okay. So, Mr. Sneed, let me ask you, you have your declaration in front of you or behind you?
A I do.
Q Okay. Can I ask you to take a look at Exhibit 2 to your declaration?
MR. DUCAYET: And, for the record, Your Honor, this is Docket 532-2 which is a March 4th, 2019 email from Mr. Schwartz to Mr. Sneed.
BY MR. DUCAYET:
A I have it front of me.
Q Okay. Do you recognize this document?
A I do.
Q What is it?

A It is an email from Josh Schwartz to myself dated March 4, 2019.
Q Okay. And what did you understand this communication from Mr. Schwartz to be?
A We've been having exchanges over advanced waiver language and request and this was what Chubb was offering to us, specific to bankruptcy insolvency matters.
Q Okay. And this is a topic that you had been discussing with Mr. Schwartz, this time?
A Yes, we've been discussing it in 2019 prior to this.
Q And do you know if Mr. Schwartz was consulting with anyone within Chubb who had experience in bankruptcy?
A I do know that.
Q And what was said in that regard?
A Well, it's even in the email itself, the exhibit, right at the start. But I recall in our discussion Josh had to go to people in his company with experience and expertise in bankruptcy and insolvency to address and spell out specific things that are happening in the bankruptcy or in insolvency. And the result was this email to me.
Q Okay. And, ultimately, did Sidley agree to the three conditions that are laid out in this exhibit?
A He would not.
Q Okay. And why is that?
A I'm sorry -- some background.

The view at our firm was that individually negotiating specific provisions like this would become unwieldy and for that reason, we didn't accept this. That there would be too many variations across clients and it would be difficult to keep track of and (indiscernible).

Q Okay. Mr. Sneed, I want to switch topics again. And if I could ask you to take a look at Exhibit 5 to your declaration. And for the record, that is Docket 532-5.

A I have it.

Q Okay. And can you identify that for the record, please?

A This is an email chain that begins December 13, 2018 to Josh Schwartz. Then it flipped to me, and I respond, and Josh responds to me.

Q Okay. Let me direct your attention to the first email in the chain, that's the December 13th email from Mr. Schwartz to you. Do you see that?

A The first email or the second?

Q The first email in sequence, so the original email that was sent by Mr. Schwartz to you.

A Well the original one from him to me, I have that, yes.

Q Okay. And let me just ask you to read, if you could, the first sentence of that email after good morning?

A Okay. Now, good morning appears in the email to Josh, not the one to me.

Q Excuse me, I'm sorry. Thank you for clarifying that. This is a forwarding of an email that was sent to Josh, correct?

A Correct.

Q Okay. Thank you for clarifying that, Mr. Sneed. Could you just read that first sentence of the original email that was sent to Mr. Schwartz that was then forwarded to you?

A Okay. It says,

"Good morning. As you can see from the article from this morning's *Wall Street Journal*, BSA is considering filing for Chapter 11 bankruptcy."

Q And then could I ask you to read the last sentence of that paragraph?

A "BSA has retained Sidley to advise it on the bankruptcy issues."

Q Okay. "So that was forwarded to you by Mr. Schwartz. And so, the next email in the chain, which is right up above, can you just read the first line of that?

A Josh writes to me, "Hi Bill, FYI below."

Q Okay. And the version that's been agreed to by the parties for purposes of this public proceeding have some redactions in it, but let me just ask you. In either of the redacted or the unredacted language that appears after FYI below, did Mr. Schwartz raise any issue or concerns about the representation, potential representation of Boy Scouts by

Sidley?
A He did not.
Q And did you respond to Mr. Schwartz?
A I did. I responded the same day.
Q And what did you tell him?
A I told him that I needed -- I emailed him, that I needed to figure out some things and get some information that my firm and then get back to him.
Q And did you get back to him?
A We spoke the next morning.
Q And what did you tell Mr. Schwartz the next morning on your call?
A I told Josh that I had, in fact, spoken with people at my firm including someone who could speak to this *Wall Street Journal* article and that I couldn't confirm or deny what was in a press report in the *Wall Street Journal*. We had confidentiality duties. We couldn't speak to that.

But I had also told Josh that we didn't consider, Sidley didn't consider representation of an insurer to collect its reinsurance to be adversity to the policyholder who's been paid by the insurer, in this case Boy Scouts. And so, I told him we did not consider that we had a conflict that prevented us from representing Century against Lloyd's on the Boy Scout's reinsurance billings that hadn't been paid.

Q And what was the basis for that?

A The representation of the insurer against the reinsurer is about a reinsurance contract to which the policyholder is not a party. The policyholder is not interested in or have privity with the reinsurer.

If I can give an analogy, I thought about this.

Let's assume I specialize in unemployment insurance benefits and someone is laid off and comes to me and says I need to try to file for unemployment. And I say well I know how to get that from the state; here are the things you need to do. I will be interested. Where did you work? When were you laid off? What was your benefits -- in order that I can advise on collecting from the unemployment fund?

But I'm not adverse to his employer or former employer. I'm not. And we mention earlier reinsurance and direct claims being kept separate and distinct and they are. The reinsurance dispute is not the insurance dispute. We don't offer advise to the insurer about what its doing with its policyholder. Not only do we not do that, they don't want us to do that. It doesn't happen.

Q Okay. Mr. Sneed, did Mr. Schwartz respond at all to the explanation that you gave him?

A In our call he was pleased to hear that we had no conflict and could continue to represent Century against Lloyd's.

Q Okay. And at any point during that telephone call with Mr. Schwartz did he ever say in sum or substance, look, I understand you can't confirm this, but if it's true that you represent Boy Scouts, we're going to have a major problem?

A He did not.

Q Did he say we review this as a textbook unwaivable conflict?

A He did not.

Q Okay. Did the topic of Sidley's representation of Boy Scouts come up in any of the discussions that you had in early 2019 about the advanced waiver?

A It did a couple of times.

Q And how did it come up?

A We had multiple calls, myself with Josh at one time, an additional partner of mine and me with Josh about trying to bang out language both sides could agree to. There was give and take and discussion about what happens in a bankruptcy and what is actual adversity and different gradations of it.

During these discussions, at least twice, Josh commented to me this is all because you guys represent Boy Scouts, isn't it? And I just (indiscernible). I said it's not. In fact, these requests I'm getting to negotiate advanced waivers they're coming from management, not the restructuring partners. This is broader and not specific to a particular policyholder or insurer.

Q Mr. Sneed, based on your interactions with Mr. Schwartz over this time period, is there any doubt in your mind that Mr. Schwartz was aware of, at least, the possibility that Sidley was representing Boy Scouts?
A There's no doubt in my mind.
Q Okay. Let's fast forward then, if we could, Mr. Sneed, to October of 2019. Did there come a point in time when Mr. Schwartz did, in fact, raise a concern about Sidley's representation of Boy Scouts?
A Yes.
Q And when was that?
A On October 29, 2019.
Q And how did Mr. Schwartz raise that issue?
A He reached me on my cell phone and called to tell me he hated to be the bearer of bad news but they just learned that our firm represented Boy Scouts in the restructuring and they were going to have to consider that and needed information about it. And he was calling to let me know that.
Q Okay. Did you have any reaction to his statement that he had just learned about Sidley's representation?
A I did.
Q And what was that reaction?
A I was incredulous. To me was something that he knew from ten months ago, had raised with me a couple of times in early 2019, and this whole notion that we just discovered

this was surprising and annoying to me.
Q Did you express that to Mr. Schwartz?
A Yes.
Q Did that -- during that conversation did Mr. Schwartz definitively state that he believed that Sidley's representation of Boy Scouts was a conflict?
A No. No. It was cast in terms of potential need to consider it. It wasn't flat out you're conflicted period. It was cast at that time and forward for the next few months as we need information to make a determination.
Q Okay. And how did you leave things at the end of that call?
A Well he told me he was going to send me an email, and I said I'll wait for it, and I got it, and I would notify the other people in my firm about this. And then it was basically follow what they instructed me to do.
Q Okay. And let me ask you, if you could, to turn to Sneed Exhibit 7 which, for the record, is Docket Number 532-7.
A Yes, I have it.
Q And this is another email string, Mr. Sneed, so let's see I can get this right this time.
Looking at the first email in sequence which is at the end of the chain; do you see that?
A Yes.

Q And that's an email from Mr. Schwartz to you on October 29th at 5:48 p.m., do you see that?
A Yes.
Q And is this the email that you were just describing that was sent to you after the conversation that you had?
A It was.
Q Now after you had this discussion with Mr. Schwartz on October 29th, who did you understand was going to be taking sort of the primary responsibility for addressing with Century its issues about Sidley's representation of the Boy Scouts?
A The restructuring lawyers at our firm involved with Boy Scouts were going to take the lead on that.
Q And when was the next time that you spoke with Century about this issue?
A December 18 of 2019.
Q Okay. And did you initiate that call?
A I asked for it, yes.
Q And what was the purpose of you initiating that call?
A The purpose was to try to make progress. Following October 29 there had been exchanges between Chubb and Century representatives and folks from my firm. I was copied on them. I wasn't really corresponding.
They were -- they struck me as unproductive posturing and bickering. And I wanted to tell Josh, and Christie

Russell was also on the call, that we needed to get past this. We needed to resolve this. We needed to meet and get past posturing and have a discussion about the true concerns and that was the purpose for my call.

Q And, Mr. Sneed, I'm sure that you're aware, at this point, that Century has accused you of threatening and bullying them on that call in December; are you aware of that?

A I'm aware.

Q And is that accurate?

A No, it is not.

Q Did you ever threaten Century?

A No. What I did, the call at the start, said I've seen these exchanges. They're not productive. We want to continue to do this reinsurance work for you, but it's not going to be possible if this letter writing contest and accusations keep coming back and forth. We need to get past it.

Our firm's view, our representation of Boy Scouts and the restructuring was not a conflict, vis-à-vis Chubb. We weren't going to withdraw from representing them. We wanted to continue to represent Century in the reinsurance matters they entrusted to us. But I wasn't going to keep getting letters and emails and bickering from my own client.

I wanted this worked out. I wanted a call of the more

senior people instead of the lawyers. You know I used the word posturing and I used this during the call and it antagonized them, but I wanted to get past the posturing.

Q And, Mr. Sneed, how were things at the conclusion of that call?

A Well at the conclusion of the call, I thought there was a good chance we were going to have this conference I asked for, you know, among the senior people. Christie and Josh said they would consider it. And they said, you know, we have multiple constituencies here. We might not get back to you right away, but we'll get back to you. So, I was hopeful that maybe we would get beyond letter writing and into a discussion about what to do.

Q And after this telephone conversation what was the next communication that you received from Century?

A I was copied on a letter emailed to our firm on January 3 of 2020, a Friday.

Q Okay. Let me ask you then to take a look at -- do you have Mr. Schwartz's declaration in front of you?

A I have it.

Q Okay. And just so the record is clear, this is the Schwartz declaration with the exhibits that the parties have agreed to concerning redactions and confidentialities, is that the version you have in front of you?

A I have a redacted version.

Q Okay. And it should be Docket Number 539, is that correct?
A Correct.
Q Okay. Let me ask you to turn to Exhibit 5 which is at page 47.
A Yes. I have it.
Q Okay. Is that the letter you were just talking about?
A Yes.
Q Okay. And if I could just direct your attention to the second paragraph there in the middle, do you see where it says, "we are unable to rule out that your firm's representation of Boy Scouts," do you see that?
A I see it, the fourth line.
Q And was it your understanding that --
MR. SCHIAVONI: Excuse me; Your Honor. And this Tancred Schiavoni. If I might just ask Mr. Ducayet if he could just give us the exhibit number for the Schwartz --
MR. DUCAYET: Yeah. It's Exhibit 5. And I'll wait, Mr. Schiavoni, until you have that in front of you.
MR. SCHIAVONI: That's fine. Thank you very much.
MR. DUCAYET: Okay. Thank you.
BY MR. DUCAYET:
Q So, Mr. Sneed, the second paragraph says,
"We're unable to rule out that your firm's representation of Boy Scouts of America constitutes the

conflict, the potential conflict of interest with the duties that Sidley owes to the Chubb Companies."

Do you see that?

A I see that.

Q Were you surprised that Century was still taking the position even in early January that it wasn't sure if there was a conflict or not?

A Well that was how they had -- that was how they had put it. And the narrative from October of 2019 forward that we can't rule this out. And I did think after a few months of exchanges and thinking about it they should have been beyond, you know, wondering whether there was a conflict or not.

Q Well, let me just ask you this, Mr. Sneed. You're aware of the fact that in the papers that have been filed in response to our application motion that Century has characterized this as a textbook violation of the ethics rules, are you aware of that?

A I am aware.

Q Is that consistent with any of the positions that they articulated to you over the course of beginning in late October through to the beginning of January?

A No, the position as outlined, as you can see from the exhibits, is we need information to make a determination.

Q So as a result of this letter, what happens with respect to the relationship between Sidley and Century?

A Well, in my view, this was most inflammatory of the exchanges since October when I asked that we get past letter writing. This was more of the same and worse. They called our behavior shocking and offensive. In my view, we weren't going to go on representing them.

Q And so was there a decision made to withdraw from the representation?

A Yes.

Q Was that communicated to Century?

A Yes, I sent them a letter.

Q Okay. Let me ask you to turn back to your declaration Exhibit 9.

MR. DUCAYET: And just so the record is clear, this also is an exhibit to Mr. Schwartz's declaration. It's Sneed Exhibit 9 ECF532-9.

BY MR. DUCAYET:

A I have it.

Q And is that the letter that you sent to Century and Chubb giving notice of the firm's withdrawal?

A Yes.

Q Okay. And in your view was there any ambiguity expressed in this letter about whether or not Sidley was prepared to continue to represent Century?

A No. The point of the letter was to tell them we were going to withdraw and here's how we are going to do it and

outlining a timeframe for it.
Q And did Century respond to this?
A I believe they did a couple weeks later.
Q So two weeks later they gave you a response to this?
A I believe it was still in January, yeah, yes.
Q Okay. Now, again, in connection with the papers that had been filed in this matter, there's been some suggestion that the timing of the withdrawal is relevant in that various administrative or ministerial staff necessary to accomplish that withdraw had not been accomplished by the time the petition was filed; are you aware of that?
A I'm aware of that claim.
Q And from your perspective do you think that there was any doubt that as of January 16th that the attorney/client relationship had but for the ministerial or administrative things necessary had terminated?
A No doubt. That was the point of my letter.
Q Okay. Let me ask you, you mentioned earlier about the service level agreement and let me just ask you, if I could, to take a look at the service level agreement itself which is Exhibit 1 to Mr. Schwartz's declaration.
A I have it.
Q Okay. And if you look at the cover page of that, you see it?
A You got to tell me what you mean?

Q Yeah, sorry. Let me give you a specific page reference. Let me ask you to turn to page 2 which is in the Docket Number -- it's Docket 539 page 13 of 83; you see that?
A Yes, I have that.
Q Okay. And what's the title at the top of that?
A Service level agreement for the petition of non-claims legal services.
Q Okay. And are you aware of the fact that non-claims legal services is a defined term?
A I am aware.
Q And if I could ask you to turn to page 4, please?
A I have it.
Q And can you read for the record the definition of non-claims services?
A "Non-claim services are services performed by the law firm for a client that are unrelated to the defense of an insurance claim or related insurance coverage clam."
Q Okay. And let me just ask you this question, Mr. Sneed. Is that description of non-claims services consistent with the scope of the work that you actually did in this matter?
A Yes. Absolutely.
MR. DUCAYET: Okay. I don't have any further questions. I tender the witness.
THE COURT: Thank you.

Cross, Mr. Schiavoni.

MR. SCHIAVONI: Well, Your Honor, this is Tancred Schiavoni, may I proceed?

THE COURT: You may.

THE WITNESS: Your Honor, William Sneed. Can I get a glass of water before?

THE COURT: Yes.

THE WITNESS: I'll be back in one minute.

THE COURT: Yes, well why don't we take five minutes and then Mr. Schiavoni, you can proceed.

THE COURT: Thank you.

(Recess at 11:34 a.m.)

(Telephonic Proceedings resume at 11:41 a.m.)

THE COURT: Mr. Schiavoni.

MR. SCHIAVONI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCHIAVONI:

Q Mr. Sneed, this is Tancred Schiavoni from Century. I'm going to ask you some questions. It is not my intention that you reveal any attorney/client communications that you have as Chubb's lawyer. And I would ask you if you think a question I ask you requires you to disclose such information, if you could tell us that first before you go ahead and do so. Can we have an agreement on that?

A Yes.

Q Okay. Does Sidley have a policy or practice of running conflict searches before taking on a new matter for an existing client?
A Yes.
Q Did you run a conflict search before taking on for Chubb new matters concerning reinsurance disputes for the Boy Scouts, related to the Boy Scouts?
A I did that twice.
Q And when did you do it for the first time?
A September or October of 2018 respecting Lloyd's.
Q And when did you do it the second time?
A July 2019 respecting the other reinsurer.
Q And what were the entities for which you ran conflict searches for, the names? I don't want you to reveal the names of the reinsured parties of the reinsurers.
A The reinsurers.
Q Okay. Did you run as part of your search, did you run a search for Boy Scouts?
A I did not.
Q Does Sidley's conflict mechanism, does it allow for the designation of a party in connection with a conflict search as a related party to a matter?
A Yes.
Q At what -- so did -- all right, so it's fair to say that when you open the matter you hadn't run a search for Boy

Scouts?
A Correct.
Q When you were asked to take on by Chubb the reinsurance matters concerning Boy Scouts the September time period time period of 2018, did you tell Chubb that Sidley represented what was anticipating taking on Boy Scouts as a client?
A No. Let me just say something about your question and I might have misheard it. But the request to me in September or October of 2018 could we take on a reinsurance matter adverse to Lloyd's. It wasn't specific about Boy Scouts. And the next question you had was did I tell them whether I had -- I'm sorry; could you re-ask the second one?
Q Sure. At some point you learned before opening a matter for Chubb that Boy Scouts was involved in that matter, isn't that right?
A I wouldn't put it that way. I did learn the underlying insurer with Boy Scouts.
Q Who among your partners in 2018 did you speak to about the Boy Scouts' matter, Sidley's representation of the Boy Scouts?
A At any time in 2018?
Q Yeah when was the first time you spoke to your partners about Sidley representing the Boy Scouts?
A It was around December 12 or 13 of 2018.
Q And who did you speak to?

A Jim Conlan.
Q And who else did you speak to?
A I spoke to -- they might not have been partners. I spoke to people in the OGC, the office of general counsels, office of general counsel group at our firm.
Q Okay. Does Mr. Conlan have a sort of management position within Sidley's? Is he on the executive committee, the policy committee or any other management committee's?
A I think he's probably on the executive committee, but not the management committee. I can't always keep those straight, but I think he would be on the executive committee.
Q And is that an important committee within Sidley?
A Oh, sure.
Q Did Mr. Conlan is he the originating partner for the Boy Scouts' representation?
A I don't know.
Q Is he involved in the Boy Scouts' representation?
A I assume he is.
Q Well why did you speak to him?
A There was the email from Josh about the *Wall Street Journal* article and I needed information. And Jim is the fellow I think of as the restructuring partner.
Q When you spoke -- if we could just go to Sneed Exhibit Number 5. Mr. Stamoulis, if you could pull that up for us.
A Yes.

Q And, Mr. Sneed, I'd like you to go to the email you sent Mr. Schwartz on December 13th, 2018.
A Yes.
Q Okay. Do you see this -- is this a true and correct copy of the email you sent Mr. Schwartz on December 13 at 11/01/2018?
A Yes.
Q And this email was sent in response to Mr. Schwartz's passing onto you an article that indicated that an unnamed source had indicated that Sidley might represent the Boy Scouts, is that right?
A I'm sorry. I was trying to get this -- I'm trying to get the screen; it has people instead of the document so I was a little distracted.
Q Mr. Sneed, the email your December --
A Go ahead, go ahead.
Q Your December 13th email you sent to Mr. Schwartz after he passed on a *Wall Street Journal* article to you that named an unnamed source as indicating that Sidley may be representing the Boy Scouts, am I right?
A I'm not sure. Oh, all right. I'm reading the email in the Josh Schwartz. Says, "BSA has retained Sidley." If you look at the article itself, the second paragraph of the article itself says the leaders of the Boy Scouts have hired law firm Sidley according to people familiar with the matter.

Q All right, so the article attributes to an unnamed source the possibility that Sidley represents the Boy Scouts, am I right?
A It says people familiar with the matter have said this.
Q Okay. So Mr. Schwartz passes that article onto you, right? He does it on December 13th, am I right?
A Yes.
Q And then you sent him back this email on December 13th, 2018 at 11:01, responded to his forwarding that article to you, am I right?
A Correct.
Q And your response was I'm in information gathering mode here, re Boy Scouts, right?
A Yes.
Q And what you did in response was, you contacted Jim Conlan who is the originating partner on the Boy Scouts' matter, a member of the executive committee, the head of your bankruptcy group, right?
MR. DUCAYET: Objection to the question as it assumes facts not in evidence; mischaracterizes the (indiscernible).
THE COURT: Sustained. Sustained.
BY MR. SCHIAVONI:
Q I'm sorry, Mr. Sneed; can you answer?
A I thought it was sustained.

Q Oh. Attached to Ms. Boelter's declaration is a copy of the retention agreement between the Boy Scouts and Sidley, are you aware of that?
A No.
Q What did Mr. Conlan tell you about the Boy Scouts' engagement?
MR. DUCAYET: And, Mr. Sneed, before you answer that question, I would just caution you not to reveal the substance of any privilege communications that may have been provided to you by Mr. Conlan but, otherwise, you should go ahead and answer that.
BY MR. SCHIAVONI:
A Jim told me that we couldn't confirm or deny press reports. And that's what I should tell anyone who asked about Boy Scouts and Sidley. And then we talked about the reinsurance matter we had for Century against Lloyd's. And whether we could handle that matter given that Boy Scouts was involved in the sense that the underlying losses had been paid under policies that covered Boy Scouts.
Q Was this the only discussion you had with Mr. Conlan about the Boy Scouts' representation?
A I think it's the only one I had in 2018.
Q When was the next one that you had?
A I think I had at least one since October 29, 2019.
Q Okay. When was the next one?

A The next one was, I think, in early November of 2019.
Q If you go to -- Mr. Stamoulis, if you can pull up Boelter Exhibit 1?
MR. DUCAYET: And, Your Honor, forgive me for interrupting here. I don't mean to impede on Mr. Schiavoni's examination. I think it would be helpful just for the record to clarify whether or not Mr. Sneed has the Boelter declaration in front of him.
MR. SCHIAVONI: We're going to present a copy of it on the system here. There is it. Exhibit 1.
BY MR. SCHIAVONI:
Q Will you go to the last -- this is -- if we go to the last page of it, please? By the way, stop there at the first page.
This is a letter, Mr. Sneed, to the Boy Scouts. That's what's indicated on the front page there, the general counsel. It's dated October 3, 2018.
If you go to the signature page on the last page.
A I see it.
Q Okay. Is that the James Conlan you spoke to in 2018?
A Yes.
Q Okay. And is it anyway refresh your memory that Mr. Conlan was directly involved in the Boy Scouts' representation?
A No.

Q Okay. If you go to page of this --

THE WITNESS: an we stop for a second. I asked the person to show me how to keep the documents from coming on the screen. I prefer to see the people, particularly if I have the document.

Your Honor, could I have this fellow help me for a second?

THE COURT: Yes.

THE WITNESS: Thank you.

(Pause)

BY MR. SCHIAVONI:

Q Well, Mr. Smeltzer if you could go to the attachment, roman numeral III.

A I'm sorry?

Q Yeah, Mr. Sneer, I just asked you to go to the attachment to the engagement letter for the Boy Scouts.

A Yes.

Q Where it says the title, "Publicity."

A Yes.

Q It says here that, "Unless the client --" I'm reading the first line on publicity.

"Unless the client instructs otherwise, Sidley may for conflicts resolution purposes disclose to other clients and potential clients the engagement letters or otherwise that the client is represented by Sidley."

Have I read that correctly?
A Yes.
Q Is that a standard term in Sidley's engagement letter that you're familiar with from other letters?
A No.
Q Oh is this a special term for the Boy Scouts?
A I don't know.
Q So you don't know one way or the other?
A Correct.
Q Okay. Did Mr. Conlan tell you --
A I'm sorry. I'm not recognizing it in anything I've attached to my letters.
Q Okay. Did Mr. Conlan tell you that the Boy Scouts had specifically instructed him or Sidley not to disclose the engagement to Chubb?
A I don't remember him saying that, that there was a specific instruction from Boy Scouts.
Q Why is it that you believe that you were prohibited from conveying to Chubb anything about the Boy Scouts' engagement?
A Well Jim Conlan told me we can't confirm or deny what's in the press report, so that's what I conveyed to Josh in my call.
Q Did there come a time where you sought a waiver from Chubb to take on bankruptcy matters where you would be

adverse to Chubb?

A There were discussing in the first three months of January 2019 about advance waiver which included bankruptcy insolvency.

MR. DUCAYET: And this is Jim Ducayet. I apologize for interrupting. If we could just get back on the screen, take the document down if we're off with that and put the folks back up. Thank you.

MR. SCHIAVONI:

Q Can we just go to Sneed Exhibit 1?

A Blow that up for a second.

Q The first email that appears on Exhibit 1 is an email dated December 7, 2018 from Mr. Schwartz to you, Mr. Sneed. It's sent at 2:08; do you see that?

A This is my Exhibit 1?

Q Yes.

A The top email is December 7 at 2:08, correct.

Q Right. And is this a true and correct copy of that email that was sent to you?

A Yes.

Q And Mr. Schwartz in this email advised you that Chubb is unable to provide you with a written waiver, isn't that right?

A He says, "I am sorry. But we are unable to provide a perspective waiver."

Q Did Sidley or was it Chubb that raised the concept of the waiver after this?
A Sidley.
Q Okay. So you went back -- despite this communication, you went back to Chubb after this and asked again for a waiver, am I right?
A Yes.
Q And how long after this email did you do that?
A It was either later in December or early January of 2019.
Q The discussions that you subsequently had with Chubb over a waiver, did you end up at the end of them withdrawing all requests for a perspective waiver?
A Yes.
Q Did Chubb ever grant you a waiver?
A On what?
Q For anything with respect to the Boy Scouts' matter or for a perspective waiver?
A I (indiscernible) not.
Q Was the relationship that you were engaged with and the work you were doing in December, January, February, March was it pursuant to the SLA, the service level agreement, that you talked about at the end of your direct examination?
A Yes.
Q And, Mr. Sneed, there's no question but that Sidley

acknowledged that agreement and that that's the agreement that controls the relationship?

A Well, it depends on what you mean by that. They issued that to us and we did acknowledge it in 2014 or 2015. And as these later disputes have arisen, that was the one that Century has told us governs.

Q Well you referred to this in your papers and at the end of your testimony, in some way, governing the relationship, am I right or am I wrong?

A I don't know exactly what's said in the papers. But I think my declaration does say this is what Chubb has said governed. You know I don't want to say quibbling with you been on this is that exactly how it governs in terms of going forward. I have, you know, I have my doubts but it is -- we accept that this SLA is the agreement that governed our relationship, vis-à-vis these reinsurance collection matters.

Q All right, so you agree that this SLA governs the reinsurance matters that you handled in 2018, 2019 and 2020 for Chubb, right?

A 2018 and 2019. We withdrew in early 2020.

Q And this is the agreement that governs?

A It's -- yes, this is the SLA. This is the operative SLA.

Q At any point did you convey to Chubb that you didn't think the SLA applied?

A Well depends on which SLA. I mean I asked them in November of 2018 to send through an SLA and this all was sent through, but this is the one they say governs. So, there was a little back and forth on that.

Q But as we stand here today there's no disagreement that this SLA governs the relationship?

A Yes, given some potential disagreement over what that exactly means. Yes, I'm not challenging you on that.

Q All right and one of the things that you knew from your historical dealings with Chubb, as well as your reading of the SLA in 2018 was that Chubb required written waivers in order to memorialize any type of waiver, am I right?

A I think so. I don't have the SLA provision in mind, but that's what I believe.

Q Well, Mr. Sneed, on multiple occasions you went to Chubb, didn't you in 2019 to seek waivers for other matters, not involving the Boy Scouts, am I right?

A Yes.

Q And you were insistent on those occasions that you receive a written letter, providing a written waiver for those other matters, am I right?

A I don't recall what my email said in terms of insisting or not, but we would email them and ask them for a waiver at times, and then they would supply it.

Q Even the occasion where they sent you a waiver letter

and it wasn't signed and you went back to them and said, geez I have to have a signed one, right?

A I remember getting something from them. It wasn't correct. It was miscaptioned and asking it to be corrected.

Q Okay. But there's no question here, Mr. Sneed, but that you had the SLA, you were familiar with its terms, and you knew those terms required Sidley to obtain written waivers for any -- to memorialize any type of conflict waiver, right?

A I think that's right. That if there was a conflict and we wanted a waiver, we had to communicate with them and they would communicate back and it was, I believe the SLA probably says in writing.

Q Okay. Now when you went to Chubb to try to get, to renew the discussion of a waiver in 2020, who was it internally at Sidley that asked you to do so?

A Yvette Ostolaza.

Q If you would go for a moment to -- I'm going to call up an exhibit. I can only display it. Sent it to the court his morning. It's Tab number 30. If you go to the 2/20/19 email, Mr. Stamoulis.

A I'm sorry, Mr. Schiavoni. Could you describe this document a little bit more in detail? I've got the ones that you emailed around but I can't figure out which one is Tab 30.

Q Yeah, it's an email chain on -- you know, containing emails on 2/20 and 2/21 of 2019 between Mr. Schwartz and Mr. Sneed.
A Okay so the top email is 2/21 at 12:42, is that right?
Q Right.
A Okay. Thank you.
Q If you just go down a little bit further, the first one in the chain, Mr. Stamoulis. The one that says from Mr. Sneed, the results -- there it is, right there.
Mr. Sneed, if you look at the email dated February 20, 2019, it was sent at 6:45.
A Yes.
Q Is this a true and correct copy of an email that you sent to Mr. Schwartz at that time?
A Yes.
Q And one of the things you conveyed was that a bankruptcy proceeding is a litigation and that is intended to be encompassed in the waiver, am I right?
A That's what it says.
Q Who was it at Sidley that told you they wanted to get a bankruptcy waiver?
A The discussions I had internal at the firm were there were three prongs to a waiver which we would seek. One (indiscernible), litigation two, transactional three is insolvency restructuring. And we assumed there's be given

take and negotiations with individual clients over the three, but what we wanted to pursue was the three. And then we would see how the negotiation went.

Q Am I right that the form of the waiver you were seeking changed from the first time you asked for it in December to when you later had exchanges in January and March?

A Yes.

Q Did you have -- did the firm have more information about what was going on at the -- you know, with respect to the Boy Scouts' engagement during this time?

A No, that's not why.

Q I didn't ask you why. I just asked whether more information was obtained?

A I'm not sure what you mean.

Q Well in connection with drafting these waivers, did the people involved in drafting the waivers obtain more information about what was going on, on the Boy Scouts' engagement from Mr. Conlan?

A I don't know.

MR. DUCAYET: Objection; foundation.,

BY MR. SCHIAVONI:

A Yeah, I don't know.

Q All right, if we look at the next --

THE COURT: Sorry. Overruled. He's answered. You can go on.

THE WITNESS: Sorry, Your Honor.

THE COURT: It's okay.

BY MR. SCHIAVONI:

Q All right, if you just look at the email a little further down or maybe it's up, December -- oh this is Tab 31; if you pull that one up next.

A Tab 31?

Q Yeah.

MR. SCHIAVONI: Your Honor, if I could just for that email, that exchange that was just up, if I could just offer it into evidence.

THE COURT: Well we haven't yet taken all the documents. That's something I meant to ask all of you about is whether the series of documents are agreed. So, but let me ask if there's any objection?

MR. DUCAYET: Your Honor, Jim Ducayet for Sidley. There's no objection to this document and I don't think there is any objection to any of the documents that are attached to any of the declarations and so maybe if it's just easier as a housekeeping matter just to move those in.

MR. SCHIAVONI: And so, Your Honor, there's not going to be objection to the documents attached to the declaration, to the extent the email we just showed, that email exchange, we'd ask for that to go into evidence since it's not part of the declarations. And then just one other

one I'd like to do the same with.

THE COURT: Okay.

MR. DUCAYET: No objections to those.

THE COURT: Okay. Well then all of the exhibits attached to the declarations are admitted.

(Debtors' Exhibits Attached to Declarations, admitted)

THE COURT: And I will admit this email. I want to make sure I have the right one. I did print them out from this morning.

MR. SCHIAVONI: It's the string that --

THE COURT: The string we were just talking about okay.

MR. SCHIAVONI: Yes.

THE COURT: That's admitted.

(Century's Exhibit, admitted)

MR. SCHIAVONI: All right now if you bring up one other one that's not an exhibit, exhibit to a declaration that's Tab 31 Mr. Stamoulis.

BY MR. SCHIAVONI:

Q And, Mr. Sneed, I want to draw your attention to the email here that you sent to Mr. Schwartz on February 28 at 8:42. Do you see that?

A I do.

Q And that's an email that you did send at that time, right?

A Yes.

MR. SCHIAVONI: We can move this email string into evidence also, Your Honor.

THE COURT: Any objection?

MR. DUCAYET: No objection.

THE COURT: It's admitted.

(Century's Exhibit 2/28 email, admitted)

BY MR. SCHIAVONI:

Q If you go to the end, this is an email string where you're now presenting an alternative form of a perspective waiver, am I right.

A Well it's different than what has been exchanged before.

Q And it's got -- if you go to the last paragraph.

A Yes.

Q And then the last sentence talks about adversity, direct adversity. You see the sentence I'm talking about?

A Yes. The second paragraph or the first paragraph?

Q It's the sentence that starts intended to make clear.

A I can --

Q If you can highlight that.

A Yes, I see it.

Q Okay. And the sentence says, "It's intended to make clear that we," that's a reference to Sidley, right, we?

A Yes.

Q "We may directly adverse to you in a bankruptcy proceeding." I read that correctly so far. It's not the whole sentence, right?
A Yes.
Q Okay. Who was it that provided you wit this text about direct adversity in a bankruptcy?
A I don't remember who in particular. My discussions were percolating up and down with different people. And we were trying to respond to Chubb and the point it had raised.
Q And you go on, Mr. Sneed, in this email, in the form of perspective waiver to describe what cold constitute direct adversity in a bankruptcy, am I right?
A I can read the sentence. It says, "We may be directly adverse to you in a bankruptcy proceeding." And then it said, "Including but not limited to those various things."
Q Okay. And one of the things that you identified that could give rise to direct adversity in a bankruptcy proceeding involving an insurer was objecting, Sidley objecting to insurer's request for relief in a bankruptcy, am I right?
A I'm reading it. I mean it reads; it says what it says. I can read it.
Q Okay. And one of the other things, Mr. Sneed, that you put in this request for a perspective waiver was a statement that Sidley acting to confirm or support a plan over

uninsured's objections, that could also give rise to direct adversity, am I right?

A That's not really what it says, but it's included in the list of, included but not limited to after the first part of that sentence.

Q Okay. Is Sidley's representation of a debtor in confirming or supporting a plan over an insurer's objection something that could give rise to direct adversity?

MR. DUCAYET: I'm going to object to that question as an incomplete hypothetical.

BY MR. SCHIAVONI:

Q Let me withdraw the question and ask it a little bit differently. And I'll add something different.

Another thing you conveyed to Chubb was that it could be direct adversity in Sidley's representation of a debtor in Sidley objecting to or supporting motions or taking other actions over an insurer's objection.

A I don't quite agree with that. And then if you want, I can explain why.

Q Did you convey this from waiver request to Chubb?

A Yes.

Q That's reflected in this exhibit?

A Yes.

Q Did Mr. Schwartz raise concerns with you about Sidley ever being in a position in an adversarial manner where it

was adverse to Chubb?

A Well, I can answer that by reference to one of the exhibits. I mean -- my explanation, if I can give it, is that --

Q Well, first of all can you just answer that question yes or no or not?

A I can't answer it yes or not. It's more complicated than that. There was a particular subset of things that they didn't want to happen. The general representation of a debtor was okay. I wasn't in this email trying to say this is what we all agree to direct adversity. I was trying to spell things out not to define direct adversity, to flush things out given our discussions. They were okay with a whole set of things. There was a subset of things they weren't okay with. And I was trying to hammer that out.

Q Okay. So is one of the subset of things that you were told was that Chubb had -- would not agree to Sidley being involved even indirectly in a bankruptcy in a coverage dispute?

A I'd have to look at the March 4 email that Josh sent me. I don't remember that. I mean we were agreed we weren't going to be representing the coverage order against an insurer. That was a given. But there were three things that came out on their side on what they wanted in this waiver scenario, and I don't remember them off the top of my head,

but I've been shown them this morning.
Q Why don't we go, we're go to your March 4 email. Why don't you go to that? We don't have to call it up on the screen.
A Can you tell me which exhibit that is?
Q That's your exhibit number 2.
A All right.
Q And if you go to paragraph 3 in that exhibit, I'll read it to you. Tell me when you have it in front of you, Mr. Sneed.
A I have it.
Q Okay. It says there, this is from Mr. Schwartz. It is one of the requirements. Sidley would not have any direct or indirect involvement in disputes. Right, I have read that correctly?
A Yes.
Q Okay. And that includes indirect involvement in any coverage disputes, right?
A See after that intro is coverage disputes.
Q Right. And one of the reasons why Sidley was unwilling even to accept this form of waiver was because it was not adequate to give you a waiver in bankruptcy to take on a bankruptcy where the insurance was getting targeted as part of the bankruptcy and impaired by the plan, am I right?
A No, not at all.

Q Am I correct that Sidley didn't accept this form of perspective waiver, right?
A That's correct.
Q And, in fact, there was no agreement on any waiver at all?
A No, the negotiations ended in March without an agreement.
Q There came a point in time where you left Mr. Schwartz a voicemail saying that you had withdrawn all requests for a perspective waiver, right?
A Yes.
Q And no waiver was ever obtained specific to the Boy Scouts, am I right?
A Correct.
Q And throughout the course of these discussions about a perspective waiver, you maintained your position that you couldn't disclose any information whatsoever about representation of the Boy Scouts or whether you did, in fact, represent the Boy Scouts, am I right?
A No, I wouldn't agree with that exactly. I think you're overstating it.
Q Oh, I thought during your direct you acknowledged that you told Mr. Schwartz that you couldn't admit or deny whether or not Sidley represented the Boy Scouts, am I wrong in that, is that what you told them or not?

A I told him I couldn't admit or deny what was in the press report.

Q At any point thereafter before October of 2019, did you provide Mr. Schwartz with any information about the substance of any engagement that Sidley had with the Boy Scouts?

A No, no. The way you asked that, I would say no.

Q Did you Sidley obtain the consent of the Boy Scouts to disclose anything about what its engagement was or the fact that the engagement even existed?

A I don't know.

Q So you talked a little on direct about the work that you did for your client Chubb. One of the things you talked about was the first encounter agreement, am I right?

A You're referring to the declaration?

Q And your direct testimony.

MR. DUCAYET: I'm going to object to that. I actually didn't -- I was quite intentional about not getting into that.

THE WITNESS: I don't remember testifying about that.

BY MR. SCHIAVONI:

Q Can you tell us yes or no whether or not the first encounter agreement that you referred to in your declaration includes a settlement of coverage disputed issues?

A I don't know without having it in front of me. My

recollection of the agreement is that it is an agreement that this is where we'll put the date of loss for a molestation claim that goes on for a period of time.

Q It's not an insurance policy, am I right?

A I'm sorry. I missed the first part.

Q Okay.

A I just didn't hear you right.

Q Okay. Does the FEA embody a settlement of disputed coverage issues; yes or no? If you can't answer, that's fine.

A I don't know. Without looking at it, I don't know.

Q Did you tell Mr. Schwartz repeatedly in 2019 when he asked anything about the Boy Scouts that you had no conflict?

A 2019?

Q Yes.

A The only time he raised it in terms of it's a conflict was from October 29 on or a potential conflict. We had discussed it earlier in 2019 in the first three months, not this is a conflict. But he was acknowledging, I know you represent the Boy Scouts. This is why you're seeking all of this waiver. We didn't talk there about is it a conflict or not. After October 29 we did.

Q You wrote Ms. Russell and Mr. Schwartz that you wanted to deal with management level employees, am I right?

A I wrote?

Q Yes.
A I'm not recalling the writing but if you can show me, I won't disagree, but I'm just not remember a particular writing.
Q Sure. Did you request a management level meeting?
A I recall in December 18 asking that these issues get discussed at a higher level; whether you want to call it management, but that was something I asked for and thought would be productive.
Q Okay. And isn't that what you called it a -- you said that you weren't satisfied with dealing with Ms. Russell and Mr. Schwartz because you wanted to deal with management level people?
A No. That's -- I certainly wouldn't say that. I wanted to get away from litigation lawyers. I wanted to get it to business people.
Q Does Ms. Russell have a business role at Chubb?
A Yes, she does.
Q Is she a senior vice president at Chubb?
A I believe so, but she's reinsurance.
Q She was your client?
A Century is the client. Christie Russell is the senior V.P. of reinsurance. Remember that's (indiscernible) separation. The issues being drenched up about Boy Scouts were coming from the direct side not the reinsurance side. I

wanted someone at that level to be involved, not that Christie couldn't be involved. I wanted to get it up and out of letter writing contest.

Q You were counsel, you know, in January of 2020, you were counsel in more than one arbitration for Chubb, am I right?

A I'm thinking of one and there was another that was tied up in court, whether there would be one or not.

Q And the arbitrators in those matters your name had been disclosed to them and they knew that you were Chubb's counsel, right?

A Well the one didn't have a full set of arbitrators but the one that did, yes.

Q Am I correct that you didn't notify the arbitrators of your withdrawal until after the bankruptcy was filed.

A I don't know exactly when the bankruptcy was filed, but I do remember notifying the arbitrators during the week of February 17th of this year.

MR. SCHIAVONI: Thank you, Your Honor. I have no further questions of Mr. Sneed.

THE COURT: Thank you. Redirect?

MR. DUCAYET: Yes, Your Honor. Jim Ducayet on behalf of Sidley. Just give me a moment to get my screen set up here.

REDIRECT EXAMINATION

BY MR. DUCAYET:

Q Mr. Sneed, I just have a couple of questions for you.

So, first of all, Mr. Schiavoni asked you some questions the very outset of his cross-examination about the process of setting up the matter and the way in which parties were identified in the Sidley system, do you recall that?

A Yes.

Q And he asked you a question about whether you had ever identified Boy Scouts as a related party when you set up the Lloyd's matter, do you recall that?

A I do.

Q Okay. Why didn't you identify Boy Scouts as a related party when you set up the Lloyd's matter?

A You know they weren't -- I go back to the testimony I gave this morning and said I had to repeat, but the representation of an insurer on a reinsurance dispute is not adversity to the policyholder -- different contracts, different agreements. Boy Scouts is not involved in the reinsurance arbitration against Lloyd's and the other. They're not.

Q And so, from your perspective does that mean that Boy Scouts is unrelated as a party to the (indiscernible)?

A Yes.

Q Okay.

A I don't want to prolong this but I've been doing this

for thirty-three years. I've never run a conflict on the underlying insured.

Q Mr. Sneed, let me ask you to turn to, if you have in front of you the Sidley engagement letter that Mr. Schiavoni asked you about -- Exhibit 1 to the Boelter declaration.

A Okay. I have it.

Q Okay. Let me ask you to turn to the page that Mr. Schiavoni asked you about. It's romanette (iii). And for the record, this is ECF Number 500-1 and I'm referring Mr. Sneed to page 8 of 8. Do you have that in front of you?

A I do.

Q Okay. Mr. Schiavoni asked you about the second paragraph in that document which is labeled publicity; see that?

A Yes.

Q And he asked you some questions about the first sentence of that paragraph which said, "Unless the client instructs otherwise, Sidley may for conflicts resolution purposes disclose to other clients and potential clients in engagement letters or otherwise if the client has represented by Sidley."

Did I read that right?

A Yes.

Q Can you read the next sentence, please?

A The next sentence reads,

"Sidley will not, however, disclose that it represents or has represented the client in a particular matter without client consent unless matter has been publicly disclosed such as by a filing with the court or regulatory authority or by the client's issuance of a press release."

Q As of December of 2018, had the fact that Sidley was representing Boy Scouts been disclosed in the filing with the court a regulatory authority?

A My understanding is no.

Q Had it been disclosed through the Boy Scouts' issuance of a press release?

A Same answer; it had not.

Q Do you have any understanding based on this language whether or not under this engagement letter you were authorized to disclose the representation of Boy Scouts to anybody?

A I don't really know, but I had negotiated --

MR. SCHIAVONI: Objection; calls for speculation.

THE WITNESS: Well the answer is no, if you read it.

THE COURT: I'm going to sustain the objection. Go on.

MR. DUCAYET: Okay. And we'll withdraw the question, Your Honor. I'll move on.

BY MR. DUCAYET:

Q If I could ask you, Mr. Sneed, to turn back a couple of pages to romanette (i). This is page 6 of 8; do you see that?
A Yes.
Q The first paragraph there reads, "Limitations on the Scope of the Matter," do you see that?
A I do.
Q Could you just read that into the record, please?
A "Unless otherwise agreed by Sidley in writing, our engagement in the matter or in any other representation contemplated by this letter will not include (indiscernible) insurance coverage issues.

We will provide advise concerning notification of insurance carriers. It will not be responsible for notifying such carriers or for follow-up communications with the carriers regarding the status of the matter. Period.
Q And, Mr. Sneed, have you seen a provision like this in engagement letters?
A Yes.
Q Is this a typical provision that Sidley puts into its engagement letters?
A Yes.
Q And to your understanding is that consistent with the role that Sidley has, in fact, taken, in connection with its representation of Boy Scouts?

MR. SCHIAVONI: Objection; no foundation. Your Honor, we would ask for the foundation for (indiscernible). In fact, this witness knows about the Boy Scouts' representation, given what he said about (indiscernible). We ask for foundation on this.

THE COURT: Sustained.

BY MR. DUCAYET:

Q Okay. Well let me just ask the question. Do you know, Mr. Sneed, if Sidley has provided advice to Boy Scouts on insurance coverage issues?

A I know of --

MR. SCHIAVONI: Objection; no foundation.

MR. DUCAYET: I'm trying to lay a foundation.

THE COURT: He's asking if he knows. Overruled.

BY MR. DUCAYET:

A I do know.

Q Okay. And what do you know?

A Sidley is not the insurance counsel for Boy Scouts. Haynes and Boone is. Sidley is not offering advice about the insurance. There is a separate set of lawyers who handle the insurance coverage disputes. It's not our firm.

Q All right. And, Mr. Sneed, let me just ask you a couple questions about the discussions in early 2019 about an advance waiver.

I think you testified in response to one of Mr.

Schiavoni's questions that in the course of those discussions that Century/Chubb had agreed that as a general proposition representing a debtor would be acceptable. And if the dispute was over specific categories of things that Sidley would not be able to do, is that fair?

A Yes.

Q And with respect to the documents that were shown to you, you were shown an email in which there was a statement that included sort of a parenthetical thing. We won't be directly averse to you and then parentheticals about the kinds of things you wouldn't be doing. Is that correct?

A That was 30 or 31.

Q Yep. And taking a look at Exhibit 2 to your declaration that's the March 4th email? Do you have that in front of you?

A Yes.

Q Were these categories of information consistent with what you just described? These are the things, the particular categories of activity that Chubb indicated to you would need to be carved out.

A Yes.

Q And was this email after the earlier email that was exhibit or Tab 30 or 31?

A It was. It's a subsequent.

Q Okay. And was this sort of the final word on the

matter, if you will?
A I think there were no further exchanges after this on the language.
Q Okay.
MR. DUCAYET: All right, I have nothing further.
MR. SCHIAVONI: Your Honor, if I could just have two minutes here.

RECROSS-EXAMINATION

BY MR. SCHIAVONI:
Q The final word on the matter -- this is Tancred Schiavoni -- Mr. Sneed, was that Sidley withdrew the request for perspective waiver and none was granted, isn't that right?
A Yes, I think we've gone over this. I told Josh we were not pursuing this anymore.
Q All right. And a moment ago, you offered testimony about the scope nature of Sidley's bankruptcy engagement. Do you remember just generally that question and answer?
A Just like five minutes ago?
Q Yes.
A Yes.
Q Okay. What is the foundation, how do you know about what the scope and nature is of Sidley's bankruptcy engagement for the Boy Scouts?
A Reading the papers in this, you know, before this

hearing; reading the papers that had been filed about this.
Q Okay. So you weren't testifying based on your personal knowledge. You're saying that you read -- if you didn't read Mrs. Boelter's declaration you indicated earlier, right?
A Whose?
Q Janine. I asked you earlier today about your bankruptcy partner's declaration and you indicated you haven't read that, right?
A Well, no. I hadn't read all the exhibits to every declaration. I read the objection and the reply. I also know that our firm doesn't sue insurance companies about coverage. They don't
Q Have you spoken to any of the bankruptcy partners that have worked on the Boy Scouts' matter?
A Well after October 29, 2019, a call with Josh when things started to proceed after that, I remember speaking with some of the bankruptcy lawyers.
Q And who did you speak to?
A I remember Jim Conlan and a couple of others whose name escape me right now. It was about a mediation whether it was going to go or not because of the Century objection. And I think it was in November of 2019.
Q Okay. Did you speak to Mike Andolina, one of the Sidley bankruptcy partners then?
A I don't remember speaking with Mike Andolina. It's

possible, but I just don't remember that.
Q So I have this right that in October you spoke to Mr. Conlan who signed the engagement letter for the Boy Scouts and you spoke to other bankruptcy partners about the Boy Scouts matter?
A No, you don't have it right.
Q Oka. "Did you speak to any of the -- to Mr. Conlan or any of the bankruptcy partners or associates working on the Boy Scouts' matter after that mediation which was on November 4 and 5 of November of 2019?
A No.
Q Did you tell Mr. Conlan anything about the representation of Chubb?
A I think I missed the first part of that question. It was a little muffled. Can you repeat it?
Q Sure. What did you talk to Mr. Conlan about in connection with the mediation that was going forward?
A Mr. Conlan just called to tell me that someone was refusing to mediate because of this and he wanted to let me know that and that was about it.
Q And what did you tell him?
A I don't remember besides noted.
Q You don't remember?
A I don't remember anything beyond that.
Q Thank you, Mr. Sneed.

THE COURT: Okay.

MR. SCHIAVONI: Nothing further, Your Honor.

THE COURT: Thank you. Okay. Mr. Sneed's testimony is concluded.

MR. DUCAYET: Your Honor, if I could just make one point very quickly. I would like to reserve the possibility of providing any testimony in rebuttal to anything that's offered by Century including through additional testimony of Mr. Sneed but, otherwise, we're content to take him off the stand.

THE COURT: Okay.

THE WITNESS: All right, I can depart, Your Honor?

THE COURT: As far as I'm concerned, you are excused. Thank you.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Okay. Mr. Ducayet, what's the next -- who's the next witness?

MR. DUCAYET: Your Honor, at this point, we would proffer the declaration of my bankruptcy partner, Jessica Boelter into evidence.

THE COURT: Okay. Mr. Schiavoni, I assume that that's acceptable, subject to cross?

MR. SCHIAVONI: Yes, Your Honor. We'd like to cross.

THE COURT: You intend to cross. How long do you think the cross will be?

MR. SCHIAVONI: We'll be very efficient, Your Honor; fifteen minutes maybe, twenty minutes.

THE COURT: Okay. Then let's go forward with Ms. Boelter's cross-examination.

Ms. Boelter, can you raise your right hand, please.

JESSICA BOELTER, WITNESS, SWORN

THE COURT: And can you please state your full name and spell your last name for the record?

THE WITNESS: Yes. My full name is Jessica Carey Knowles Boelter. And my last name is spelled, B- as in boy O-E-L-T as in Thomas -E-R.

THE COURT: Thank you. Mr. Schiavoni.

CROSS-EXAMINATION

BY MR. SCHIAVONI:

Q Hi, Ms. Boelter, this is Tancred Schiavoni for Century. In your declaration, you refer to yourself as the head of the team on the restructuring, am I right?

A That's correct.

Q And as head of the restructuring team, can you tell us whether you ran a conflict search when you opened up the Boy Scouts' matter?

A I'm actually currently the head of the restructuring

team. I was not involved in the running of conflict searches when this matter was opened.

Q Who was in charge of the Boy Scouts -- well, let me ask you. When did you become in charge?

A I would say it was late 2019, early 2020.

Q Who was in charge before you?

A Jim Conlan.

Q And can you tell us do you know what conflict searches were run before 2019 for the Boy Scouts' matter?

A I do not know.

Q Did the Boy Scouts instruct Sidley not to tell Chubb that Sidley had been retained?

A We were instructed to maintain the confidentiality of the engagement. The instruction was not specific with respect to any particular party.

Q When did you first receive that instruction?

A At the time we were engaged in late September, early October of 2018.

Q Okay. And how do you know that, Ms. Boelter?'

A How do I know that instruction was received?

Q Yes.

A I was involved in the matter at that time and was the recipient, among others on our team, of that instruction.

Q Okay. To the extent you were involved, were you involved in any way in helping identify entities to run a

conflict search at that time?
A I was not.
Q Do you know who did that?
A I do not know.
Q Did you later run a conflict search?
A In connection with our retention application our team of associates ran conflict searches on a number of parties. Those parties are listed on the attachment to my original declaration.
Q Okay. And did you run one for Chubb?
A Century and Chubb are included on that list.
Q Okay. And why was it that you ran a conflict search for Century, Chubb?
A As I mentioned in connection with our retention application, we were -- are required to disclose our connections to parties in interest. The list that was prepared included Chubb and Century.
Q Do you know if anyone ever went to the Boy Scouts and asked them for their consent to advise Chubb that Sidley was representing them?
A I'm not aware.
Q There was a meeting in October, on October 14th of 2019 that you refer to you in your declaration, am I right?
A Yes.
Q Okay. And Chubb was invited to that meeting, right?

A Yes.

Q In advance of that meeting what did you do to confirm that the Boy Scouts didn't have any objection to Chubb being invited and being told that Sidley, in connection with that meeting, was representing them?

A I'm not sure that I understand the question. The Boy Scouts were present at the October 14th meeting. Our general counsel was there, as well as coverage counsel and national coordination counsel on abuse claims.

Q Okay. My question is this, Ms. Boelter, if I got this right the view was that somehow confidentiality of the Boy Scouts would be violated if Chubb was told that Sidley represented them in December, January, February, March et cetera, right?

A I don't have personal knowledge of that. I'm told that Mr. Sneed or I just heard from Mr. Sneed's testimony that he did not tell them. But yes, my specific instruction in late 2018 and 2019 was that we were not to disclose the engagement without the consent of the Boy Scouts.

Q Okay. So what did you do to get the consent of the Boy Scouts before inviting Chubb to the meeting on October 14 where you'd be present?

A Well, again, the Boy Scouts were integrally involved in scheduling that meeting. They attended the meeting. They were aware of the meeting and they certainly knew that they were

attending that meeting with their restructuring counsel, as well as their other lawyers.

Q Is it fair to say you didn't, you can't identify anything you did to ask for that consent or any need to sort of seek it for that meeting?

A Well, we had several conversations leading up to that meeting and many other meetings at that point, so I guess we had consent if that's what you mean.

Q In 2019, before the bankruptcy was filed, is one of the things you did was to interview and select someone to represent future claimants against the Boy Scouts?

A No.

Q Did you interview candidates to serve as a future claim's representative?

A No.

Q Who did?

A Candidates were not interviewed in connection with the future claimant's representative process.

Q One of the things in your declaration, I believe, is a statement that you've leveraged your experience to bring about a variety of results including obtaining a futures claimant representative --

A Yes.

Q Does that generally -- so what did you do to aid in the selection of a future claimant's representative?

A Without going into privileged information, we obviously, and I think we said this previously publicly considered multiple candidates, ultimately selected Mr. Patton as the best possible candidate for purposes of this position.

Q Okay. Did you speak with or meet with Mr. Patton before he was selected?

A I don't recall.

Q Did anyone on your team?

A I don't know.

Q Is one of the things that you did was agree on behalf of the Boy Scouts to fund Mr. Gilbert as Mr. Patton's counsel in 2019?

A No.

Q Did you have to, Ms. Boelter, negotiate any type of agreement with Mr. Patton in order to finance his activities in 2019?

A There is an engagement letter between the Boy Scouts of America and Mr. Patton.

Q And who negotiated that?

A I don't know for certain.

Q You weren't in any involved in that?

A I think Mr. Conlan handled that as well as one of my other partners.

Q In connection with -- there was a mediation on November

4, am I right?
A Yes.
Q In advance of that mediation Chubb conveyed to you their concern about the concurrent representation of both the Boy Scouts and Chubb, am I right?
A Chubb conveyed to us their concerns, yes.
Q And they told you that they didn't consent to the concurrent representation, right?
A I would have to go back and read the email that was sent to us by Mr., I think Mr. Celentano sent it. It's attached to my declaration.
Q Did you reveal Mr. Celentano's declaration this morning?
A As I understand it, it was filed late yesterday. I've had the chance to review it briefly on my computer screen.
Q Okay. And he refers in that declaration to an email that you sent him concerning the mediation, am I right?
A That's right. So we, as I refer to in my declaration, we had a very early meeting with yourself, as well as representatives from Chubb on that Monday which I believe the date was November 4th. We all agreed that we would move forward with the mediation provided that Chubb was reserving all rights. And I believe the email that you're referring to was memorializing that agreement.
Q It's an email from you expressly agreeing on behalf of

Sidley that Chubb's rights and objections to Sidley's concurrent representation were preserved, right?

A Again, I'd like to go back and read the email before characterizing. As a general matter, my recollection of the email is that it reserves Chubb's rights with respect to the engagement.

Q And Sidley agreed to that, right?

A We, Sidley -- I sent that email on behalf of Sidley.

Q And all I'm getting is that Sidley agreed that Chubb's rights were reserved, right?

A Sidley agreed to the terms of that email. Again, I would like to go back and read the email before testifying as to what it says.

Q All right, do you have Mr. Celentano's declaration there?

A I do not. I don't have printing capabilities here and it was filed yesterday, so I can go on my other computer and pull it up.

Q All right, Mr. Stamoulis why don't we pull it up for a second, if you could? Pull up the Exhibit 1 to Celentano's declaration.

MR. STAMOULIS: This is Stan Stamoulis, just bear with me for one second.

BY MR. SCHIAVONI:

A And I've actually found the declaration on my computer,

so if you'd like I can just look at directly from here.
Q Why don't you look at it and Mr. Stamoulis will continue to try to find it here for a second, but why don't you just read it for a moment.
There we have it. So, Ms. Boelter, we have on the screen Celentano Exhibit 1 which is an email from you to Mr. Celentano dated November 4 2019. And is that an email you sent at that time?
A It is.
Q Okay. And am I correct that you agreed on behalf of the Boy Scouts and Sidley, you acknowledged and agreed that Chubb's continued presence at that mediation on the 4th and 5th would not constitute a waiver of Chubb's argument that Sidley was conflicted?
A That is what the first sentence says, yes.
Q Well, is that true?
A Yeah. We, on behalf of ourselves and our client, acknowledged that Chubb's participation in the mediation would not constitute a waiver of this issue.
Q Is there any reason that you didn't -- well, strike that.
Why is it that you didn't disclose this email and this agreement as part of the declaration that you submitted?
A My read of this email is that it's a reservation of rights by all sides and, in fact, I did disclose this and we

disclosed it in our reply. If you'd like, I can point you to the specific spot in my declaration where we note that -- here, I can find it right now.

Q Well, I can take you to it.

What you disclosed was that Chubb reserved its rights, but you didn't disclose that the Boy Scouts and Sidley had agreed to that reservation, right?

A You're right. Paragraph 17 says, "Century agreed to participate in the mediation without waiving its rights."

Q Okay. Now, am I correct that the people who were invited at Chubb to attend the meeting on October 14th, and then there were two calls thereafter, those were people on the claims side. They were claims handlers for Chubb; am I right?

A That's my understanding.

Q Okay. And you listened in on Mr. Sneed's testimony, right?

A I did.

Q Okay. And one of the things that Mr. Sneed talked about was how the claims people are sort of separate from the reinsurance people, right.

Do you remember that testimony?

A I do.

Q And the Sidley representation here was on the reinsurance side, right?

A There were two, so (indiscernible) correct.
Q Okay.
A Correct. Sidley represented Chubb or Century on the reinsurance side.
Q Okay. Now, Ms. Boelter, I don't think this is a controversial point, but I mean, it just should be clear, right, that at no point during the meeting on October 14 were the two subsequent calls that you refer to in your declaration to either you or Mr. Andolina or anyone else on behalf of Sidley, tell the claims people who were there that, Hey, we just want to let you know that we also represent Chubb on the reinsurance side, right?
A That's correct. I don't think the team was aware of the engagement, as I indicated in my declaration.
Q Okay. So, it's fair to say there was no disclosure to these, but Chubb people on the claims side who came to these meetings, there was no disclosure to them by Sidley that, Hey, you know, like, we -- Sidley represents Chubb at the same time, right. They didn't know that when they came.
A I don't know whether they knew it, but I can affirm your statement that there was not a disclosure at those meetings of the reinsurance engagement.
Q Okay. Now, you also refer in your declaration to somebody from the claims side coming to Chicago a week after the October 14 meeting and meeting with underlying defense

counsel for the Boy Scouts.

Do you -- am I correct?

A So, the week after October 14th, there was a meeting at Sidley's offices not involving Sidley lawyers, between individuals from Ogletree, which is national defense coordinating counsel, and individuals from Century or Chubb.

Q Okay. The Chubb person went to that was Shelly Williams, who's the claims handler involved in handling the Chubb's role in connection with the underlying defense; am I right?

A I'll take your word for it. I don't know, specifically, what her role is.

Q Okay. And --

A If you tell me that's true, I will take that.

Q All right. Well, my point is simply that there was no disclosure to her when she came to Chicago, either, that Sidley was representing Chubb, right? She's on the claims side, she comes to Chicago to talk about the underlying defense. Nobody disclosed, from Sidley, to her, their engagement, right?

A Not to my knowledge.

Q Okay. And when she was there to talk with -- the counterparty for the Boy Scouts who was there, he was the national defense counsel in the underlying cases, right?

A I believe Bruce Griggs from Ogletree was present at

that meeting.
Q Okay. And --
A He was national defense counsel.
Q And he is not a bankruptcy lawyer, right?
A That's correct.
Q All right. And one of the things that came up at the October 14th meeting was Chubb was complaining it didn't necessarily have up-to-date claims information about the claims in the tort system, right?
A I don't recall that, specifically. That may have happened, but I don't recall.
Q Okay. Is what -- Ms. Williams traveled to Chicago the following week to meet with national defense counsel in the underlying cases was to talk about and try to get information about the -- like, the current information on the tort claims; am I right?
A Yeah. My understanding of that meeting was they were going to sit down and talk about pending claims.
Q Exactly. All right.
They weren't there to talk about negotiating or drafting terms of a plan, right?
A Not to my knowledge, no.
Q And they weren't there to talk about drafting trust-distribution procedures or any exhibits to them, right?
A Not to my knowledge, no.

Q Okay. And they weren't drafting a claims matrix either, right?
A There was a claims matrix that had been circulated to Chubb, I believe, by coverage counsel in advance of the October 14th meeting. I think that was reviewed at the meeting that was at Sidley's offices, but, again, I was not present at the meeting that you were referring to, so I'm not sure if they discussed it or not.
Q Because the information you had was that they were to talk about the claims, right?
A In light of the claims matrix. So, there was a discussion at the October 14th meeting about a claims matrix that had been circulated to Chubb in advance of that meeting by Haynes & Boone, which is Boy Scouts' coverage counsel. My understanding was the claims were then to be discussed by national coordinating counsel, as well as Chubb, to help Chubb better understand, I believe, that proposed claims matrix.
Q Right. So, they were there, Ms. Williams was there in Chicago with the national underlying defense counsel to talk about the claims information, right?
A In light of the proposed claims matrix, yes.
Q Okay. But just to be clear, when you signed -- when you submitted this declaration, what you chose to put in was that they were there to talk about the matrix.

You didn't put in that they were there to talk about the claims in light of the matrix, right?
A I'd have to refer to my declaration.
Q Why don't you do that.
A Right. I say in Paragraph 14:
"The following week, Sidley hosted additional meetings at its Chicago office, although, Sidley attorneys did not attend, which involved the representative of Century and Chubb, as well as attorneys from Ogletree Deakins, regarding a proposed claims matrix."
Q Right. They weren't there to discuss terms of a bankruptcy plan. They were there to just discuss the specifics of the tort claims, right?
A I agree. They were not there to discuss the terms of a proposed bankruptcy plan.
Q And the whole sort of point of your declaration is to sort of convey that Chubb came to these meetings knowing that Sidley represented Chubb and they didn't object, right?
A No.
Q You're not -- that's not the point of your declaration?
A No.
Q Okay. All right.
Well, then there's not really much disagreement about it, then.
Thank you, Ms. Boelter. I very much appreciate your

answering my questions.

THE COURT: Thank you. Any redirect?

MR. DUCAYET: Yes, Your Honor, and I'll be brief.

REDIRECT EXAMINATION

BY MR. DUCAYET:

Q Ms. Boelter, could I ask you to take a look at that Celentano declaration again.

A Yeah, one moment. I just need to pull it up on my iPad.

I have the declaration and the exhibits.

Q Okay. Let me ask you to turn to Paragraph 18, please.

A One moment. Yes, I've got it.

Q Okay. And Mr. Schiavoni asked you a number of questions regarding what was and what was not discussed during that October 14th, 2019, meeting.

Do you recall that?

A Yes.

Q And if you could look at Paragraph 18 and, in particular, let me just read to you the second sentence of Paragraph 18. Actually, let me read the whole paragraph.

THE COURT: Excuse me, Mr. Ducayet.

Will everyone please make certain that when you're not speaking, you're muted. I'm getting someone's typing.

Thank you. Go ahead.

BY MR. DUCAYET:

Q Yes. Paragraph 18 of Mr. Celentano's declaration reads as follows:

"The role that Ms. Boelter acknowledges that Sidley has taken in her declaration puts Sidley at the opposite side of the table in negotiating with Chubb over the term of a plan and prosecuting confirmation of a plan. I saw this at the meeting on October 14th, 2019, where Ms. Boelter and Mr. Andolina of Sidley led the discussion, presented Chubb with plan terms implicating Chubb's rights, pressed that those terms be offered to the tort claimants and then did so over our objection."

Do you see that?

A I do.

Q Is that an accurate characterization of what happened at the October 14th, 2019, meeting?

A Not at all.

Q What happened in that meeting?

A Sure. So, as I mentioned, prior to that meeting, Haynes & Boone had circulated a claims matrix to Century. That matrix was not part of a plan of reorganization; rather, it was intended to be a measurement by which we could approach the mediation with the plaintiffs on November 4th and 5th.

At the meeting on the 14th, we, on the restructuring side, conveyed to Chubb that the Boy Scouts was looking for a

global resolution of abuse liability. That in consideration of that, we had a desire to organize a global mediation particularly aimed towards current claimants, that in furtherance of that, after working with Ogletree, Boy Scouts had devised a claims matrix that they wanted to share with the plaintiffs and asked Chubb for its feedback with respect to that matrix.

We did not have a proposed plan. There was not a plan that was drafted. Plan terms were not presented to Chubb. We merely described the process that we were going to, and, in fact, we were hoping to reach some sort of pre-packaged or pre-negotiated agreement with all parties and simply suggested to Chubb that we wanted to partner with them in furtherance of that objective.

Q Okay.

MR. DUCAYET: Thank you, Ms. Boelter. I have nothing further.

RECROSS-EXAMINATION

BY MR. SCHIAVONI:

Q Well, I -- this is Mr. Schiavoni -- I do have a few questions.

Ms. Boelter, you told us that you were negotiating a pre-packaged plan. You weren't negotiating an agreement. You were negotiating a pre-packaged bankruptcy plan, right?

A That was the objective. We were not yet in

negotiations.
Q And when you brought up --
A (Indiscernible) the first step.
Q Okay. And when you brought up this matrix, you actually made clear that the matrix, itself, was drawn by Sidley from a (indiscernible) from another bankruptcy, right?
A I don't recall that.
Q Okay. Well, who on your team prepared the matrix?
A I believe it was a joint effort between the Ogletree team that spent extensive time walking through sort of the injury types and values that were assigned to those injuries, and then there were members of our litigation team that provided support for that.
Q And the matrix was intended to be put into the trust-distribution procedures; am I right?
A If it were ultimately agreed to, the matrix -- and that's pretty typical -- it does find its way into trust-distribution procedures.
Q And you told us at that meeting that you had interviewed candidates to serve as a futures claimant representative, didn't you?
A I don't believe we said that.
Q Well, what did you say about a future claimants representative at that meeting?
A I don't recall specifically what we said.

Q Well, do you recall anything?
A I recall that we had disclosed that in furtherance of the process for some sort of pre-arranged or pre-packaged bankruptcy filing, that we had a discussions with a future claimants representative. I believe in the WebEx that was referenced on -- in my declaration that came a week or two later, we had a specific discussion with Chubb about the identity of the future claimants representative.
Q And did Chubb object to the retention of Mr. Gilbert?
A So, Mr. Gilbert is not the future claimants representative. Mr. Patton is.
I don't know that they lodged a specific objection, but I also recall that conversation being somewhat contentious over the identity of the future claimants representative.
Q But you conveyed to Chubb that Mr. Gilbert was going to be, whatever, partnered or counsel or, you know, retained at counsel or connected in some way to Mr. Patton; am I right?
A I believe you asked us whether Mr. Patton had engaged the Gilbert firm and we, I believe, said, Yes, he has engaged the Gilbert firm.
Q And that was done prepetition with the Boy Scouts financing that, right?
A Yeah. The Boy Scouts, I believe, provided Mr. Patton a retainer for his professional fees. I don't recall beyond that.

Q All right. And the contentiousness or we could call it adversity that you referred to, that was taking place between Chubb and Sidley in connection with the whole discussion of how Sidley was proceeding with respect to a pre-packaged plan, right?

A No, that is not an accurate characterization of the conversation.

Q Well, what was contentious then? Was that contention between someone else?

A We had a conversation, I believe it was, as I said, October 29th or 30th in my declaration. We, on the Boy Scouts' side, disclosed, at Chubb's request, who the future claimants representative was and my recollection was that you expressed to us disappointment in our selection of Jim Patton as the future claimants representative.

Q Wasn't it about Mr. Gilbert?

A As a follow-up question, I believe you may have asked -- again, I'm going -- I don't recall the precise words -- but I think you had asked whether Mr. Patton had retained the Gilbert firm and we said yes.

Q The point of Mr. Celentano's declaration is in the back-and-forth in that meeting and the one that followed, that back-and-forth over how things were proceeding, that was taking place between Sidley and Chubb, right?

MR. DUCAYET: I'm not sure if that's a proper

question, Your Honor. It's sort of characterizing what the purpose of the declaration is (indiscernible).

MR. SCHIAVONI: All right. Fair enough.

I'll withdraw the question.

BY MR. SCHIAVONI:

Q Sidley led the meeting, right, on the 14th?

A I don't agree with that characterization. There were multiple parts to that meeting. The part concerning the restructuring, Sidley did take the lead on.

MR. SCHIAVONI: I have no further questions, Ms. Boelter. Thank you very much.

THE COURT: Thank you.

Mr. Ducayet, anything further?

MR. DUCAYET: No, Your Honor.

THE COURT: Okay. Thank you, Ms. Boelter.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

THE COURT: Okay. Mr. Ducayet, what's your future next witness?

MR. DUCAYET: Your Honor, at this point, we would intend to tender the declaration, proffer the declaration of Professor Rapoport. As I indicated, she is available, you know, in case there is cross-examination or if Your Honor has any questions and so we would like to proceed that way. I can notify Professor Rapoport that she should in if we want

to proceed now.

THE COURT: Mr. Schiavoni, do you have cross-examination for Professor Rapoport?

MR. SCHIAVONI: Yes. We can be very brief with it. So, if we could put her on, we can get done with her quickly.

THE COURT: Okay. Well, I need a break and I suspect some of you may, as well. Let's take -- I've got 1:25. Let's convene at two o'clock.

People can get something to eat. You can -- Mr. Ducayet, you can reach out to Professor Rapoport, and we will start at 2:00.

MR. DUCAYET: Okay.

THE COURT: We're in recess.

MR. DUCAYET: Thank you, Your Honor.

THE COURT: And we will keep this open and I'll ask my chambers to do some activity which keeps it open during this time frame, but everything, as my understanding, should remain open. If you want to call back into CourtCall, you can, or you can leave it open. It's up to you. Thank you.

MR. DUCAYET: Thank you, Your Honor.

(Recess taken at 1:25 p.m.)

(Proceedings resumed at 2:06 p.m.)

THE COURT: Okay. Counsel, are we ready to begin?

MR. ABBOTT: I believe so, Your Honor. Thank you. Derek Abbott.

MR. DUCAYET: Your Honor, James Ducayet from Sidley. We're ready to proceed.

THE COURT: Okay. Thank you.

And I see Mr. Schiavoni.

Mr. Ducayet, I don't remember if you formally tendered Ms. Rapoport's declaration or not.

MR. DUCAYET: Your Honor, I'm not sure either, but in the interest of completeness I will do so now.

THE COURT: Okay. Thank you.

It is admitted subject to cross examination.

(Declaration of Nancy Rapoport, admitted)

MR. SCHIAVONI: Your Honor?

THE COURT: Yes.

MR. SCHIAVONI: Your Honor, I -- we do have objections to the substance -- the admissibility of the opinions themselves. Perhaps I could just briefly make those to preserve my rights on it at the end of the examination, but I don't want to be seen as having waived those.

THE COURT: Okay. You haven't waived anything and I can guess what those comments might be, but I will hear the witness.

So, Professor Rapoport, if you can raise your right hand, please, I will swear you in.

NANCY RAPOPORT, WITNESS, SWORN

THE COURT: Will you, please, state your full name and spell your last name for the record?

THE WITNESS: My name is Nancy B. Rapoport. My last name is spelled R-A-P-O-P-O-R-T.

THE COURT: Thank you.

CROSS EXAMINATION

BY MR. SCHIAVONI:

Q Thank you, Ms. Rapoport. My name is Tancred Schiavoni on behalf of Chubb. I'm going to be asking just a few questions here.

Ms. Rapoport, first, can you tell us how long did you spend interviewing Bill Sneed?

A I spent no time at all interviewing Mr. Sneed. I relied on his declaration.

Q Okay. Did you spend time interviewing Mr. Conlan?

A No.

Q Do you know who Mr. Conlan is and what role he plays in the case?

A No.

Q Did you interview any of the bankruptcy lawyers working on the Sidley engagement for the Boy Scouts?

A No.

Q Is it -- did you take everything that Mr. Sneed said in his declaration as true, and accurate, and complete?

A I used his declaration to help me form my opinions. So, yes.
Q Okay. In formulating your opinion were you asked by Sidley to assume that Mr. Sneed's declaration full described all of the work that he did for Chubb?
A I don't recall being asked by Sidley to do that, no.
Q Okay. In formulating your opinions did you assume that Mr. Sneed's declaration fully portrays all of the work he did for Chubb?
A Yes.
Q Is one of the assumptions that you made in formulating your opinion is that Century is, in fact, a former client of Sidley?
A Yes.
Q Okay. Am I right that Sidley asked you to assume, for purposes of formulating your opinions, that Century is a former client?
A Yes.
Q So, all of the ethics rules you applied and the bankruptcy rules you applied were all premised upon Sidley's request that you assume that Century is a former client. Am I right?
A That is correct.
Q Okay. Is another assumption that Sidley asked you to make was that the two reinsurance disputes that Mr. Sneed

worked on with respect to reinsurance for Boy Scout matters exclusively involved historic claims; claims that had already been paid?

A Yes.

Q Now you reached -- you addressed two questions in your report, is that right?

A That is correct.

Q Okay. Who framed those questions for you to answer?

A Sidley did.

Q Okay. Were there other questions that came out of the facts that you read about this case that could have been posed to you?

A I'm sorry. I don't quite understand your question.

Q Fair enough. It was an awkward question.

Let me ask you about the first of the two questions you were asked. You were asked by Sidley to reach a conclusion about the reasonableness of Sidley's thinking about something, right?

A That's correct.

Q Okay. That's Question 9-A in your report, am I right?

A I'm happy to go look at my declaration, but I assume, yes, that's the correct one.

Q Okay. The Model Rule 1.9, right -- you're familiar with that model rule, right?

A Yes.

Q Does Model Rule 1.9 use the word "reasonable" anywhere in the rule?
A No.
Q And is there anything about determining -- is there anything in the rule that says that the clients -- strike that.
Is there anything in the Rule 1.9 that says that the lawyers subjective intent about reasonableness in any way it goes into the determination of whether something is substantially related or not?
A No. Rule 1.9 talks about whether matters are the same or substantially related and material effect, but, no, not about reasonableness.
Q In the test that's applied in order to determine whether something is substantially related is an objective test. It's not a subjective test as to what the lawyer thinks, is it?
A Well, I'm going to give you a king of complicated answer. Someone has to make the determination about whether the matter was the same or substantially related. And that will determine what happens next in Rule 1.9.
Q Okay. The second question you were asked goes to whether various actions could take place to mitigate or -- is it to mitigate or is it to prevent damage to a client?
A Let me take a quick look on how it's phrased in my

declaration. Bear with me, please.

Issue two of my declaration asks,

"Could any potential issues or concerns with respect to Sidley's prior representation be addressed by means of the use in conflict counsel, screens and other steps in the bankruptcy?"

And then the second part of issue two is,

"Does Century's description of the potential adversity have implications with respect to the ability of large firms to represent debtors and are there ways to address those implications through some of the steps?"

So, those were the parts of issue two that I was asked to address.

Q Okay. Now with respect to the first component of that, which includes screens, for an ethical screen to be put in place should it be put in place before the conflict manifests itself?

A If there is a conflict, yes.

Q Okay. Let's turn now to your reference here to "conflict counsel."

Did you do any work to investigate whether there was any -- whether the people at Haynes & Boone had any experience in drafting plans of reorganization?

A I did not.

Q So, is it fair to say in formulating your opinion you

don't know whether it's a practical possibility to have this Haynes & Boone Firm in Texas take over drafting the plan of reorganization or parts of it?

A Well, actually, as a Texas admitted lawyer, I'm quite familiar with Haynes & Boone and its experience in bankruptcy. And I hold it in high regard.

Q Okay. I'm not insulting the firm. I want to be clear about that.

A Sure.

Q Let me confine it to the lawyers -- the insurance coverage lawyers at Haynes & Boone that are working on this matter, you didn't -- in formulating your opinion you didn't make an evaluation of whether those particular lawyers have any expertise, or skill, or the ability to really draft plans of reorganization (indiscernible). Do you?

A I did not.

Q Okay. So, the documents -- did you review documents other than the exhibits from Mr. Sneed's declaration?

A All of the documents that I reviewed have been attached to my declaration as Attachment 2.

Q Okay. Now, Ms. Rapoport, I want to just refer you to -- and if you need to get your report, I'd like you to do it because I'd like to refer you to Footnote 5 of your report.

A All right. Bear with me. Yes, I see it.

Q Who drafted Footnote 5?

A I did.
Q Okay. And did Sidley ask you to include that in this report or did you decide you should include it in the report?
A I believe I did, yeah.
Q Okay. Could you read to us what Footnote 5 says?
A Yes. It is my understanding that Century has not provided informed written consent to Sidley with respect to the BSA representation.
Q Okay. And was that statement true when you signed the report?
A To the best of my understanding, yes.
Q Okay. And based on all the information you have seen in the case is that statement true now?
A To the best of my understanding, yes.
Q Okay. Now the rules, the model rules require for informed consent that -- am I right that an attorney disclosed information to the client?
A Are you speaking in general about informed consent?
Q Yes.
A Yes. Whenever you seek informed consent from a client you have to provide the client with sufficient information that the client can make a -- and I'm sorry to use the word in its own definition, but an informed decision.
Q Okay. That imposes upon the law firm an obligation to provide the client with adequate information in order to

reach a conclusion, right?
A Yes. If a law firm is seeking informed consent it has to provide enough information that the client can understand what the law firm is asking it to do and decide whether it wants to consent to that.
Q Okay. Now you -- have you ever practiced -- you have a very fine academic background, I want to be clear about that, but have you ever -- your private practice you worked at Morrison & Foerster, am I right?
A Yes. That is correct.
Q Okay. Were you in the bankruptcy group there?
A I was.
Q Good. Good.
So, let me ask you this; are there some bankruptcy engagements where a bankruptcy lawyer is consulted by a client to give advice about insolvency matters or bankruptcy matters, but doesn't actually take on the role of being debtor's counsel itself?
A Yes.
Q Okay. So, being in the position of being a bankruptcy lawyer providing advice to a client you'd agree with me there's a whole range of possibilities about what the scope of that engagement could be, am I right?
A Yes.
Q It could be a counseling engagement where you don't

take on the debtor's role, right, that's one.
A Sure.
Q Right. Is another possibility for representation is that the debtor's -- you take on the debtor's counsel where it can be more of a litigation engagement where you're trying to put in place, say, a contested plan or cramming down a plan, for lack of a better explanation.
A Yes.
Q Okay. And to the extent you're a client and you're trying to make an assessment about providing consent is the provision of some information about the nature and scope of the bankruptcy engagement, whether it's transactional advice or whether it's more comprehensive, is that something that goes into evaluating whether it's to inform consent?
A Well before I answer that I have to ask a follow-up question. Are you asking me about informed consent generally or informed consent with respect to Rule 1.9?
Q I'm asking generally.
A In general you have to provide enough information for the client from which you're asking or for which you're asking for, informed consent, so that the client can make a well thought out decision.
Q Okay. Have you seen anything, Ms. Rapoport, that (indiscernible) Chubb actually gave written consent in this case?

A No.

MR. SCHIAVONI: Okay. Thank you very much for your testimony.

THE COURT: Mr. Ducayet, redirect.

I will ask everyone to check to make sure they are muted. I'm getting some extraneous noise. Thank you.

Mr. Ducayet?

MR. DUCAYET: Thank you, Your Honor. James Ducayet on behalf of Sidley.

REDIRECT EXAMINATION

BY MR. DUCAYET:

Q Professor Rapoport, nice to see you.

A Nice to see you.

Q It's one of the oddities of the time that we live in that we've worked together and, yet, never actually met in person or even seen each other over a video conference.

Professor Rapoport, let me just pick up on a couple of the questions that Mr. Schiavoni was just asking you.

In connection with the work that you did here did Sidley ever ask you to analyze the issue of whether or not Century had given informed consent in connection with the representation here?

A No.

Q Okay. And in terms of the application of Rule 1.9, does 1.9 require written informed consent if the matters are

not substantially related?

A No.

MR. DUCAYET: I have nothing further.

RECROSS EXAMINATION

BY MR. SCHIAVONI:

Q Is there -- Ms. Rapoport, that last question assumed that there was no possibility of a conflict, right? Isn't that correct?

I'll withdraw the question. Let me ask the fresh, okay?

A Sure.

Q If someone is seeking a waiver under 1.9, does Rule 1.9 require written consent?

A Sorry, I was trying to make sure that I didn't have any beeps in the background and I can't get rid of them. My apologies, Your Honor. There are some things that Zoom doesn't let me do.

So, to answer your question what would trigger a request for informed consent is the first part of Rule 1.9. Whether the matter was the same or substantially similar would be the first part of the inquiry. So, if the matters are not the same or substantially similar you would never get to an informed consent.

Q Right. My question, though, is to the extent one is seeking a waiver, either a current waiver or prospective

waiver with regard to 1.9, am I right that Rule 1.9 requires a written waiver for it to be effective?

A To the extent that someone is seeking a waiver under 1.9 the language of 1.9 says the client -- the former client gives informed consent confirmed in writing. Law firms often ask for waivers for a variety of reasons, but if they are looking specifically at 1.9 that's the language of 1.9.

Q Okay. And one of the reasons why the model rules require waivers in writing it's in the commentary to the rules, and the academic discussion of it, for lack of a better word, you know, commentary because a written waiver is something that conveys to the client both the seriousness of the request and assures that the waiver is granted by someone internally who has the authority to grant it. Am I right?

MR. DUCAYET: Your Honor, if I could impose an objection here. I think this is getting beyond the scope of my redirect.

THE COURT: Sustained. I will let her answer this one question.

THE WITNESS: Sorry. Could someone please read the question back?

THE COURT: Mr. Schiavoni, give it a shot.

BY MR. SCHIAVONI:

Q Okay. I'm not going to read it back, but I'll just tell you what I think I said. Okay. Is one of the reasons

why, you know, referred to in the commentary, in the academic treatises and what not on Rule 1.9 for the reason why 1.9 requires a writing is because the writing conveys to the client the seriousness of the request and that the request is also one that's considered and approved internally by someone with authority.

A Certainly it's true that you want to convey the seriousness of the request. I'm trying to recall whether any of the comments talk about a person with authority, but the comments do say that they want a record which is why written consent is required.

Q Did anyone ever tell you at Sidley why you weren't being asked to analyze whether there was informed consent and a proper waiver here?

MR. DUCAYET: I'm going to interpose the same objection.

MR. SCHIAVONI: It's my last question, Your Honor.

THE COURT: Actually, I'm going to overrule that objection. You can answer it.

THE WITNESS: Sure. Sidley asked me to look at one very specific set of facts and not to go beyond that set of facts.

MR. SCHIAVONI: I have nothing further, Your Honor.

THE COURT: Thank you.

Mr. Ducayet, does that prompt any further questions from you?

MR. DUCAYET: It does not, Your Honor.

THE COURT: Okay. Thank you. Thank you, Professor Rapoport. You are excused.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

MR. SCHIAVONI: Your Honor, just very briefly, we do object to the admission of the opinions. We think that they would constitute net opinions that don't lack a foundation in the subject matter. The opinion about the reasonableness has nothing to do with Rule 1.9 here. Otherwise, the opinion is one that is a net opinion and not to any foundation. We would ask for it to be excluded on that basis.

THE COURT: Mr. Ducayet, a response?

MR. DUCAYET: Yes, Your Honor. We do think it's appropriate. The issues that Professor Rapoport was asked to address relate to the ultimate question here which is under the circumstances Sidley made a determination that these matters are not substantially related. We are very cognizant, Your Honor, about not offering opinions on the ultimate legal question.

Just by way of a spoiler alert, you know, we do have that objection with respect to Mr. Slanina's

declaration.

The issue, Your Honor, of whether or not in undertaking its analysis of whether or not these matters are substantially related, you know, that's an objective standard. Reasonableness is an objective standard. And it certainly, I think, is probative of Sidley's good faith in undertaking that analysis and that ultimately at the end of the day, Your Honor, you have a lot of discretion in this matter.

Among the things that are appropriate for you to consider in exercising that discretion is whether or not Sidley had a reasonable basis for taking the position that it did.

THE COURT: Okay. I will consider the objection as I consider my decision. I am not sure if anyone provided me with case law; although, I will confess, I haven't had as much time to spend on the last filing that tells me exactly what I do in this situation and how I judge a situation where a law firm makes a determination of no conflict. As I said, I will consider that objection as I consider my decision.

Okay. What's up next?

MR. DUCAYET: Yes, Your Honor. On behalf of Sidley Austin that will conclude our evidentiary presentation subject, of course, to offering anything in rebuttal to anything that's presented by Century. I do know that Mr.

Abbott, of the Morris Nichols Firm, on behalf of the debtors filed a brief in support of the Sidley application. So, I am going to turn it over to Mr. Abbott at this point for his evidentiary submission.

MR. ABBOTT: Thank you, Your Honor. It's Derek Abbott of Morris Nichols.

Your Honor, I would like to offer, in support of the debtors' application, the declaration of Brian Whittman that had been filed at Document 499 on the docket. Mr. Whittman, as I understand it, is on CourtCall, on Zoom and available for cross examination if necessary. It's not my understanding that any of what is covered in his testimony has been contested, but he's here and available for that if necessary, Your Honor.

THE COURT: Okay. Thank you.

Any objection to Mr. Whittman's declaration coming into evidence?

MR. SCHIAVONI: Your Honor, other than we think it's irrelevant, we have no objection.

THE COURT: Okay. Well, its --

MR. SCHIAVONI: We do object on relevance grounds, but, otherwise, we don't.

THE COURT: Okay. Well, I will admit it and determine whether it's relevant in the context of my deliberations.

(Declaration of Brian Whittman, admitted)

THE COURT: Mr. Schiavoni, do you have any cross examination?

MR. SCHIAVONI: I do not, Your Honor. Thank you very much.

THE COURT: Okay. Thank you.

Mr. Abbott, do you have anything further?

MR. ABBOTT: Your Honor, I have nothing further to offer on an evidentiary basis. I, obviously, reserve my right for argument in due course.

THE COURT: Okay. Thank you.

Mr. Schiavoni?

MR. SCHIAVONI: Your Honor, I have several witnesses, but there is one, I think, maybe non-controversial. Ann Rappleye offered a short declaration about the execution of the SLA. Based on Mr. Sneed's testimony I don't believe it's at issue. I still would like to tender her declaration into the record. She is not -- I need to call her to get her available, but if there's not an issue with this from Sidley I would just and if they could tell us that now so we could put her declaration in. If they want to cross her we'll go to a different witness.

MR. DUCAYET: Your Honor, Jim Ducayet on behalf of Sidley.

We don't have an objection to the submission of

the declaration and we do not have any questions for her on cross.

THE COURT: Okay. Thank you.

Can you -- Mr. Schiavoni, can you give me a docket number for that. It appears to be a declaration I did not print out.

MR. SCHIAVONI: Your Honor, it was attached as an exhibit to our motion for leave to file a sur-reply on Friday.

MR. BUCHBINDER: Your Honor, this is Dave Buchbinder. It's Docket Entry 531, Your Honor; 5-3-1.

UNIDENTIFIED SPEAKER: Your Honor, I think Ms. Rapoport was 531. I believe Ms. Rappleye is 540 if I'm not mistaken.

THE COURT: Okay. I do see a declaration at 530-1. So, that is an exhibit to the Century reply brief filed on the 1st. Okay. That is admitted without objection.

(Declaration of Ann Rappleye, admitted)

MR. STIMOULIS: Your Honor, this is Sam Stimoulis.

I filed that also independently at Docket No. 540. Just so it's clean and not as an attachment to another filing.

THE COURT: Thank you. But its, otherwise, the same?

MR. STIMOULIS: Yes.

THE COURT: Thank you.

That's admitted without objection and no cross examination requested.

MR. SCHIAVONI: Your Honor, next we'd like to call Christine Russell.

THE COURT: Ms. Russell.

MS. RUSSELL: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Mr. Schiavoni, do I have a declaration for Ms. Russell or no?

MR. SCHIAVONI: You do not, Your Honor. We were able to get declarations to you for everyone else, but in the time allotted we just couldn't get one done for Ms. Russell.

THE COURT: That's fine.

Okay. Ms. Russell, I'm going to swear you in.

CHRISTINE RUSSELL, WITNESS, SWORN

THE COURT: Please state your full name and spell your last name for the record.

THE WITNESS: Christine Gellert Russell, R-U-S-S-E-L-L.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. SCHIAVONI:

Q Ms. Russell, this is Tancred Schiavoni from O'Melveny. Let me ask you this to start, by whom are you employed?

A I'm employed by Chubb. I actually work for a subsidiary company, but Chubb is probably the easiest way to state it.

Q Ms. Russell, what is your position, your title at Chubb right now?

A I'm senior vice president, head of reinsurance for the sub-group I was just talking about, the Brandywine Group of insurance and reinsurance companies.

Q Tell us, Ms. Russell, in general terms what your responsibilities are at Chubb?

A Sure. I oversee a group of about 30 people responsible for billing and collecting reinsurance. So, when we are the insurance company and we need to submit a bill and make collections from our re-insurers I'm responsible for that. About two-thirds of my group do that and then the other one-third of my group we're also, what's called, an assuming company. So, we are also a re-insurer sometimes. And I also oversee the bills that come into us where other companies are seeking collection from us for reinsurance.

Q Okay. In your reinsurance group are sometimes matters contested requiring litigation, or arbitration, or other adversarial processes?

A Yes. I'd say at any given time I oversee between 30 to 40 open disputes. As Mr. Sneed said, the vast majority of reinsurance disputes are in arbitration and a smaller

percentage are in court.

Q Okay. How long have you been in the role you have now?

A I was a practicing attorney from 1995 to 2012 when I took my current role. And I've been in that role ever since.

Q Okay. And in private practice, before joining Chubb in this reinsurance capacity, were you on a transactional side or were you litigation? What was the nature of your practice?

A I was involved in litigation my entire career. The latter 10 years largely reinsurance litigation.

Q Okay. Are you, effectively, the client in dealing with Sidley Austin for Chubb?

A Yes.

Q Okay. I want to talk about or have you come back and talk about the Sidley relationship in a minute, but if we just spend a minute on just covering reinsurance and what it is for those of us who don't know too much. Can you tell us what reinsurance is?

A Sure. I think Bill did a reasonably good job with this. He explained that, you know, reinsurance is insurance for insurance companies. It's a risk spreading mechanism. So, when the insurance company writes a risk they don't necessarily want to keep the entire risk. So, it's a way of sharing the risk with other companies, other risk bearing entities.

As Bill said there are generally two types. There is treaty reinsurance that reinsures usually a large book of business, or a particular set of risks or large set of risks. Then there is risk specific reinsurance where it's one policy that's reinsured specifically and that's called facultative reinsurance. It gives a much closer connection between the insurance policy and the reinsurance.

Q Mr. Sneed talked about, he used the word, facultative reinsurance and treaty. Is there any significance for what we're going to be dealing with today between these different types of reinsurance?

A Sure. So, in the two disputes in particular -- and I will note that the two that Bill focused on are not the only disputes that Sidley was handling for us at the time they took on the representation with the Boy Scouts. The two that he did refer to, one of them was a treaty dispute, the other is a facultative dispute.

I think it's important to note that, you know, there's a concept in reinsurance where the reinsurers follow what the insurance company does. So, they're bound to follow decisions that are made under the policies, but with facultative it's important to note that there's a concept in the -- facultative certificate, the contract if you will, is often just a two page preprinted form and it's got a follow the form provision, and it follows the terms and conditions

of the underlying policy.

So, in fact, in a case we had in the Southern District of New York recently the court found, and I think correctly, that the policy is part of the integrated reinsurance agreement. So, you can't construe the reinsurance contract without construing the underlying policy.

Q So, how is it that the insurance that an insurer issues directly to a policyholder is relevant to billing reinsurers or part of analyzing reinsurance?

A It's very much a huge part of what I and my team do every day. If there's an insurance claim that we have there are a few things. Once that claim is resolved in some way you go through resolution by settlement or by judgment. There are a few things my team has to look at to figure out how to build the reinsurance. One is the reinsurance contracts. The second most significant thing is the underlying claim and the claim resolution. And it's extremely important to know how to bill your reinsurers that you understand the coverage issues that existed in the underlying claim and how those were resolved. If you get into a dispute that's the evidence that's most pertinent in addition to the contracts themselves.

Q Do you face situations where in the underlying insurance matter, where there's the direct insurance to the policyholder, where the terms of that insurance between

policyholder and insurer are in dispute?
A (Indiscernible) dispute in the reinsurance case?
Q Well let me ask it a little bit differently. Do you have situations, as a reinsurer, where costs are being presented to you from the underlying insurance matter where the terms of that coverage are in dispute between the policyholder and the insurer?
A Yes. Very, very often.
Q Okay. And do you have to -- in connection with assessing those situations do you need to have information about how the legal analysis was done of the underlying coverage?
A Absolutely. That is very typical evidence that we share with our reinsurance lawyers that they need to understand and pursue our collections is to understand that, you know, things often get decided by judgment, but more often than not things are resolved by settlement. It's really important that we share our evaluation of our litigation risk, and how and why we settled the way that we did. Reinsurers ask that.

While there's a doctrine called Follow the Settlements that doctrine requires us to demonstrate that what we did was, at least, reasonable and businesslike. So, we are often called on to share with our counsel and it becomes an issue in the reinsurance matter about what was decided and why, and

what our legal analysis was in the underlying case.

Q Okay. Is one of the ways that your reinsurance group can get at that issue efficiently sometimes is by providing that to counsel through exchanges with members of your legal team at Chubb?

A Yeah. My legal team will exchange with my team and sometimes even with the underlying claims handlers. You know, they have to interview them, put them on as witnesses.

Q Okay. Is the information that you need to provide or need to consider in connection with a reinsurance dispute or billing sometimes involve information about what the strategy in the underlying action was with respect to the coverage?

A Very often.

Q If there are disputed issues on the direct coverage level, this is where like the policy is issued directly to the policyholder, that are resolved at that level what information about the direct coverage is needed to address the reinsurance claims and is that often privileged?

A It is privileged and it's an issue that we struggle with a lot because, you know, we've got, often times, still an ongoing matter, an ongoing coverage dispute and yet we have settled some things and we're going to bill our reinsurers for their share. They want to understand why we entered into the settlement that we entered into. And we really have to -- we struggle, you know, with sharing our

information that is privileged. And we certainly share it with our own counsel and then we have to decide how much of that we can share with the reinsurers. So, it's a very delicate balance, but certainly it's always shared with our counsel. I mean there is no doubt about that. They can't help us evaluate the claim without understanding our privileged analysis.

Q Does your work on reinsurance, on contested matters in particular, does it often times, you know, involve your team's analysis of the strengths and weaknesses of people who would be witnesses in arbitrations from the underlying matter?

A Absolutely.

Q And would those people be sometimes people who are directly involved in the underlying coverage matters?

A Certainly they are. They are -- I'd say in my career of doing this for 20 plus years it's the rare reinsurance arbitration that doesn't have the underlying claim handlers as a witness in one capacity or another. Either they're taking depositions or appearing at a hearing.

Q Are the arbitrations in the reinsurance field, are they usually public in nature or are they subject to confidentiality agreements?

A No. They are typically subject to confidentiality agreements.

Q Why is it, Ms. Russell, that the arbitrations of the reinsurance field are subject to confidentiality agreements?

A There's a few reasons for it:

First of all because the business disputes between insurers and reinsurers you have ongoing relationships and they want to resolve their business disputes in a confidential form and not out in the public.

Secondly, because as we were just talking about, a lot of privileged information and proprietary information is shared as evidence in those proceedings. So, again, the parties don't want that to be shared in the public forum.

Third, and I think I eluded to this a minute ago too, because we are sharing privileged information with our counsel and sometimes in the proceeding itself, and there can be ongoing underlying litigation, we don't want to have to turn over confidential or privileged material that might be harmful to our policyholder. So, it's an effort to protect our policyholder from the disclosure of confidential information.

Q All right. Let me turn to asking you some questions about Sidley Austin and their connection to Chubb.

How long has Sidley Austin been a client of Chubb's?

A Well, I think you mean we've been a client of Sidley Austin.

Q Oh, I got it backwards. I apologize.

A Yes. I don't know the full extent of it, but I can tell you from my personal experience it goes back at least 15 years. When I first -- when I joined the last law firm I was (indiscernible) right before coming to Chubb, I became involved in matters in 2005 that Bill Sneed and Sidley were also involved in. And I know from then forward while my firm was representing Chubb the Sidley Firm also was. I had many, sort of, common engagements where we interacted together as outside counsel, sometimes co-counsel on matters. Then once I took my job in 2012; we continued to use Sidley and often on some of our most significant matters, the biggest problems confronting our reinsurance group.

Q Over the period of time you've been running this reinsurance group have Chubb used Sidley on more than one matter?

A Yeah, I don't know that I could count how many matters we retained Sidley on while I've been at my job for the last seven years, but, yeah, numerous, you know. I don't know exactly how many.

Q Does knowledge of how Chubb's reinsurance programs and underlying insurance programs work and the position that Chubb takes play any role in hiring a firm like Sidley in more than one matter?

A Definitely. You know, Sidley has a very deep long understanding of our insurance program and our reinsurance

program. You know, we certainly rely on that historical knowledge when we retain them on a new matter. We don't reinvent the wheel every time. And, you know, Bill, in particular, has a deep understanding of our historical issues, our historical concerns, how we present things, disputes we've had in the past. You know, yes, it's important to us to have a partner that understands all of that so we don't reinvent the wheel each time.

Q You used the word partner. Is that how you viewed Sidley?

A Yes.

Q Some of the engagements you've had Sidley on involved direct adversarial work, arbitrations, right?

A Yes.

Q Have you engaged Sidley on other matters where there's more of a counseling role on an ongoing basis?

A Yes, several. In fact, one of the most significant matters we've had over my tenure.

Q And is there privileged information that's conveyed in connection with those counseling matters?

A Definitely.

Q And has Sidley been asked to prepare a legal analysis, and memos, and provide legal analysis in connection with those matters?

A Yes.

Q I don't want you to refer to the specific name in the matter, but was there a matter that Sidley commenced work on in May of 2017, it's a counseling matter?
A Yes.
Q And was that one of the matters that was open that Mr. Sneed sought to withdraw from in 2020?
A Yes.
Q And did you close that matter at any point in time between May of 2017 and 2020?
A No. It's still an open ongoing matter.
Q Now did there come a time when you learned that Sidley was representing the Boy Scouts against Chubb in a prepackaged bankruptcy where the insurance was directly put at issue in the underlying matter?
A Yes, I did. I learned it right after Josh learned in the October, late October timeframe.
Q Now did you learn of that through some letters exchanged with Mr. Andolina?
A Actually, I think I first learned about it as soon as Josh learned about it, and I think he talked to his boss. I'm not sure of the timing, whether he talked to me first or talked to his boss first, but, you know, in that same couple of days or 24 hours Josh let me know. Then, yes, I did see some letters thereafter.
Q Okay. I'd like to take you to Schwartz Exhibit 4.

This is a letter from Mr. Andolina.

A Yes, I have it.

MR. SCHIAVONI: I'm not going to pull it up on the screen right now, Your Honor. I'm just going to ask the witness some questions about it.

BY MR. SCHIAVONI:

Q Do you have this letter in front of you, Ms. Russell?

A Yeah. I think (indiscernible). Are you referring to the first one of December 3rd or the second one of December 16th?

Q Yeah. So, let's look at the first one.

A Okay.

Q December 3rd. Now was there anything significant about this letter when you received it?

A Yeah. So, after Josh informed Bill Sneed that we were concerned, you know, the next thing that seemed to happen from my perspective was we started getting letters from Mr. Andolina. I thought that what he wrote was inaccurate. It struck me -- first of all, why was it from Mr. Andolina and not from Bill Sneed, who is our lawyer. Secondly, I thought it was inaccurate in ways that Bill would know it was inaccurate.

It seemed to be, you know, accusing of us of knowledge of something that we didn't have. So, you know, I was taken aback by it and I thought, you know, and I think I

probably said that to some of my colleagues, you know, Bill knows some of these things aren't true that are in here. Why is Mr. Andolina writing this and where's Bill in all this.

Q So, Ms. Russell, can you give us an example of something that caught your eye that wasn't really accurate in your view that you were getting from Mr. Andolina at this point in time?

A Yeah. He said that Sidley's work on, as BSA's restructuring counsel, is unrelated to Sidley's work for Chubb affiliates on reinsurance issues. I thought there was two problems with that because, one, he was saying it was Chubb affiliates as if they were some companies that were different then the companies in the bankruptcy, but it's actually the exact same insurance policies that are at issue in the bankruptcy are the ones that they were representing us to collect the reinsurance on. So, it wasn't -- I felt like he was trying to make this distinction that they were somehow affiliated companies in some attenuated way where we're actually talking about the exact same policies for the exact same company.

Then the other thing that struck me is that he said that they were unrelated. Again, I just really take issue with the notion that the reinsurance collections are unrelated to the coverage issues that are going to be part of the bankruptcy reorganization when the policies are such an

important asset in the bankruptcy. Those issues are what are going to drive the reinsurance.

Q Did you ask to speak to Bill Sneed after you had learned about this issue?

A I didn't. We were just kind of talking internally on what to do. I believe we wrote back. I think Josh is the one who wrote back and had some questions. He directed -- but we did decide that we would direct the note not just to Mike, but to Bill as well because we did feel like Bill was our lawyer. So, you know, we formulated some questions and raised some concerns with the accuracy of the letter and wrote back.

Q Did you listen to Mr. Sneed's testimony?

A I did.

Q Okay. There were aspects of Mr. Sneed's testimony where, at least to me, okay, he seemed to be casting fault at Chubb for asking questions, and wanting to investigate, and get information about what the conflicts were. Were you pursuing those things in any way other than in good faith?

A We were absolutely pursuing it in good faith. At some point we had been told, I believe it was maybe Chris Celentano had been told that they had asked their general counsel about the situation. They kept insisting that there was no conflict in a very conclusory manner. So, you know, we wanted more information to assess whether there truly was

-- if they were right, there was no conflict, we don't know why they wouldn't just explain that to us and yet we kept asking and not getting the answer to that. We were very much acting in good faith.

You know, it seemed to me that very quickly, at least the bankruptcy lawyers concluded that, I think they used the word a distraction, that our concerns were just a distraction. So, you know, we repeatedly were just asking for information and getting nothing back but conclusions.

Q Did you end up having a call with Mr. Sneed?

A We did ultimately, yes.

Q And when did that take place?

A That was December 18th, 2019, 2018 -- I'm losing track. 2019.

Q 2019, right? That was last year?

A Yes.

Q All right. As we get older, I forget what year it is.

So, in 2019. What did you do to prepare for that call?

A Well, first of all, Bill had reached -- as Bill said in his testimony he reached out to Josh and said he would like to have a call. I was pleased because I had been sitting here, you know, for a couple of months saying, you know, where is Bill, why is Mike Andolina continually writing to us accusing us of ill-motive and our lawyer hasn't even reached out to us to talk since we initially alerted him to this

issue. So, I was pleased to hear that Bill wanted to talk to or talk to Josh. I said to Josh, I would like to be a part of that discussion. I felt like I had a long good relationship with Bill and I was optimistic that, you know, this was a good sign that we were now going to be able to talk with someone and have our questions answered.

I called Josh and said, you know, Josh, I've thinking about this, I think we should take a listening approach on this call. I think we should go with some questions we want to have answered, but Bill asked for the call. So, we should listen first, but let's have some prepared questions that we -- you know, the things we want to understand going into the call. So, we did that, we prepared a list of questions, Josh wrote it and I edited it a little bit. And that was the approach we decided to take going into the call.

Q What was your goal in preparing questions for the call?

A My goal was that I felt like we had asked questions in letters and we weren't getting answers, and we had a lot of things we didn't understand not only about just why they thought there was no conflict, but just what had transpired and how we got to where we were that they were accusing us of having known this for a long time and that somehow we sprung it in some opportunistic way.

So, we wanted to understand how Sidley got the perspective that they did and what their thinking was. So, I

thought it was best to have some key points that we wanted to come out of the call with answers to.

Q I'm not sure if I drew this out before, but what day did the call take place?

A Yeah. December 18th, 2019.

Q Okay. And did Mr. Sneed, on that call, provide you with a fulsome explanation about why there wasn't a conflict?

A No. We started the call with some pleasantries and then Bill just jumped right in and said I asked for this call, and what I'm here to explain to you is that after Josh contacted me on October 29th I reported this issue to our general counsel's office, general counsel decided that the bankruptcy team would handle the communications with Chubb. So, I've been sitting on the sidelines watching this happen for a couple of months. He said I don't think it's been productive. I think there has been a lot of posturing. I am here to tell you that Sidley is not going to stop representing the Boy Scouts and if Chubb can't live with that I need to give back all the reinsurance matters.

Q What was your reaction to hearing that Bill Sneed had "stayed on the sidelines" as you referred?

A I was quite surprised by that because he was our lawyer. I just -- having been outside counsel I just can't imagine having a longstanding client relationship, and being a client relationship person and not being the one who wants

to communicate and discuss the issue. If there was a resolution to be had, if Sidley really wanted to work things out with us the way to do it would have been to have Bill talk to his client and his client contacts; not have Mike Andolina, sort of, accusing us in letters.

So, you know, the fact that he then got on the call too -- and I thought he was going to be the one that was going to talk with us and talk through the issues, and the fact that he got on this call with the same posture was really surprising to me.

Q What did you tell Mr. Sneed in response to his assertion that Sidley would drop Chubb as a client if it didn't live with this situation?

A Yeah. We said we weren't ethics experts. I think, actually, Josh said this that we're not ethics experts, but our understanding is that you're not allowed to drop one client in favor of another, and he thought this would fall into a rule that we both loosely as the hot potato rule and ask Bill what he thought about that. Bill, again, asserted that he felt that rule required a conflict for it to be applicable and he didn't think there was a conflict here.

We, again, pressed -- I think I then asked why (indiscernible) ask me for your analysis, but there is no conflict. Why won't you just give us that? If you really believe there is no conflict what's the harm in giving us the

analysis and he said I'm not the person to address that, I'm not here to address that. We didn't get anywhere with that.

Q Ms. Russell, I want to ask you -- my next question I want to be clear, I don't want you to disclose attorney/client privileged information. And I know it's not Chubb's intent to do that, but to the extent you can answer the question without doing that I'd like you to do so. My question is did you talk to Mr. Sneed on the December 18th call about how Sidley's engagement by the Boy Scouts could cause harm to Chubb?

A I did. After we didn't get anywhere on the request for the conflict analysis, we asked a few more questions. We asked about whether the prospective labor was being requested because of the Boy Scouts. He didn't answer that question. Then -- in fact, several times in the call he accused us of cross-examining him, that we weren't here to have these kinds of discussions. You know, we could stop cross-examining him and, you know, that this should be resolved at a higher level of the organizations.

I said let me ask you a question, Bill, because this is something I felt strongly that felt strongly that Bill understood that the bankruptcy lawyers would not understand. I said, Bill, do you understand how certain things that could be said in the bankruptcy action by Sidley could harm us in our reinsurance election and you understand that our seeded

asset, our reinsurance collections are an important asset to Chubb and that we could be harmed in that collection by things Sidley would say. I gave him a specific example that I prefer not to repeat here. He said, okay, now that's something we can talk about, that's a legitimate concern.

Q Now did you ask Mr. Sneed whether or not he had Boy Scouts in mind when he had asked for a prospective waiver with six or seven, whatever it was, eight months before?

A I did ask him that question and he didn't answer it.

Q Sitting here today have you -- in preparing for this hearing did you have an opportunity to go back and look at that correspondence about the prospective waiver request?

A I did.

Q And at any time during that exchange at the time the prospective waiver request was being made did Mr. Sneed or Sidley tell you anything about the Boy Scouts engagement other then they couldn't admit or deny the representation?

A I did not have any specific conversations with Bill or Sidley about that. Josh reported to me what was going on that was happening. It was not about the Boy Scouts as far as we knew.

Q Okay. Did you do anything after the December 18th call, you know, based on -- actually, let me ask you something else about the December 18th call. Over time, over the course of, really, your career, right, working at Chubb

and then working with Mr. Sneed in private practice before that you've had a lot of dealings with them over time, am I right?

A That's correct.

Q Was there anything noteworthy about the tone or the nature of the discussion on the 18th that stood out to you?

A Yeah. I was taken aback. Really, I've said several times to some of my colleagues since then that it was one of the strangest professional conversations I've ever had during my career. I just couldn't believe that he came out of the box so aggressively and gave us an ultimatum. It was you have to accept this or else. That is not how I expected the call to go. As I said before, I was really pleased that Bill was finally reaching out to talk to us and I expected a much more conservatory approach, but it was not that. It was an ultimatum.

As I said, as we tried to ask our questions, which I believe to this day were all very legitimate fair questions for us to be asking trying to figure out what was going on, he repeatedly said you're cross-examining me, this is irrelevant, I'm not here to talk about that. What he said earlier today is true, he did suggest discussions at a higher level of the company. I didn't understand why we weren't having that discussion on this call. I don't know why we were deferring the discussion. I thought I was having a

discussion with the person who could answer the questions that I had.

Q Now after that meeting on the 18th or the run-up to it did you take any steps yourself to try to further an investigation of what was happening, and what you needed to do, and whether there was -- the extent of the conflict, et cetera.

A Yeah. After that call we had a lot of internal discussions. You know, because this matter involved different groups at Chubb and given the significance of both the issues in the bankruptcy in terms of our insurance that's at issue there and the very significant reinsurance asset that I'm responsible for on the backend we had a lot of discussions at very high levels in the company and trying to figure out what to do. We retained an ethics expert to evaluate the issue. You know, were we seeing, not seeing something, was there something missing; you know, we felt like this was a real problem and we took it very seriously.

Q Prior to the December 18th meeting did you do anything to -- strike that.

Up through this meeting had you conveyed to Sidley that you did not consent to a concurrent relationship?

A Yes.

Q You listened to Mr. Sneed's testimony about the information he was provided in connection with his engagement

according to Mr. Sneed. Am I right?
A Yes.
Q Okay. Did you also review Mr. Sneed's declaration?
A I did.
Q Without getting into disclosing specific privileged information can you tell us does Mr. Sneed accurately portray the scope of the privileged information which he was given?
A No.
Q And specifically with regard to the Boy Scout matter did Mr. Sneed provide a complete list and explanation of the privileged information he was provided?
A I think his list is accurate. I think he is trying to walk a fine line in terms of explaining what exactly that list means. The full arbitration record from the (indiscernible) matter is a lot of information and a lot of confidential information including a lot about the underlying coverage issues. So, to downplay that as a minimal amount of information is not accurate.

In addition, he neglects to recognize the 15 years of historical information he has about our insurance coverage and our reinsurance issues. Each reinsurance matter is not wholly unique. The contractual issues, the coverage issues repeat. So, he has historical knowledge that he can bring to bear on these matters.

Lastly, he focuses only on documents and not on

conversations with people in our legal group and on my team, and myself, wherein, I think, anybody who has practiced understands when you interview the key people that's when you tend to tell your lawyers some of the, you know, what's keeping you up at night; let's put it that way.

Q Ms. Russell, as part of the arbitrations that are done on reinsurance disputes do they deal just with the collection of, sort of, outstanding bills or is declaratory relief sought as often happens in coverage disputes in court?

A Yeah, absolutely. In fact, that is one place where I think Mr. Sneed, unfortunately, was not accurate at all in his declaration or today. Both of the open Boy Scouts matters that he was handling did not involve exclusively paid claims as he indicated. They both involved declaratory relief and reinsurance coverage for future claims. Thus, you know, that's one of the big concerns because things that -- as I said to Bill on our call, I don't know what Sidley is going to say or do in the bankruptcy that could impact my future claims.

Q In Ms. Rapoport's expert declaration she notes that she was asked by Sidley to assume -- let me just find it here for a second. I'm looking at -- you don't necessarily need to pull it up, but I'm looking at her expert report on Page 4 of the declaration under (II) assumptions and questions presented, 2-D. It says,

"The two reinsurance disputes that Mr. Sneed was engaged to work on involved historical paid claim, not existing claim."

Is that in some way not complete or accurate?

A No. It's not true for the reasons I just stated. The future claims were every bit at issue and probably more valuable, ultimately, to us then past paid claims.

Q Okay. Did you review the pleadings that were filed by Boy Scouts in the underlying coverage disputes in court that is pending today, you know, prior to today?

A Yes.

Q Okay.

THE COURT: I'm sorry. Mr. Schiavoni, can you repeat that question?

MR. SCHIAVONI: Yeah. I'm sorry, Your Honor.

THE COURT: No, it's me.

BY MR. SCHIAVONI:

Q Ms. Russell, we've been struggling for a way to try to address -- let me ask you this. Have you been struggling with a way to try to address how there is overlap between the work that Mr. Sneed has done and issues that may be in dispute in the bankruptcy without revealing non-public privileged information?

A I very much have been struggling with that. If I can explain a little bit. I think with all due respect to Bill

he tried to walk a very fine line to say that the reinsurance issues -- you know, what he was doing for us in the reinsurance case isn't relevant to the insurance issues. He steered clear of explaining that the insurance issues are very much relevant to the reinsurance. To demonstrate that would require me to explain some things in open court that I'd rather not explain because they have the potential to be harmful in the reinsurance collection matters. Not harmful, but just, you know, potentially harmful or potentially just not things we want to talk about. They are privileged confidential information.

So, yes, I have struggled with that. I think we've found a way to do it and perhaps that is where you were headed.

Q Ms. Russell, tell us have you come across a way that perhaps we can touch on this issue just based on public information without going a step further? If so, can you explain, you know, what you have done?

A Yeah. Basically, if you look at even what Bill admits in his declaration, the types of information he got and the issues that he, himself, discusses as being issues in the reinsurance matters and you look at the pending coverage actions related to the bankruptcy or related to Boy Scouts you can see that the issues are very much overlapping. You see that number of occurrences is something that is

discussed. You see that allocation is something that is discussed. You see the first encounter agreement is something that is discussed in both.

So, as I testified earlier, you know, the underlying insurance issues drive the reinsurance. The underlying insurance are almost always at issue in the reinsurance matter. There occasionally are matters that I think Bill would like you to believe is what we have here where there is strictly a contract question and it literally turns on the reinsurance contract, but those are few and far between.

This matter is much more -- these matters are much more typical particularly the one that Bill didn't talk much about. They do involve a lot of overlap and interplay between the insurance issues and the reinsurance issues.

Q Did you go through the pleading in the coverage action to try to find specific references to things and then try to cross-reference those to statements that Mr. Sneed made in his declaration?

A I did. As I sit here, Tancred, I can't tell you have I have total recall on where those things appear in the pleadings, but I think what we just talked about that there are talking about number of occurrences you see that in the declaration, you see number of occurrences in the pleadings as an issue. You see allocation, you see allocation in the pleadings. Then you see the first encounter agreement and

that is also discussed as an issue in the insurance.

So, as I sit here, I can't give you chapter, line and verse, but it is there.

Q Let me ask you this, Ms. Russell, maybe we want to move on, maybe we don't get into more detail, but would it be possible for you to give cites to where allocation is referred to by Mr. Sneed, just examples of them, and examples of where they are on the DJ pleadings?

MR. DUCAYET: Your Honor, if I could object to this. I don't know if Ms. Russell has a document in front of her that she's referencing, but the idea that, you know, she would be able to recall from memory particular cites, maybe that's possible, maybe it's not, but if there is a document that Ms. Russell is looking at we'd like to see a copy of it. I will just remind the court that Ms. Russell did not submit a declaration. She is the only witness who did not do so.

So, I think it's important that to the extent that there are specific documents that she's relying upon in connection with this testimony that we be provided a copy of this.

MR. SCHIAVONI: Yeah. The declaration of Mr. Sneed and the Texas allocation pleading. We can just make a proffer of it. It's in the record. It's the Panchok-Berry declaration, Exhibit D. We can make a proffer of it when we're done with the witness.

THE WITNESS: I'm not actually looking at a document. I just want to be clear about that. I actually was just going to answer that without looking at a document I probably can't give the sites.

BY MR. SCHIAVONI:

Q Let me ask you another way we tried to, sort of, come after this problem. Has the Boy Scouts said or done anything which indicates that if content that Mr. Sneed's legal work is relevant to the issues in dispute between Chubb and the Boy Scouts?

A Yes. The Boy Scouts sought discovery from us about what went on in the arbitration.

Q And was that discovery both document discovery and interrogatories?

A I believe that's right.

Q In January of 2020, Ms. Russell, did Chubb have matters outstanding with Sidley?

A Yes.

Q And how many matters were outstanding?

A January of 2020 -- before Sidley started to withdraw I would say four or five. I think at least four, perhaps five.

Q And was Sidley still counsel of record in a number of those matters at the time that the bankruptcy was filed?

A I'm sure for at least one, perhaps two. I'm not a hundred percent sure of the precise timing of the withdraws,

but I know at least one was not withdrawn until after.

Q Did Chubb consent to Sidley withdrawing from those matters that were active in 2020?

A We did not consent. In fact, we asked Bill not to contain the parties or the arbitrators, and he did it over our objection in many of the matters. In the court case we ultimately consented. He unilaterally filed for a withdraw without our consent and then we ultimately worked out consent once we got new counsel. That was the only one we ultimately consented after he tried to do it without our consent. The rest of them we did not consent and he, nonetheless, contacted our counterparties and our arbitrators without our consent.

MR. SCHIAVONI: Ms. Russell, thank you very much for your testimony. I have nothing further, Your Honor.

THE COURT: Thank you.

Ms. Russell, are you ready for cross or do you need a break of any sort?

THE WITNESS: I'm fine. Thank you.

THE COURT: Okay. Thank you.

Mr. Ducayet?

MR. DUCAYET: Yes. Thank you, Your Honor. Jim Ducayet on behalf of Sidley.

CROSS EXAMINATION

BY MR. DUCAYET:

Q Ms. Russell, let me ask you, first, you described the position that you hold within Chubb and you described it as, I think, you're the head of the reinsurance disputes group within Chubb. Is that correct?

A No.

Q Okay. I didn't mean to misidentify your position. Maybe you could just refresh my memory and then we'll get a question out.

A Sure. No problem.

It's a little bit complicated, but I am the head of the reinsurance group for a subgroup of entities or claims within Chubb. So, there's the larger Chubb. There are a couple different reinsurance groups within Chubb. I am the head of one of them.

Q Okay. Thank you.

A We largely do long tail and run-off claims. Where you were off a little bit in your characterization is not just disputes. My predominant part of my job is billing and collecting reinsurance. The disputes is actually a little bit ancillary.

Q Okay. Thank you for that clarification.

Now am I correct that within Chubb that direct claims and reinsurance claims are handled in two separate and different departments?

A That's true.

Q And you heard Mr. Sneed testify earlier this morning about some of the reasons why that's typical. Do you agree within that that's typical in the industry?

A I don't remember exactly what he said about that topic and why it's typical. I think generally my experience is -- I'd say most larger companies have a separate direct claims group and a separate reinsurance group, but I think many smaller companies, the same people that handle and pay the direct claims they bill the reinsurance as well.

Q Okay. In companies that are comparable in size, your competitors, for example, at Chubb the direct claims are typically handled by a different group, different department then the reinsurance claims. Is that correct?

A Those that I'm familiar with, yes. I think that's generally true.

Q Okay. Thank you.

Now you provided some testimony in response to Mr. Schiavoni's question about the general way in which the underlying direct coverage issues may become an issue in a reinsurance dispute. Let me ask you this question, were the terms of the BSA coverage, the coverage that Chubb provided to Boy Scouts, were the terms of those policies in dispute in either the Lloyd's reinsurance matter of the second reinsurance matter that also involved Boys Scout policies?

A Yes.

Q In what way were the terms of the underlying policies in dispute in the reinsurance dispute?

A I'm going to try to formulate an answer to this without revealing information I'd rather not reveal. This is actually putting me in the precise predicament that I was worried about which is to tell you what issues are at issue in the reinsurance matter will cause me to reveal what I'm most concerned about being revealed.

Suffice to say that while Bill focused almost exclusively on the Lloyd's matter, I think he was flat wrong when he said that the Boy Scouts -- that the second matter did not involve these issues.

Q Okay. I apologize. I don't mean to interrupt you. I want to try to make this easier for you to testify about consistent with your concerns about revealing information.

So, let me break the question down just a little bit, Ms. Russell. So, let's just focus on the Lloyd's dispute. Okay?

A Yes.

Q First of all, Lloyd's was a treaty, correct?

A Yes.

Q Okay. And my question is were the terms of the underlying coverage that Century provided to BSA, were those in any way disputed by Lloyd's in connection with that reinsurance dispute?

A Yes.

Q Okay. Can you explain to me why? And maybe I could try to make it even a little bit more precise and that is to the extent that the first encounter agreement was at issue in the first litigation, which Sidley did not handle, was the first encounter agreement at issue in the arbitration that Sidley was asked to handle?

A The arbitration -- first of all, whether or not it was squarely at issue in the second arbitration, I'll come back to that in a second, but whether it was or it was not there's no way that Sidley could have evaluated the prior arbitration record and discussed with us, strategized with us about going forward in that matter without considering positions we took vis-à-vis the first encounter agreement.

Q Well, let me just ask you this question; was -- the first encounter agreement was an issue with respect to the first arbitration, and this is all public because its revealed in the publicly filed decision in the District of Massachusetts, and Century's reliance on the first encounter agreement was rejected by the arbitration panel, first arbitration, correct?

A I wouldn't characterize it that way.

Q Well, didn't the first arbitration panel conclude that the allocation methodology that was used by Century, which was based upon the first encounter agreement, was not the

product of a reasonable businesslike investigation? Isn't that what the panel said?

A I think they concluded there was an absence of proof that we acted reasonably in a businesslike manner. I don't know that they concluded it wasn't a reasonable business-like settlement. I think that's a big distinction. You know, it was a question of whether we would ever get to put on that proof again, I don't know. You know, you're now pushing me to get into strategic decisions that we would have discussed with Bill. But we don't think that award was clean and bullet proof. What we might be able to accomplish the next time around is very much in discussion and subject to strategic consideration.

Q Okay. Now the first encounter agreement is an agreement between Boy Scouts and Century, right?

A Yes.

Q So, obviously, Boy Scouts is aware of the first encounter agreement, correct?

A Yes. But not our internal (indiscernible) about it.

Q Okay. But the fact of the -- well, let me just ask you this, Ms. Russell. The position that Century took in the first Lloyd's arbitration was that the first encounter agreement was a valid finding and reasonable way to allocate claims, right?

A Yes.

Q And in connection with the second Lloyd's arbitration is Century taking any position with respect to the applicability of the first encounter agreement? Does that have anything to do with the issues that have been submitted to the second arbitration?

A We have a --

MR. SCHIAVONI: I'm sorry, Your Honor. If I just could caution Ms. Russell. I don't -- you know, she doesn't need to disclose privileged information. I would ask Mr. Ducayet, to the extent he's relying upon what he says is in a district court decision, if he could do his questioning a lot more safely by just quoting from that decision.

If you could answer, Ms. Russell, you know, within the confines of not disclosing privileged information go ahead.

THE WITNESS: I think I can. I was just going to say that we haven't put any positions to a second arbitration panel yet. I think part of the problem that Bill has in trying to minimize the extent of the information that he was provided and, you know, the extent of the potential conflict is because both of the arbitrations -- you know, Lloyd's was just -- we just got an order that we can go forward with the arbitration. And the other one was in the very early stages too.

So, we were still strategizing, thinking,

positioning ourselves. You know, so what exactly were the issues that we were going to have to confront and work through with Bill, you know, I think we know some of them, but I don't -- we haven't put any position to either arbitration panel yet other than a very, very -- other then, in the one matter, in a very preliminary way and the other one not at all. So, it's not so much what was before the panel, but it was the strategic thinking that we were doing with Bill about how we might position ourselves.

BY MR. DUCAYET:

Q And -- okay. Again, I'm not trying to pressure you to disclose privileged information, but just to be clear wasn't it the position of Century in the District of Massachusetts case that the whole reason we should have a second arbitration was because the rebilling that was made to Lloyd's was no longer telescoped under the first encounter agreement?

A That was one of the reasons, yes.

Q If you want, Ms. Russell, I can point you to the decision. Page 5 of the District Court decision in connection with that says that that is the position that Century was taking.

A I agree with you. The rebill was no longer under the first encounter agreement.

Q Okay. Thank you.

You mentioned in connection with describing the work that is done in connection with putting together a reinsurance dispute, both receiving documents and then conducting interviews, and you said that in many instances the underlying --

(Phone interruption)

THE COURT: Could everyone please mute their phones. I'm hearing a conversation.

Mr. Ducayet?

MR. DUCAYET: Sorry, Your Honor. I lost my train of thought here.

BY MR. DUCAYET:

Q You were asked some questions about the kind of work that a lawyer would do in connection with preparing a reinsurance dispute. And I thought you mentioned the idea that a reinsurance dispute counsel might interview those who were involved in the underlying claims. Did I understand that correctly?

A That's true.

Q Did Mr. Sneed or anybody from Sidley conduct any interviews along those lines in connection with either the Lloyd's or the second matter?

A Mr. Sneed had phone conversations with myself, with Mr. Schwartz and two of my colleagues that report to me. None of us are direct claim handlers. I anticipate he would have had

discussions with the direct claim handlers as the matters went forward.

Q Okay. But he didn't, right?

A Not yet.

Q Okay. And he's not going to because he's not representing anymore, correct?

A Apparently.

Q Okay. Now you testified in connection when you first learned about the Boy Scout matter that it was about the same time that Josh did. I think you said in October or so 2019, is that correct?

A Yes.

Am I allowed to add something to my last answer that I just thought of?

Q Certainly. Go ahead.

A I just wanted to say that while Bill didn't interview the underlying claim witnesses in the Lloyd's matter their testimony was available to him in the full arbitration record from the first arbitration.

Q Okay. It was part of the record that was provided to the arbitral panel that, obviously, was shared both with the panel and with the opposing counsel, right?

A Yeah. Under a confidentiality agreement.

Q Yeah. But you're not suggesting that's privileged, are you?

A I'm suggesting there are things that are privileged in the underlying matter that are part of the arbitration record.

Q So, your suggestion is that the disclosure of information to a reinsurer doesn't waive a privilege. Is that what you're saying?

A It's a thorny issue and one we worry a lot about.

Q Okay.

A In my view --

Q And you can say with absolute assurance that there was no waiver by reason of having providing that information to a litigation adversary?

A I can't say that with a hundred percent certainty, but if my counsel is going to try to establish that I waived my privilege I got a real problem with that.

Q Okay. Getting back to the question I asked you in terms of when you first became aware of the Boy Scout representation by Sidley, let me ask you, Ms. Russell, if you have in front of you, could you take Mr. Sneed's declaration and take a look at Exhibit 5, please.

A Hold on. I think that's in the other book here. Hold on.

Q Okay.

A Did you say Exhibit 5?

Q Yes. To Mr. Sneed's declaration.

A Okay. I have it.
Q Okay. Let me ask you to turn the page to the first email in the string which is an email that was sent to Mr. Schwartz and a number of others on December 13th, 2018. Do you see that? Subject is Boy Scouts.
A I'm sorry. What was the date?
Q December 13th, 2018 at 7:19 a.m.
A Okay. Hold on. 7:19 a.m.?
Q Yeah.
A I'm not seeing 7:19 a.m.
Q Okay. Do you have Exhibit 5 in front of you?
A Yeah. The top email is December 13th, 2018 at 10:33 a.m.
Q We're talking about Sneed Exhibit 5, right?
A I believe so.
Q Okay. Docket No. 532-5.
A I don't have a docket number.
Q Okay.
A I believe Sneed Exhibit 4 is the service level agreement, correct?
Q Exhibit 5.
A Right. It follows 5 though and I'm just confirming that 4 is the service level agreement, right?
Q Yes. I believe that's correct.
A Okay. So, then when I turn to 5 the top email that I

have is Thursday, December 13th, 2018 10:33 a.m.
Q Okay. So, I want you to turn the page.
A Okay.
Q And you will see there's an email on that second page December 13th at 7:19. Do you see that?
A Okay. I do see that. I'm sorry.
Q Okay. No problem.
Now at the time, December 2018, was your email address christine.russell@brandywineholdings.com?
A Yes.
Q Okay. If I were to represent to you that you are the first recipient on this email would you have any basis to disagree with me?
A Not at all.
Q This has been redacted by request of your counsel. Do you know why they asked that that be redacted?
A I don't have the redacted one in front of me. So, I'm not sure what you mean by "that" being redacted.
Q I see. So, you have an un-redacted copy?
A I do.
Q Okay. So, you can confirm for that the first addressee in the to line is you, correct?
A Yes. I just said that.
Q Okay.
A I didn't realize it was redacted and I have no idea why

to answer your other question.
Q Okay. So, the issue of the potential representation of Boy Scouts by Sidley was brought to your attention back in December of 2018, correct?
A Could you ask that again? You said it very fast.
Q The issue of Sidley's representation of Boy Scouts was first brought to your attention back in December of 2018. Isn't that correct?
A I was informed that there was a press release that suggested that Sidley was representing the Boy Scouts, yes.
Q Okay. And that was in December 2018, right?
A Yes.
Q Okay. Now you made some mention in your testimony about the discussions that Mr. Schwartz had with Mr. Sneed and others about the advanced waiver requests in early 2019. Do you recall that?
A Yes.
Q Were you made aware of those discussions at the time they occurred or did you just learn about them later on?
A I think I was aware of them as they were ongoing.
Q Okay. So, you saw, for example, the March 4th email that Mr. Schwartz sent to Mr. Sneed laying out the three conditions under which Century would be okay with Sidley representing a debtor in a bankruptcy proceeding, right?
A I don't think I did see that contemporaneously when it

was happening. I think that Josh was -- you know, Josh and I talk on the phone a lot and I think he was keeping me orally informed of what was going on, but I don't think I was being copied in on the emails.

Q Okay. But Josh wasn't acting in a sort of unauthorized basis, right? He was conveying the position of Century Chubb at that time, right?

A I certainly believe he was. Josh is very conscientious about making sure he gets authority, but that authority would not have come from me with respect to prospective waivers. That would have come from a much higher level in the organization.

Q Okay. So, just to be clear then the proposal that was made on March 4th that lays out the three conditions that was approved at the very highest level of the company. Is that what you are saying?

A I think that's my understanding, but you would have to ask Josh to be sure.

Q All right. Now you gave some testimony about the coverage litigation that is ongoing in Texas and I think there is a case in Illinois as well. Do you recall that?

A Yes.

Q I think Mr. Schiavoni elicited testimony from you that you had gone through the pleadings and the documents in connection with that coverage litigation. Is that fair?

A I won't say I went through everything involved in the coverage litigation. I've seen some of the pleadings, excerpts, I would say, and I think I saw t eh discovery request that was served on us at one point in time. Over time I've seen a lot of the pleadings, but I can't say that I've seen everything. I certainly saw excerpts that I was referring to more recently.

Q Okay. So, let me just ask you then with respect to the discovery that you looked at this was discovery that had been served by Boy Scouts upon Century?

A Yes.

Q And you know, right, that Sidley is not representing Boy Scouts in connection with any of that coverage litigation, right?

A I know that I believe Haynes & Boone is counsel of record and I've been told that Sidley is not representing the Boy Scouts with respect to that coverage litigation, but I don't know for a fact, you know, how much involvement Sidley has in assisting with the coverage issues. I don't know that one way or the other.

Q Okay. Well, if I were to represent to you that Sidley doesn't have any role whatsoever in connection with that insurance coverage litigation do you have a basis to disagree with me?

A No. I just think there is a lot of overlap between

what Sidley is doing in the bankruptcy and the coverage issues where the insurance policies are one of the significant estate assets. So, not being a bankruptcy lawyer, I don't know fully what Sidley's role is, but I imagine there is a fair bit of overlap. It's hard for me to imagine that there isn't; that you can draw a clean line and Sidley has nothing to do with coverage issues at all.

Q Okay. But I'm asking a different question, Ms. Russell. I'm talking about the coverage litigation in Texas and in Illinois. If I were to represent to you that Sidley has no involvement in that coverage litigation would you have a basis to disagree with me?

MR. SCHIAVONI: Your Honor, asked and answered. This is something we address in our brief that deals with the plan itself.

THE COURT: Sustained.

MR. DUCAYET: Okay. Your Honor, we'll move on.

BY MR. DUCAYET:

Q Let me just ask you about the discovery. You reviewed the discovery requests?

A I did.

Q Okay. And did you review the responses to the discovery requests?

A I don't know. I can't remember.

Q Isn't it the case, Ms. Russell, that the position that

Century took in the insurance coverage litigation in Texas and Illinois was that it would not provide documents responsive to those requests because they were irrelevant?

A Yes. I believe that the reinsurance issues are -- the reinsurance discovery is irrelevant to the insurance case. That doesn't mean that the converse is true which is what Bill tried to imply in his testimony that the insurance record is relevant to the reinsurance case. The reinsurance record is not relevant to the insurance case.

Q Well, hold on a second. You testified that the reinsurance record contains information that you think would be harmful if it were disclosed to Boy Scouts. So, how could it be irrelevant?

A I said potentially harmful.

Q Okay. Then how is that irrelevant?

A Irrelevant but for the -- of course, some of the privileged discussions which should be maintained privileged.

Q Okay. But that is a not a qualification that was made. The position that has been taken is that these are totally irrelevant. They have nothing to do with the coverage litigation, isn't that right?

A That is right.

Q Let me just ask you a couple questions about the call that happened on December 18th. Look, I think there is, obviously, a significant disagreement between you and my

partner about exactly what happened on that call. And I don't want to test the patience of the court in terms of trying to get the ultimate bottom of who said what exactly, but isn't it true, Ms. Russell, that Mr. Sneed told you and Mr. Schwartz in the course of that call that the idea that Sidley had confidential information simply wasn't true? Didn't he say that?

A I don't recall him saying that at all. No, he did not.

Q Now Century had invoked its rights under the SLA to seek arbitration of the dispute that it has with Sidley. Isn't that right?

A Could you ask that again? I'm sorry. I missed the beginning of your question.

Q Sure. Sure. Sure.

Let me focus your attention to the SLA, the service level agreement, between Sidley and Century.

A Yes.

Q That SLA contains and arbitration clause, does it not?

A It does.

Q And Century has indicated its intention to pursue that arbitration as a result of what it believes to be breaches of the SLA by Sidley, correct?

A Yes.

Q And does Century intend to pursue that arbitration?

A I think I just said yes.

Q Okay. By the way, is there a reason why you did not submit a declaration in this matter?
A The only reason I understood was that my testimony was largely rebuttal to what Bill put into his and the timing was such that it was -- you know, with the COVID-19 virus, and us all being at home, and the short timeframe it just -- there wasn't time. They would just put me on as a witness. That is what I understand.
Q Okay. You know that Mr. Celentano he submitted a declaration, right?
A I do.
Q Ms. Rappleye also submitted a declaration?
A Who?
Q Ann Rappleye. I may be pronouncing it incorrectly. Ann Rappleye.
A I know that both of those people did, yes.
Q Okay. And in connection with your preparation for your testimony today did you spend time yesterday working with Mr. Schiavoni?
A A little bit.
Q Okay. And you understood that the testimony that you were going to provide would be in rebuttal to Mr. Sneed's declaration, correct?
A In large part, yes.
Q Okay. And you also understood that I had represented

to the court that Mr. Sneed would not testify beyond the scope of what he said in his declaration, right?
A I think I heard you say that this morning.
Q Well, were you aware of that before this morning?
A No.
Q I think you testified, Ms. Russell, that the categories of documents that Mr. Sneed received was accurate. Your dispute was over the language he had -- you said walked a fine line. Is that a fair summary of what your testimony was?
A I think I said it was inaccurate to the extent that he didn't really explain what all was in the arbitration record and the 15 years of historical knowledge and records that he has reviewed over 15 years.
Q Okay. Just to be clear you are not suggesting that Mr. Sneed's description of the categories of documents that he received was inaccurate, correct?
A Only that he was trying to minimize it as much as possible.
Q Okay. Is that a yes?
A Yes.
Q So, you made reference, by the way, to having consulted with an expert. Do you recall that?
A Yes.
Q When did that happen?

A Well, we actually consulted with several experts.
Q Okay. Let me ask you to take a look at Mr. Schwartz's declaration. In particular I'm going to ask you to focus on Exhibit 5.
A Yes.
Q And Exhibit 5 is a letter from Mr. Schwartz to Mr. Andolina at Sidley.
A Yes.
Q And its dated January 3rd, 2020?
A Yes.
Q And if you look at the very last paragraph, the second to last sentence reads,

"We also consulted with outside ethics counsel."

A Yes.
Q Okay. Was that Mr. Slanina?
A I don't know when we first reached out to Mr. Slanina.
Q Okay. Let me go back in that document to the second paragraph. Are you there?
A Yes.
Q In the third sentence it says that,

"We are unable to rule out that your firm's representation of Boy Scouts of America constitutes a conflict or potential conflict of interest of the duties that Sidley owes to the Chubb companies."

Do you see that?

A Yes.

Q And so as of January 3rd even having consulted with one or potentially even more than one outside ethics expert you were still unable to say that this was a textbook in obvious violation of Sidley's obligations, correct?

A We believed internally that that was the conclusion we were reaching and the advice we were getting, but we were still interested in having Sidley answer the questions we had been asking and we weren't getting answers to. So, rather than come out with a flat accusation we, again, were trying to gather information to check ourselves and say what are we missing. This seems very obvious to us, but what are we missing. Help us.

Q By the way, you accused Mr. Sneed of having this unusual tone and being very bullying in his December 18th call. There is no reference to any of that in this letter, is there?

A I don't know. I'd have to re-read the whole letter, but if you tell me there's not I will believe you.

Q Okay. Ms. Russell, in connection with the application that Sidley is making here Sidley has indicated that it is not representing Boy Scouts in connection with coverage disputes and that the firm of Haynes & Boone will be involved on those issues. Are you aware of that?

A I'm aware that Sidley has said that.

Q Do you have reason to doubt that Sidley has, in fact, done that? That that is the division of responsibilities?
A Yes. I do have doubts. I said this a few minutes ago because I think that in the context of this bankruptcy I find it -- just what I've learned just since I've been involved to the extent to which the bankruptcy plan is going to hinge largely on the insurance assets and in particular Chubb's policies, I find it hard to believe that Sidley can completely detach itself from the reinsurance issues and not be adverse to Chubb. I think -- you know, Bill said as much when he explained to Josh why they needed the prospective waiver. Without mentioning the Boy Scouts, he explained the extent to which, you know, a bankruptcy plan can have significant adversity to the insurers.

So, I think -- and I think we're seeing that play out already from what I understand in some of these meetings that have happened. And Sidley being on the other side of the table and trying to force us to a mediation on behalf of the Boy Scouts. So, I think from what I'm seeing I doubt that that line can be drawn the way Sidley suggests very cleanly.
Q Okay. And you have not been involved in these meetings, right? You are just repeating what you've heard?
A I have heard from my colleagues and my counsel that were at these meetings.
Q And you heard Ms. Boelter describe her view of those

meetings today in court, didn't you?
A I heard her talk about some of the earlier ones. I don't think she talked about the more recent ones.
Q Are you aware of the concept of insurance neutrality, Ms. Russell, in bankruptcy?
A Could you ask the question again? I'm sorry.
Q Sure. Let me ask it a little bit differently.
Are you familiar with the concept that in the bankruptcy context that a plan that materially impacts the rights of an insurer may give rise to the ability of an insurer to lodge an objection to the plan of confirmation?
A I'm familiar with the fact that an insurer can lodge an objection to the plan, yes.
Q And do you understand that that can only happen if the court determines that the plan is not insurance neutral?
A I wasn't aware of that, no.
MR. DUCAYET: Your Honor, just give me one second. I'm going to just look at my notes.
BY MR. DUCAYET:
Q You made some pretty strong statements about Mr. Andolina in your direct testimony. Did you ever speak with Mr. Andolina?
A Not at all which is partly why it was shocking to me that he was writing these things accusing us of ill-motive when I had never met him before and my own lawyer wasn't

contacting me.

Q Okay. So, you never had a conversation with him?

A No.

MR. DUCAYET: Your Honor, at this point I don't have any further questions for Ms. Russell. Thank you.

THE COURT: Thank you.

Redirect?

REDIRECT EXAMINATION

BY MR. SCHIAVONI:

Q Let me ask one question. Ms. Russell, do you think there is -- are there any of the answers that you have given or questions that you feel you need to clarify anything?

MR. DUCAYET: I'm going to object to that question.

THE COURT: It's pretty broad. Sustained.

MR. SCHIAVONI: Your Honor, I thought that question might be appropriate in the new video world where I'm so far away. I have no further questions.

THE COURT: Okay. Thank you.

Okay. Ms. Russell's testimony is concluded. You're excused if you wish to be.

THE WITNESS: Thank you, Your Honor. I prefer to stay on if that's okay.

THE COURT: Yes. You're the client representative, yes. Okay.

Mr. Schiavoni, what's next?

MR. SCHIAVONI: Yes, Your Honor. We have Mr. Schwartz.

THE COURT: Okay. And are you offering his declaration, are you doing direct or both?

MR. SCHIAVONI: I'm going to offer his declaration and I have some supplementation to add.

THE COURT: Okay. Mr. Schwartz?

MR. SCHWARTZ: Yes, Your Honor.

THE COURT: There you are. People keep moving around.

JOSHUA SCHWARTZ, WITNESS, SWORN

THE COURT: Please state your full name and spell your last name for the record?

THE WITNESS: My name is Joshua Robert Schwartz, S-C-H-W-A-R-T-Z.

DIRECT EXAMINATION

BY MR. SCHIAVONI:

Q Mr. Schwartz, if you could just briefly tell the court what your positon and title is?

A Managing counsel, director of reinsurance litigation for the Chubb Group.

Q And what generally are your responsibilities at Chubb?

A I manage and oversee the reinsurance disputes for the Chubb Group. We're in 54 different countries. I oversee

both seeded disputed where we're the insurance company, we pay the claimant, and now we're looking to our reinsurers to make their contribution. I also counsel (indiscernible) where we're the assuming reinsurer and we've been presented with the bill. So, I see both sides. I also work on both the legacy or run-off book of business that Ms. Russell manages as well as the active book of ongoing active policies.

Q How long have you worked with Sidley Austin?

A Since about 2016. I moved back from Bermuda. I was the general counsel at ACE Bermuda and then at the beginning of 2016 I met Bill -- I'm sorry, I met Mr. Sneed as well as the Sidley Austin Law Firm other attorneys. Right at the beginning of my tenure in 2016 because we had an ongoing litigation that was set for trial in June that had already been up to the Court of Appeals. Sidley had been on it for about four or five years. The case actually got adjourned for another year. So, that was a year and a half of very, very heavy activity on that one as well as others.

Q Have you been involved in retaining Sidley Austin in more than one matter?

A Yes, multiple.

Q What is the general nature of those matters that you retained them in?

A They're reinsurance disputes. Some where we're the

(indiscernible), others where we're the assuming reinsurer. The case I was talking about that I inherited we were an assuming reinsurer on that one. So, we worked on reinsurance disputes in both directions.

Q Were there counseling matters that were open at the time that you hired Sidley for the Boy Scouts reinsurance matter?

A Yes.

Q Okay. And were those counseling matters among the matters that Mr. Sneed sought to resign from and sent you a letter resigning from in 2020?

A Yes.

Q Did you engage Sidley to represent Chubb in connection with reinsurance matters for the Boy Scouts insurance coverage?

A Yes.

Q Okay. And can you tell us when did you first contact Mr. Sneed about that?

A I contacted him in September of 2018 and then he needed to address certain kinds of issues on his end. By October 5th I had sent him materials. He was clear of the conflicts and we were off to the races.

Q With a conflict matter --

A On the Lloyd's matter. I'm sorry, Tanc.

Q Right. With the conflict matters that he was

addressing did those deal with who the reinsurers were in the case?

A Yeah. It was the reinsurer issue, yes.

Q Okay.

A One of the challenges in this line of business that, you know, certain law firms can't represent us in certain disputes because of conflicts and we play by the rules.

Q Okay. And did Mr. Sneed tell you that he was conflict free to take on the Boy Scouts matter?

A Yes, he did.

Q When -- at the time you approached him to take on the Boy Scouts matter and then, you know, into October when you sent him materials on it did he tell you that Sidley represented the Boy Scouts?

A No.

Q Did you provide -- first of all, was Sidley operating under the service level agreement when you approached him about the Boy Scouts matter?

A Yes.

Q And did he ask you for a copy of the current form of the agreement?

A I believe that happened in November of (indiscernible). It didn't happen before the engagement commenced. They had already approved our SLA on the online system. So, we already had a binding agreement at that time and he asked to

see a copy of it in November 2018.

Q And did you provide it to him?

A I believe so. I sent him the SLA in November of 2018, yes.

Q And if you look at (indiscernible) did Mr. Sneed send you an email where he acknowledged that Sidley had worked for Chubb under the SLA?

A Yes. And we also discussed it at times as well.

Q Okay. And that's Sneed Exhibit 1. Could you just go to that exhibit for a second?

A Sure. Hang on. My materials don't have tabs. So, it might take me a second to get to the exhibits. Okay. I'm there.

Q Okay. And on December 7th, 2018 did Mr. Sneed send you an email where he indicated that Sidley had operated under the SLA?

A Yes. If you turn to Page 2 of this Exhibit 1 you will see my bill as requested with the SLA. Then he had spoken to me -- I had forgotten about this December 7th outreach when I submitted my declaration. I read Mr. Sneed's and it refreshed my memory. He had called me at the end of November and said that, you know, he's being asked to ask us for a prospective waiver for all matters. He knew that it was a non-starter and that, you know, we don't just do blanket prospective waivers. We're always very quick to accommodate

their request for waivers. So, I was a little bit surprised by it, but then he put it in writing and we told him no. I think I even mentioned -- yeah, I mentioned that we've been very willing to provide transactional waivers. So, I hope that that provides the necessary comfort going forward when I told him no on December 7th.

Q So, did you write Mr. Sneed in 2018 declining his request for a prospective waiver?

A Yeah. That is the first email on this Exhibit 1. It says,

"Bill, I'm sorry, but we aren't able to provide a prospective waiver. As you know, our company has been very welling to provide transactional waivers on a case by case basis. I hope that provides the necessary comfort."

Q Does the SLA set out a procedure for disclosing conflicts and consummating waivers for them?

A Yeah. It's incumbent on our partner law firms to bring to our attention any conflicts or potential conflicts and to obtain a written waiver if -- you know, they're a lot to ask for. (Indiscernible) decide whether or not we want to do it. With prospective waivers, you know, those are disfavored and require approval. I'm not sure if (indiscernible) SLA or not, but I know that we have to have approval from the general counsel of Chubb Group and the chief claims officer of Chubb Group in order to provide a prospective waiver.

Q And Mr. Schwartz, did Mr. Sneed get waivers for you on matters other than the Boy Scouts that indicated to you we understood the terms of the SLA with regard to written waivers?

A Yeah. You know, I took a look back we had three requests in 2019. There was one for a reinsurance transactional matter. There was one for a subpoena and we had a lot of back and forth on that one because I needed to know if there was a contentious subpoena or if this was just, you know, here's the subpoena, give me the documents and, you know, it would be a non-contentious one. What I explained to Sidley is that if it's non-contentious, you know, we're just going to agree on search terms and give you a document; that's one thing. We would not provide a waiver for a contentious subpoena.

Then we also had one other one where, I believe, Chubb was the shareholder in an entity and they were looking to do a transaction. So, we had to address that one. And with that one I think that the claims administrator folks had made an error and put the wrong header on it or something. So, I had that. Then (indiscernible), and I said why do we need to find one? I don't think these things are signed. Then they showed me, oh, no, you signed this one so please have this o ne signed. So, I had to get that one executed with a wet signature as well.

Q Okay. Did there come a time where someone sent you a copy of this Wall Street Journal article about the Boy Scouts potentially pursuing bankruptcy?

A Yes. It was in mid-December. The counsel that had been replaced on the matter, I think I communicated that a day or too earlier and it got sent over to me that Wall Street Journal article that has been the topic of testimony today. I forwarded it along to Bill so that he could have a discussion about it. And we had that discussion the next day.

Q Why did you sent it to Bill?

A Because I needed to ensure that there wasn't a conflict that would prevent our ability to work together on a matter.

Q Did Mr. Sneed tell you whether or not Sidley represented the Boy Scouts?

A No. He told me that, you know, he can't confirm or deny that Sidley has not commented on press stories. He assured me that we are conflict free and there is no problem, and that he could represent us in our manner.

Q Did you rely on what Mr. Sneed told you?

A Of course. He's my counsel. I am not an ethics specialist. Most of the time when I'm involved in a conflict process the law firm -- actually, I think every time I've had it the law firm comes to me and says this is the issue, we'd like to get a conflict. Then I work with senior leadership,

you know, to see what decision those folks want to make. I am the relationship manager of Sidley and, you know, I view my goal as to ensure that I can facilitate a prompt dialog so that we're not leaving counsel out on a lurch for a period of weeks with a waiver request. I try to get them done as quickly as possible.

Q Okay. After you hire Sidley, after you got assurance that they weren't conflicted from Mr. Sneed, and even after he assured you again after this article was sent did they come back to you and ask for a prospective waiver again?

A I'm sorry. Could you please repeat the question? My -- I'm at home and I just got nervous that my wife's blue tooth was going to catch my phone. So, I was giving her the cell phone to make sure that didn't happen. I apologize. I got distracted.

Q No problem. I have my cat here that keeps biting my ankles. Okay. So, I got my own problems.

So, just tell me -- Mr. Sneed provided you assurance that he was conflicted after you passed on the Wall Street Journal article, right?

A Yeah. I inquired and he said conflict free, and I moved forward, yes.

Q Okay. After that exchange did Sidley come back to you and try to seek a prospective waiver for bankruptcy matters?

A Well, eventually, yes. I believe in early January we

were trying to give Bill another important case. He explained that he can't take on anymore matters because there is new firm leadership and there's an initiative within the firm that requires prospective waivers and that they have flexibility on litigation matters, but they need it -- you know, it was explained to me it was for transactional and for restructuring bankruptcy matters.

So, I was provided with some wording on January 10th, 2019. That required a lot of work on my end to see if we would even be willing to contemplate it, but when Sidley explained that we can't work with them, otherwise, you know, I explained that internally and we tried to make something work.

Q Were you -- where were you trying to draw the line on -- in an exchange on a prospective waiver?

A Well, the way it worked, just to bring you up to speed, the line that they had drawn eventually was we only want it for restructuring. We're not interested in transactional anymore. And -- but I think that was by mid-February.

I think on February 20th, I spoke with Mr. Sneed and the head of his insurance -- their insurance group at Sidley. The two of them spoke with me and, you know, I explained to them on that call that litigation in bankruptcy is the issue. That I know that internally people are going to want to have carved out.

You know, we had a good talk and they said they're going to need to talk to people internally some more and they sent me over proposed wording on February 20th, which didn't address the litigation in the bankruptcy context. And I'm trying to give Bill a new case and, you know, I think you had just introduced a new document at the beginning of the case and I said, Can we cut to the chase? Like, give me the wording that we can, like, try to get this, this going with, and that led to the February 28th wording.

Q Were -- did you reach agreement on granting a prospective waiver?

A No.

Q Were you told that a request for a prospective waiver was being pushed by Sidley's management?

A Yes.

Q Okay. Did anyone disclose to you that Mr. Conklin on the executive committee was the originating partner for the Boy Scouts matter?

A No, I didn't know that Sidley was representing them at that time.

Q Okay. And did you -- did a point come where these waiver discussions broke down?

A They didn't break down. It was withdrawn by Sidley. It was -- I mean, I remember when I got the voicemail from Bill I just was like, Oh my goodness, this was a real waste

of a couple months' effort.

But at least it's gone and we can move forward and I know we can work on other matters together. So, I was pleased that it was behind us. I wasn't pleased to have gone through the process for no -- for naught.

Q Did you -- after you got the voicemail from Mr. Sneed withdrawing the request for a prospective waiver, did you memorialize that that was what he had told you in some way?

A Yeah, I sent him an email like right after. I had -- we were playing phone tag and he wound up leaving me the voicemail. So, I said, Bill, thanks for your voicemail. I just have to wait for a second and, you know, I'm glad that we're no longer -- that you're no longer seeking one. We're -- you know, we're done at the thing.

MR. SCHIAVONI: Okay. Your Honor, that email is in the record of exhibits. I'm not going to go to it, but we can -- it's cited in the papers.

BY MR. SCHIAVONI:

Q Were you -- did you become aware at some point, Mr. Schwartz, that -- of this meeting that took place on October 14, between the Chubb coverage people and the reinsurance -- and the bankruptcy team at Sidley?

A In 2019, October 14, yes, I did learn about that a couple of weeks after --

Q Okay. Did you know, at the time, that that meeting was

going to take place?
A No.
Q When did you learn that it took place?
A It was a couple of weeks after. I think it was the Sunday night, October 27th.
Q Okay. What did you do after you heard about that meeting?
A I immediately started to analyze what's going on. As I mentioned earlier, I'm not an ethics expert. I'm also not a bankruptcy expert. So, I wanted to understand what happens in a bankruptcy because irrespective of whether there is or isn't a conflict, I was -- wanted to be able to provide a recommendation upwards on, you know, how this might be negative for us.

So, I consulted with a number of different people. I mentioned -- I told Ms. Russell because it's, you know, her -- Sidley is her law firm and, you know, this is -- this was a big issue and I -- by Tuesday the 29th, I notified Sidley. I didn't want to just send Bill an email, so I gave him a phone call as a courtesy heads-up and I followed that up with an email.
Q Did you speak to Mr. Sneed after this?
A I spoke to Mr. Sneed on October 29, yes.
Q Okay. And what happened in that phone call?
A Well, it was a pretty quick call, but there were a

couple of things that I was surprised about. You know, I called and said, Gee, I haven't thought about this since the spring and I was just silent because I didn't think -- you know, I -- that prospective waiver request wasn't about the Boy Scouts to me and I'm like, Wait, we talked about this in December of '18. So, I was silent in response to that comment. He also said, This is going to cause a lot of issues internally, especially for me.

I wasn't happy about any of that, but I needed to put them on notice and, you know, what I was looking to do was to start a fact-finding mission to understand, you know, whether there's -- why they don't think there's a conflict and, you know, let's -- help us understand. Maybe we're missing something and we can analyze what we'd be willing to do. But, unfortunately, we didn't have a lot of information sharing or dialogue over the coming weeks.

Q What was the next call you had with Mr. Sneed?

A After that October 29 call I didn't speak with him again until December 18.

Q Okay. And that was the -- the December 18th call was the one that Ms. Russell described?

A Yes.

Q Okay. Is there anything that Ms. Russell described that is not in accord with your recollection of what happened in that call?

A No, it was pretty consistent. For me, you know, Bill, when he testified earlier today he said something about how he was upset or used the most-sophisticated word to express his frustration when I called him. He didn't express any frustration with me. He treated me like a client, very kindly.

But on this December 18 call, I've never had any experience like this before professionally where it just wasn't the same Bill. He got on the phone and, you know, after a few pleasantries, just dove in with a prepared speech; it was an ultimatum.

He was like, We're not dropping the Boy Scouts and if you've got a problem with that, we're going to drop -- we're going to withdraw from you on these matters, and then he listed a series of matters that he was going to be withdrawing from.

Anytime I tried to, you know, get into an understanding, Well, help us understand what is the conflict and he'd be like, You're cross-examining me now and, you know, that's not what this call is about. And, frankly, that was what the call was about, was to understand, you know, their position so that we could then make an informed decision and, you know, we were just being blocked on any substantive discussion about the issue.

Q After the December 18th call, did you try to do other

things to address this issue or resolve it?

A Yes.

Q And what did you do, Mr. Schwartz?

A Well, I know that we needed to provide a response to their ultimatum and we consulted internally and we said that we're not going to waive the conflict. But we -- you know, you can see throughout all of our correspondence that we were not trying to be adversarial; we were trying to ask questions to understand the situation best so that we could make a decision.

And even in that January 3 letter, it was, If you have other information, please let us know. And, you know, I'm not looking at the document in front of me, but if I'm not mistaken, I mentioned how we had asked for their analysis, whether it's a GC opinion or otherwise, like, we wanted to understand their analysis as to why there was no conflict with the concurrent representation of us in Boy Scouts.

We have since learned, and I'm sure Mr. Slanina is going to explain that, you know, if we're both current clients and there's adversity between the two of us, that's the end of the game. And here, we had two DJ actions pending between us and Boy Scouts at the time that we're having all this dialogue. So, we were trying to learn all this until, you know, December of '19 and January of '20, but we're just trying to figure out what's going on and we were just getting

stonewalled.

Q Did you review Mr. Sneed's declaration?

A Yes, I did.

Q Okay. And does it accurately portray the scope of privileged information which he was given?

A No.

Q And when you got into the January 2020 time period, did Chubb have open matters with Sidley?

A Yes, multiple.

Q Okay. And did you agree to consent to allow Sidley to withdraw from those matters?

A No. The only matter we consented to was the District of Massachusetts proceeding while making clear that we weren't releasing him from the Lloyd's arbitration, itself.

And in the district court, they had filed a motion and the last thing we wanted was to have a dispute before, you know, before Judge Kasper who was going to be ruling on our motion to compel, who had a rapport with the Sidley lawyers in Boston. We were not looking to have any sort of dispute in that forum and we consented with an express agreement that was on without a prejudice basis to the issues associated with this conflict.

Q As of the time that Sidley filed the bankruptcy on February 18th, was Sidley still counsel of record in arbitrations with Chubb?

A Yes.

Q Okay. And did you attach to your declaration correspondence from Mr. Sneed to the arbitrators in those matters on and after the bankruptcy where he was, in essence, making an effort to withdraw after the bankruptcy?

A Yes, I shared correspondence between me and Sidley after the filing on February 18 where Sidley said they were going to be withdrawing and, you know, I felt that they were at delicate points in the matters and I didn't understand why they needed to withdraw, other than, you know, in connection with this proceeding.

I mean, we had one matter where the other side had approached us to stay the arbitration and conduct an audit and try to settle. We did not want our adversary to, you know, be privy to this type of information.

We had another matter where the umpire was also an umpire in an arbitration that we had that was about to start and, you know, we did not want this to be -- we didn't want to be here right now. We wanted to address this in another way and, you know, after that filing, I was like, Why do you need to withdraw on us in these matters, it's going to be destabilizing. And we didn't even have counsel secured in one of the matters, so I would be the designated person to serve, which, you know, we eventually got other counsel to serve on.

We had to hire four different law firms to replace Sidley because of conflict issues with various of the counterparties in those remaining insurance disputes.

Q Did you or Chubb, to your knowledge, consent to Sidley writing the arbitrators to withdraw after the bankruptcy was filed?

A No, I actually pleaded with Mr. Sneed not to do so.

Q Did you see anything -- was there anything about the specifics about what was happening in the arbitrations that indicated that there was any reason to withdraw, other than the timing -- strike that. Strike that.

Was there anything about the timing of the withdrawals that suggested that there was any reason for the withdrawals, other than the bankruptcy, itself?

A No, it was really not, because in one of the matters that wasn't, you know, involving Boy Scouts claims, the discovery period had been extended to February 28. I think they talk about the original discovery period in some of the papers of February 4th.

So, Sidley was offering to take all those depos and then, you know, that would have been going until February 28 and they, you know, told that panel on February 20th that they're not -- that they've withdrawn.

Q Mr. Schwartz, you prepared a declaration that you filed with Chubb's objection in that case; is that right?

A Yes.
Q Are the statements contained in that declaration accurate to the best of your ability?
A Yes.
MR. SCHIAVONI: Okay. Your Honor, we'd offer the declaration into evidence and I have no further questions.
THE COURT: Thank you. It's admitted.
(Schwartz Declaration received in evidence)
THE COURT: Mr. Ducayet, cross? Mr. Ducayet, I can't hear you. You must have muted.
MR. DUCAYET: I'm sorry, Your Honor. I had it on mute for the call.
THE COURT: Yes, thank you.

CROSS-EXAMINATION

BY MR. DUCAYET:
Q Good afternoon, Mr. Schwartz.
A Good afternoon.
Q Prior to going in-house, you practiced for the firm, right?
A I worked at two law firms. I also clerked for a federal judge in Miami.
Q Okay. And the firm that you were at immediately prior to going in-house was O'Melveny, wasn't it?
A That's correct.
Q Okay. And did you know Mr. Schiavoni --

A Yes.
Q -- when you were there at O'Melveny?
A Yes.
Q Okay. Did you work with him?
A A very little bit.
Q Now, prior to the retention in the Lloyd's Insurance dispute in the fall of 2018, Sidley had never worked on any matters involving a Century policy that had been issued to the Boy Scouts, right?
A Before the October 2018 engagement, Sidley had not provided counsel on Boy Scouts' policies as far as I know.
Q Okay. And now, you testified in your direct examination about some insurance coverage litigation between Boy Scouts and Century, do you recall that?
A And other insurers, yes. I referred to it as the "DJ actions," declaratory judgment actions. I believe there were two pending that were stayed, if I'm not -- actually, I know there were stay motions. I don't know if they were stayed. I don't follow it that closely.
Q Yeah. And I think your testimony was that one of the things that were sort of, you know, wanting to consult with ethics counsel about was the fact that there were these pending declaratory judgment actions and didn't that make Sidley directly conflicted, right?
A No. I learned, eventually, what the rules are. Like,

I didn't even know that there was a 1.7 and a 1.9 until this event. So, I learned through the process, you know, what the obligations of a lawyer are.

You know, I left private practice before being put up for partner, so I went in-house, so I had never been the person who has to address conflicts with bringing business in like a partner in a law firm would.

MR. DUCAYET: Okay. I'm going to move to strike that as nonresponsive.

THE COURT: No, overruled.

MR. DUCAYET: Okay. Your Honor, thank you.

BY MR. DUCAYET:

Q The DJ actions, as you've referred to them, the proceedings in Texas and Illinois, you're aware of the fact that Sidley does not represent Boy Scouts in connection with those matters, right?

A Yes, I'm aware of that.

Q And you don't have any personal involvement in those matters, because you sit on the reinsurance side of the business and not the direct claims side of the business, right?

A That's correct. I do not have any involvement with the declaratory judgment actions, like management of the declaratory judgment actions, just to be clear. I'm thinking about that document request that you guys were talking about

earlier.

Q Right. And you understand, of course, that the position that Century has taken in connection with those document requests is that the information about the reinsurance matters simply isn't relevant in any of those claims, right?

A Yeah, it's a one-way street where the information is relevant to the reinsurance, but these are closed claims that we've already settled with the Boy Scouts and so, you know, what happened in the underlying and how the underlying policy operates is relevant, but it's not a two-way street.

Q Well, let me ask you this, the matters that Sidley was retained to represent Century on in connection with the Lloyd's reinsurance dispute and the other reinsurance dispute, those were settled matters too, weren't they?

A Yes, they were settled matters.

Q Okay. And nevertheless, as I understand the testimony of you and your colleagues, even though they're settled matters, there's still a sufficient relationship between the underlying direct insurance disputes and the reinsurance disputes that it is effectively a textbook conflict of interest, right?

A Sidley cannot advise us on the re-bill without full analysis of the first-encounter agreement, without a complete understanding of what happened in the underlying.

You know, Mr. Sneed's declaration references certain documents that were given. I had a number of conversations with him about a whole host of issues. So, he was privy to privileged information.

I don't agree with Ms. Russell that there's privileged information that was exchanged. I can't think of anything privileged, you know, like legal advice from our coverage counsel that we shared in the Boy Scouts case, but I certainly shared with Mr. Sneed, orally, a lot of information, including privileged information that I learned.

Q Okay. So, none of the documents -- you agree with Mr. Sneed none of the documents contained privileged information with respect to the underlying direct insurance claims, right?

A I haven't analyzed the full records. I wouldn't be comfortable giving you an answer. My general understanding is that there is none -- I don't know, but I don't believe so.

Q Okay. Now, Boy Scouts was not a party to the dispute between you and Lloyd's, correct?

A That's correct, (indiscernible) underlying subject (indiscernible) parties.

Q Okay. And those are that the dispute over bills that you tendered to Lloyd's in connection with matters that had already been paid out on behalf of Boy Scouts, correct?

A That's correct, yes.
Q Now, in the original Lloyd's arbitration, the one that Sidley did not handle, the reinsurers in that matter were not challenging the decisions by Century to actually make the payments for defense indemnity, correct?
A I'm not certain I can answer that question without divulging confidential arbitration information.
Q Well, wasn't Lloyd's saying that what Century should have done was it should have allocated the claims that it paid in a different way, pursuant to the terms of the reinsurance agreement, wasn't that their position?
A That's in the public record and I agree that that is one of the things, yes.
Q Okay. And they never said, Lloyd's never said, Look, you shouldn't have paid these at all. Forget about which policy they belong in. This is not within the scope of the coverage.
A They did not take that position, that's correct.
Q Okay.
A The public issue was application in the first-encounter agreement.
Q Right. And with respect to the issue that the policy that was at issue in the Lloyd's reinsurance matter, that was a treaty policy, correct?
A Yes, a treaty policy. The treaties have a

(indiscernible) provision that incorporates the terms of the underlying policy into the reinsurance contract, as well, yeah.

Q Okay. Now, Mr. Sneed discussed with you -- strike that. Let me set it up a little bit better.

You were forwarded a copy of that *Wall Street Journal* article in December of 2018, correct?

A Correct.

Q And you had a subsequent conversation with Mr. Sneed about that article, correct?

A Correct.

Q And I'm just curious, because you said in your direct testimony that the purpose of forwarding that to him was to determine whether or not there was a conflict.

Was that your testimony?

A I think I might have said something more specific, that I wanted to make sure that he wanted blocked on working on our matter for one reason or another, like -- but, yeah, I wanted to make sure there wasn't a conflict that needed to be addressed.

Q Did you say that in the email (indiscernible)?

A No.

Q Okay. You just said, FYI, right?

A And they he wrote back, I've got to go talk to a bunch of people. Let's make the call tomorrow instead of today.

We both knew what we were talking about.
Q Well, you said, FYI, and then you went on to discuss some specifics about the transmission of the matters to Sidley, right?
A That's correct, yeah.
Q Okay. And then you had a conversation with Mr. Sneed the next day, correct?
A That's correct.
Q And I think it's now undisputed Mr. Sneed said to you, Look, I just can't confirm or deny the recording here, but you don't deny, Mr. Schwartz, that Mr. Sneed told you that he did not believe that there was any conflict representing both, an insurance company that has a dispute with a reinsurer and the underlying insured, that the insurance company's policies cover, correct?
A I don't have a specific recollection of him saying that. I do know that he told me we're conflict-free and that was where I left things, because I rely on my counsel to tell me if there's a conflict or a potential conflict, anything that we need to -- anything that needs to be explored in more detail.
Q Well, you didn't say in sum or substance to Mr. Sneed, Look, if you guys are really representing Boy Scouts, that's a textbook violation. That's a fundamental conflict that we're not going to be able to get over.

Did you?

A Well, I didn't know if they were or weren't representing them. You know, sometimes someone will leak, you know, will plant something in the press. I mean, you know, like, to try to encourage the tort claimants settle more quickly.

I didn't know. Maybe they were assigned to, you know, analyze what's going to happen if we do bankruptcy with our campgrounds and, you know, just getting a legal opinion, so I didn't know.

And I also didn't know the ethics rules that I've learned over the last couple of months or so back then. As I testified to earlier, I rely on my counsel to come to me and present the issue and then I facilitate a dialogue with senior management in order to determine whether or not we want to do it. We would consent to a conflict after it's been presented to us.

Q Mr. Schwartz, based upon Mr. Sneed's comment to you that he could not comment one way or the other, couldn't admit or deny the recording, did you assume from that response Sidley was not representing the Boy Scouts?

A I didn't make an assumption one way or the other. I thought either they weren't or if they are, they're doing something that is not a conflict. Those are the only two options.

Q Well, let me just ask you this, you would agree with me that under the ethics rules, you don't have a duty of confidentiality unless someone is either a current or former client, right?

A I don't know. I'm not that well-versed in those rules. I apologize.

Q Let me ask you this, if Boy Scouts was not a client, would it violate any duty to Boy Scouts or anybody else to say, No, that's not true?

A I do not believe that there would be a confidence. No, I don't know.

I do know that my company always says we don't confirm or deny. We don't comment on press stories, and many press stories are inaccurate.

So, you know, from my perspective, that *Wall Street Journal* article caused me to make sure that I was still secure with my counsel and there were no conflict issues and I was provided with that assurance and I kept it moving.

Q Okay. Let me -- and, again, I think you never expressed to Mr. Sneed in that telephone conversation that, Hey, look, I'm just telling you, if you guys are representing Boy Scouts, we're going to have a major problem.

A No, we had a -- it was a long call. We were planning out a lot of strategy on multiple different fronts and it was just at the end of my to-do list was to say, Hey, what's the

story with that *Wall Street Journal* article? Are you guys representing them? Do we have a problem?

And what Mr. Sneed explained to me is that Sidley is not commenting on the press, you know, can't confirm or deny, but I'm fine working for you. So, that was it for me.

Q Okay. And my question just called for a yes-or-no answer.

Let me ask you, if connection with the discussions that occurred about an advanced waiver, as you said, your memory was refreshed that the discussion was initiated back in early December of 2018; is that correct?

A Yeah, my memory was refreshed, because in my mind, you know, after I spoke to Mr. Sneed in October of 2019, the whole prospective waiver was all about Q1 of 2019. I had forgotten that there was that initial request on December -- in November 30 and in writing on December 7, which we rejected. So, I had forgotten about that one.

Q Okay. And, again, I'm just trying to get a yes-or-no answer to this.

So, now that your memory is refreshed on that point, that interchange occurred prior to *The Wall Street Journal* article, correct?

A Yes.

Q And you heard Mr. Sneed testify earlier today that when he reached out to you on this issue, he was not aware of the

fact that Sidley was representing Boy Scouts.
A In December of 2018, yes.
Q Okay.
A That's what he's testified to.
Q Yeah. And in connection with the advanced waiver discussion, you described a process whereby there were different aspects of the waiver request that were being made and that with respect to the bankruptcy discussions, the focus was on litigation, right, the direct adversity like in a bankruptcy context.
Did I understand your testimony correctly?
A Yes.
Q And in connection with that, you were working with people internally at Chubb who included, which included, you know, folks who were familiar with the bankruptcy process, right?
A That's correct.
Q And that included Paul Beck, for example?
A Yes.
Q And I think Ms. Russell testified that you were keeping her apprised of those discussions, as well, correct?
A Yes, because we were trying to staff Mr. Sneed -- I'm sorry -- we were trying to staff Sidley on some Brandywine matters.
Q Okay. And in connection with the discussions, it was

Mr. Beck who came up with those three conditions in the March 4th, 2019, email, correct?

A We sat down together and discussed the issues and worked out what it would be and, yeah.

Q And did you express to Sidley the view that there were simply no circumstances under any situation in which a firm representing Century could ever represent a debtor that was also a Century insured?

A Well, the waiver that we were contemplating, the prospective one, wouldn't allow any direct or indirect involvement with coverage issues; moreover, the March 4 email I sent was not standalone integrated agreement. It references the proposal from Sidley on February 28 and said that this supplements that. So -- and that if you guys are onboard with these things, I can then go and put together a formal letter that we can then all sign off on. So, that's where we were in the process.

You know, I was optimistic that we were making some headway one way or the other and then, you know, they said, We don't need it. So, that was the end of it.

Q Okay. Mr. Schwartz, please, just listen to my question.

I asked you if you ever expressed to Sidley the view that there were simply no circumstances in which a firm representing Century could also represent a debtor that was a

Century insured, yes or no?
A I want to say yes or no. It's correct that I never said that there's no circumstance. I just want to make sure I'm answering the negative or the, you know, the yes or the no properly, so I apologize for my words.
Q Oh, okay.
And, ultimately, is it your understanding, sir, that Sidley has publicly committed that it is not going to bring an adversary proceeding against Chubb in connection with this matter?
A My understanding is that the issues involved with the plan, I mean, this is -- I believe that this is -- my understanding is that the plan and the insurance are integral and interrelated, but I'm not the best person to speak to those issues.
But I understand that the main asset that the Boy Scouts is looking to fund the tort claims with is the insurance and that's the plan, from what I understand. I think they want to maintain their real estate holdings and not have that be part of any of the funds. That's my general understanding, but I'm not speaking on behalf of my company; I'm just letting you know what my general understanding --
Q Oh, okay. And, again --
A -- but definitely people more knowledgeable that can speak to what's going on. Yeah.

Q I'm asking you a very simple question. Do you understand Sidley has publicly committed that it will not bring an adversary proceeding against Chubb, yes or no?
A I'm not aware specifically. If you want to direct me to something, I'm happy to look at something.
Q Have you read the brief? Have you read Sidley's response?
A I did read it once.
Q Okay. Are you aware of the fact that there's a section at the end of that brief that articulates precisely what it is Sidley would and wouldn't do (indiscernible) responsibilities would be divvied up among itself, Morris Nichols, and (indiscernible)? Were you aware of that?
A I didn't focus as much on that component. I'm a witness, not managing this litigation, so I was more focused on making sure I was providing accurate information and, you know, analyzing what was being said that was inaccurate. So, I wasn't as focused on that.
But if you want -- I do have the pleading in front of me. If you want to tell me what you want me to look at, I can look at something if that would be helpful.
Q Okay. Let's move on.
Let me ask you, you testified about various circumstances under in you were communicating with Sidley over the withdrawal and the way in which that withdrawal

would occur.

Do you remember that?

A I agree with everything, except the last comment, the way in which the withdrawal would occur. We weren't agreeing that they could withdraw, so I just took issue with the last part of your question.

MR. DUCAYET: Okay. Then I'll strike my last part of my sentence and the answer can stand.

BY MR. DUCAYET:

Q Now, the SLA that you refer to, Mr. Schwartz, has an arbitration provision in it, correct?

A Yes.

Q And has Century submitted to Sidley its notice that it intends to commence an arbitration?

A We've submitted our notice. Where we are in the process is that we thought we had satisfied the -- there's a meet-and-confer requirement, pre-arbitration -- we thought we had satisfied that. You said we didn't, so we, then, engaged in that process and that turned into an unsuccessful mediation and we will be pursuing our rights in terms of monetary damages in an arbitration.

Q Right. And among the monetary damages that you will be seeking are, you know, costs associated with what you claim arise from Sidley's allegedly improper withdrawal, correct?

A Yes.

Q Okay. Take a look, if you could, sir, at Exhibit 9.
A Exhibit to what, my declaration?
Q I'm sorry, excuse me. I'm sorry. Exhibit 9 to Mr. Sneed's declaration.
A I'm --
Q And I can tell you, Mr. Schwartz, this is also Exhibit 7 to your declaration, so whichever one is easier.
A Thank you. I'm ready when you are.
Q Okay. And that's a letter that was sent by Mr. Sneed on January 16th, 2020?
A Yeah.
Q And that's a letter in which Mr. Sneed communicated that Sidley withdraw from its existing representations of Century and Chubb, correct?
A It had said it intended to proceed. It said it had become a point of breakdown and I was like, Well, because we won't waive the conflict. So, yeah, this was his attempt to withdraw.
And then I wrote back saying, We don't consent to the withdrawal. I know that law firms can't just withdraw on their clients because they won't waive a conflict.
Q Well, Mr. Schwartz --
MR. SCHIAVONI: Your Honor, I apologize, Your Honor.
If Mr. Ducayet could say -- could you just -- I

just didn't hear what the exhibit number was. If you could just repeat it?

I apologize.

MR. DUCAYET: Sure. It's (indiscernible) Sneed, Exhibit 9 and Schwartz Exhibit 7. So, it's the same document.

MR. SCHIAVONI: Thank you. I apologize for interrupting.

BY MR. DUCAYET:

Q Now, Mr. Schwartz, you are aware of the fact that under the Rules of Professional Responsibility, a firm or a lawyer may withdraw from representation in the event of a breakdown in the relationship, right?

A I have not studied that. I heard -- I don't know the canon of that and what it -- I don't know the contours of that, you know, that maxim.

Q Okay. So, turn if you could, to the next exhibit, which is a letter that you sent back to Mr. Sneed.

A Yeah.

Q Okay. And you'll notice that that letter is dated January 30th, right?

A That's correct, yeah.

Q So, that's two weeks later, right?

A Yeah, it was January 3rd and then you guys wrote back two weeks later on January 16 and we wrote back two weeks

later, yeah.

Q Okay. And at the time that you received the January 16th letter, you were aware of the fact that public reports that Boy Scouts was going to be filing bankruptcy in the very-near future, correct?

A When I received the January 16 letter, I was in the middle of an arbitration. I don't recall what I knew or didn't know of. I knew that they were talking about filing, but I didn't know exactly when.

Q So, Mr. Schwartz, you weren't slow-rolling this response here in order to make the argument that counsel for Century is now making in its proceeding, which is that Sidley had not withdrawn by the time the petition was filed, were you?

A Absolutely not.

The trial ended the middle of the next week. I had to catch my breath. And then I'm not the only one who need -- I am signing this letter under my name, but I needed to make sure that the, you know, the direct claims folks, the Brandywine folks, the senior legal folks -- there are a number of people who need to be consulted, and the only reason why I didn't work on this sooner was because I was in the middle of an arbitration.

Q Now, Mr. Schwartz --

A I, frankly, thought that you can't break up with us, so

it wouldn't matter, any of this email, like, in any event; that is where my mind was.

Q Okay. So, even in the event of a breakdown in the relationship?

A The only breakdown in the relationship was that we wouldn't waive a conflict. I don't know what -- like, I really don't know what you mean about this breakdown in our relationship. It sounds like -- I don't really understand where you're going or what you're asking about.

Q So, Mr. Schwartz, you know very well that it was Sidley's position that there wasn't a conflict and you believe that there was, right?

A In the end I believed that there was and they never explained to me why there wasn't.

Q Okay.

A All they did was, you know, try to transform us into a former client to then have a debate over whether the matters are substantially related. So, I --

Q Well, let me ask you this, as of January 16th, was there any doubt in your mind that it was Sidley's intention to withdraw from all of the Chubb matters?

A Once I got this letter -- I mean, my hope was that we were going to somehow work something out so that we would be able to work with Sidley or the Sidley team, that there'd be something that could be done and that was my hope.

Q Well, how could we have worked something out when we engaged in a textbook violation of the ethics rules?

A My understanding is that, well, I mean, the reinsurance practice group could have gone to another firm. That would have been -- you know, that could have happened.

There are a number of things that could have happened if we were all working collaboratively and trying to, you know, proactively address the situation. Well, proactively would have been a lot earlier.

But we want -- we started this process on October 29, trying to understand what is the basis for your conclusion there is no conflict because we're trying to evaluate this and once we understood the conflict issue, we could maybe get to second base, which is, all right, are we willing to waive this?

But we, you know, we were just being treated very unfairly.

Q Well, isn't it true, Mr. Schwartz, that you refused to have a meeting with Sidley until you were provided with a written opinion, setting forth the reason why Sidley believed there wasn't a conflict; that was a precondition wasn't it?

A What we said was that we would like to see your analysis before the meeting and that would be, you know, make for a more-informed discussion. I don't think I would refer to it as a "precondition."

We did meet on December 18 without any analysis beforehand, other than the December 3, Mr. Andolina correspondence where he said, We, you know, we already -- we knew about this and we waived our right, you know, and it's unrelated.

And, you know, all of these points that -- well, not all, just a few points; there's just a short paragraph there where we're being, you know, criticized and he's questioning our motives and saying, you know, a nine-day delay in writing back is too long when it took him two weeks to get back to us in the first instance. So, there was a lot of -- yeah, I mean, I -- by January, I was hoping -- frankly, all along we were all hoping and, you know, in the end, we weren't able to get there.

Q Okay. Mr. Schwartz, just a last couple of questions.

In respect of the withdrawal and the arbitration proceeding, did there come a point where Sidley articulated to you a concern that the panel and opposing counsel in one of those arbitrations was being misled about the role that Sidley was going to have going forward?

A I know that our adversary said that, but it was inaccurate. We had assigned co-counsel because we weren't sure how that other matter was going to go and the co-counsel called up the other side and said, you know, we're being brought on as co-counsel, and for whatever the reason the

other side interpreted that as you're replacing them.

And we were trying to work out a joint communication with the panel and the other side is like, No, you said this. So, there was some correspondence back and forth that clarified the situation. Everything was fine and then Mr. Sneed told the panel that he is withdrawing on February 20th.

Q Didn't Sidley insist that you tell the panel and opposing counsel accurately that Sidley was not going to be involved in the case through its completion?

A Well, we were at a point where Sidley wrote and said, If you don't notify them within 24 hours what's going on, we will.

And so we said, We'll do it, and we wrote to the panel and explained the situation.

And then Mr. Sneed came back and said, Well, you didn't say that we've withdrawn.

And I said, Well, you haven't withdrawn. We have not accepted your withdrawal.

And then he said, Well, I'm going to tell the panel.

I said, Please don't, and I explained, you know, that it would not -- you know, that it would be prejudicial to us and he proceeded to do it anyhow.

Q Well, sir, is there any doubt in your mind as of January 16th that Sidley was going to withdraw?

A I don't know how these things work when a law firm wants to withdraw because you won't waive a conflict. I don't know how that works and, you know, maybe someone who knows more about the subject matter could illuminate the Court on that.

Q Okay. Mr. Schwartz, in the Massachusetts litigation in the Lloyd's matter --

A Uh-huh.

Q -- the firm that replaced Sidley in that matter was O'Melveny & Myers, wasn't it?

A Along with -- yes, along with Sugarman, which is a local firm. And Sidley had a DC office, so we were able to do a little bit of one-stop shopping, whereas we needed to hire two law firms, but not Mr. Schiavoni. We have a different dedicated team that works on that matter.

Q Okay.

MR. DUCAYET: I don't have anything further?

THE COURT: Do you have any redirect?

MR. SCHIAVONI: I'm sorry. Your Honor, I have nothing further. This is Mr. Schiavoni.

THE COURT: Okay. Thank you.

Mr. Schwartz, your testimony is concluded.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Mr. Schiavoni, what's next?

MR. SCHIAVONI: We have Chris Celentano. Your Honor, he was with -- you should have his declaration. Unfortunately, I think it was put in Saturday. It's relatively discreet; it's under 10 pages.

I would offer his testimony through the declaration.

THE COURT: Mr. Ducayet, any objection?

MR. DUCAYET: I don't object to that, Your Honor. I will register my -- no, no objection, Your Honor.

THE COURT: Okay. Any cross?

MR. DUCAYET: Very limited, Your Honor.

THE COURT: Is Mr. Celentano on video?

MR. SCHIAVONI: Your Honor, I think he is on standby. Hold on just one second.

(Pause)

THE COURT: Okay. I see him.

MR. SCHIAVONI: Stan, could you please call him on his cell phone. I'm not sure whether he's just having a technical problem, but I believe he's on the phone.

MR. CELENTANO: Can you hear me?

MR. SCHIAVONI: Is that you, Mr. Celentano?

MR. CELENTANO: Yes, it's Chris. Christopher Celentano.

Can you hear and see me?

THE COURT: I can, but are you on CourtCall?

MR. CELENTANO: I am.

THE COURT: Okay. Can you disconnect your audio on the video so that just your audio goes through CourtCall.

MR. CELENTANO: I did. I believe I did.

THE COURT: Okay. Can everyone see Mr. Celentano? I can.

UNIDENTIFIED: Your Honor, I think so. Is he wearing a set headphones?

THE COURT: Yes.

MR. CELENTANO: That is me, yes.

UNIDENTIFIED: Okay. Very good.

THE COURT: Okay.

MR. SCHIAVONI: Thanks, Your Honor.

THE COURT: Okay. Mr. Celentano, can you raise your right hand, please.

CHRISTOPHER CELENTANO, WITNESS FOR CENTURY INDEMNITY INSURANCE/AFFIRMED.

THE COURT: And please state your full name and spell your last name for the record.

THE WITNESS: Christopher Celentano, C-E-L-E-N, as in Nancy, T-A-N-O.

THE COURT: Thank you.

Mr. Ducayet, cross?

MR. DUCAYET: Thank you, Your Honor. Jim Ducayet, on behalf of Sidley.

CROSS-EXAMINATION

BY MR. DUCAYET:

Q Mr. Celentano, good afternoon. I just have a couple of questions for you.

Could you get your declaration out in front of you.

A Yes.

Q Can I direct your attention to the last paragraph, Paragraph 18.

A Yes.

Q In Paragraph 18, you're describing a meeting that occurred in October of 2019; is that right?

A Correct.

Q And in that paragraph you say that the meeting was on October 14th, 2019, and that Ms. Boelter and Mr. Andolina of Sidley presented Chubb with plan terms implicating Chubb's rights.

Do you see that?

A Yes.

Q And do you recall in that meeting, Ms. Boelter and Mr. Andolina telling you that no plan had yet been drafted?

A They did not present us with a plan document at that time. I don't recall a specific statement that they did not have a drafted plan, but they did not present us with a plan document.

Q Okay. Thank you.

And you're aware of the fact that after that meeting that your outside coverage counsel Walker Wilcox sent the letter to Haynes & Boone talking about what had happened in an October 14th meeting?

A Yes.

Q And the letter raised certain issues with respect to, you know, some of the discussions that had occurred, but it didn't say anything about presenting plan terms, did it?

A I'd have to look back at the letter to verify that. If you have it in front of you and you're presenting that it doesn't say those exact words, I'll believe you.

Q I think in the interests of time, let just keep going. I will make that representation.

If I understand your declaration, Mr. Celentano, correctly, one of the reasons why it took a couple of weeks for Century and Chubb, internally, to put together the fact that Sidley was representing Boy Scouts in the bankruptcy was because the reinsurance and the direct claims are handled by different units, different departments; is that right?

A Correct.

Q And, in fact, your office is in New Jersey, correct?

A Correct.

Q And the reinsurance group, including Ms. Russell and Mr. Schwartz, they're in Philadelphia, correct?

A Ms. Russell and Mr. Schwartz are in Philadelphia. The

entire reinsurance department of Chubb, I do not believe it's entirely in Philadelphia, but those two employees are.

Q Okay. Now, looking, again, at your declaration in Paragraph 14, 15, and 16, you discuss certain lawsuits that are pending in Illinois and Texas involving Boy Scout coverage.

A Correct.

Q Do you see that?

A Yes.

Q And just as a preliminary matter, you understand that Sidley is not counsel to the Boy Scouts in any of those matters, correct?

A Correct.

Q And in Paragraph 16 you talk about some discovery that the Boy Scouts served on Century asking for information about the reinsurance arbitrations, right?

A Yes.

Q Okay. Did you ever review the responses to those discovery requests?

A I did.

Q And so you're aware of the fact that Century took the position that the information that was being sought was not relevant to any of the issues in the insurance coverage action, correct?

A That is our position, yes.

Q Okay.

MR. DUCAYET: I have nothing further.

THE COURT: Thank you.

Any redirect?

MR. SCHIAVONI: Yes, just briefly, Your Honor. Tancred Schiavoni.

REDIRECT EXAMINATION

BY MR. SCHIAVONI:

Q Mr. Celentano, you were asked some questions about whether or not a plan had been drafted or prepared.

Did you remember those questions?

A Yes.

Q Okay. At the meeting on October 14th, did the Sidley lawyers tell Chubb that they hoped to have a pre-package bankruptcy plan agreed to and filed before Christmas?

A Yes.

Q The letter that -- if we could just go to the letter for a second that Mr. Ducayet referred you to, it's Boelter Exhibit 2.

A Okay.

MR. SCHIAVONI: And to the extent you don't have it quickly handy, I'm just going to ask Mr. Stamoulis to pull that up, the first page of it.

And is that it on the screen, Mr. Stamoulis?

(No verbal response)

THE WITNESS: Okay. I see it and I found it in Ms. Boelter's declaration. Okay. I have it.

MR. SCHIAVONI: Okay. Hold on. Through the magic of Zoom, I have -- oh, there it is. Okay. Good. I couldn't see it. We can't have the witness see it and not the lawyer.

If you could go to the first page, Mr. Stamoulis, the second paragraph, middle of the page there.

BY MR. SCHIAVONI:

Q This is a letter -- you saw this letter before it went out to the Boy Scouts, right?

A Yes.

Q Okay. In the second paragraph there, the author, Mr. Wadley said that at the meeting -- do you see the second paragraph, second sentence, At the meeting -- and that's a reference to the October 14th meeting, right?

A Yes.

Q Okay. Boy Scouts disclosed that it engaged in significant discussions with the claimant lawyers regarding the settlement of current claims and part of a pending bankruptcy and then the sentence goes on.

Have I read that right?

A Yes.

Q Okay. And did the Sidley lawyers tell you that at this meeting that this matrix was part of that bankruptcy that they were trying to negotiate?

A That was their plan, yes.
Q Okay.
A The plan was to use the matrix to settle the abuse claims.
Q Okay. And if you go to the next page of this letter, the last -- the first sentence at the very top, it says:
"Last, BSA disclosed that it has also engaged in discussions with a potential future claims representative."
Have I read that right?
A Yes.
Q Okay. And did the Sidley lawyers who were present, were they the ones who disclosed that and said that, that they had engaged in discussions with a "potential future claims representative"?
A Yes.
Q Okay. Thank you very much, Mr. Celentano.
MR. SCHIAVONI: I have nothing further, Your Honor.
THE COURT: Mr. Ducayet, does that prompt any questions?
MR. DUCAYET: Just one, Your Honor:

RECROSS-EXAMINATION

BY MR. DUCAYET:
Q Mr. Celentano, looking, again, at Paragraph 18, the sentence that we were talking about on my cross goes on to

say that Chubb presented -- excuse me -- Sidley presented Chubb with plan terms implicating Chubb's rights, pressed that those terms be offered to the tort claimants and then did so over our objection.

And my question is, did Sidley give Chubb the opportunity to provide comments on that draft matrix?

A When they presented the matrix to us at that meeting, at the meeting, we -- and that was the first time we had saw it -- and at the meeting we told them that we did not think that they should be presenting this matrix, especially with values inserted in the matrix, to plaintiffs at this initial mediation session that they had said that they already scheduled. So, they did invite our comments which we began memorializing in that October 17th letter and then we started the process of trying to get claim information from the Boy Scouts about which claims they were actually considering settling.

And that's what the meeting with my colleague Shelly Williams had attended in Chicago the following week, which was in Ms. Boelter's declaration, also. That was the purpose of that meeting, was to obtain claims information for the claims that might be subject to this matrix.

Q Okay. And didn't Chubb provide comments to Sidley, with respect to this draft claims matrix before it went to the plaintiffs?

A We noted our objection to providing a matrix to the plaintiff before the mediation. We did not give any, to the best of my knowledge, substantive commentary on the descriptions, the injury-tiering descriptions and the values because we just did not have any information to give that commentary.

So, we noted our objection at the October 14th meeting. We noted our objection, again, at -- prior to mediation. We were advised, I believe, the Friday before the mediation through Haynes & Boone that the Boy Scouts had provided the matrix to the plaintiffs and then there was no further discussion.

Q Mr. Celentano, do you know if the version that went to the plaintiffs reflected any of the comments that had been provided?

A The version that went to the plaintiffs, I'm not sure; I'd have to go back and look.

Q Okay. All right.

MR. SCHIAVONI: I apologize, Your Honor, that was more than one question, but I don't have anything further.

THE COURT: Thank you.

Okay. Mr. Celentano, your testimony is concluded and you may be excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

(Witness excused)

MR. SCHIAVONI: Your Honor, we have Mr. Slanina next.

THE COURT: Okay. Is he your last witness?

MR. SCHIAVONI: He is, Your Honor. He's an expert. I don't know what Your Honor's intention is, whether to take this on the papers when he's done or whether you intended to have -- or, you know, thought argument would be helpful at another time. If you did, we could continue and deal with Mr. Slanina then or we could do him now. It's up to the Court.

THE COURT: I'd like to get all of the testimony in today, but I'd like to take five minutes and then we'll reconvene and then we'll do Mr. Slanina's testimony.

So, I've got 5:34, so 5:40, we'll reconvene.

MR. SCHIAVONI: Okay. Thank you, Your Honor.

THE COURT: Thank you.

(Recess taken at 5:34 p.m.)

(Proceedings resumed at 5:40 p.m.)

THE COURT: Let get back on the record. I see Mr. Ducayet. I see Mr. Schiavoni. I see Mr. Slanina.

MR. SCHIAVONI: Your Honor, this is Mr. Schiavoni. My partner Mr. Svirsky is going to present Mr. Slanina.

THE COURT: Very good.

Mr. Svirsky?

MR. SVIRSKY: May I proceed, Your Honor?

THE COURT: Let me swear in Mr. Slanina first.

MR. SVIRSKY: Yes, Your Honor.

THE COURT: Okay. Mr. Slanina, can you raise your right hand, please.

CHARLES SLANINA, WITNESS FOR CHUBB CENTURY INDEMNITY, AFFIRMED.

THE WITNESS: It's Charles Slanina, spelled S-L-A-N-I-N-A.

THE COURT: Okay. Mr. Slanina, you're -- that was a little garbled for me, so can you see if you can either bring your speaker closer or maybe speak a little louder and make sure you're slow.

THE WITNESS: Okay. I can certainly do both of those things.

THE COURT: Oh, that's much better.

THE WITNESS: Is that better?

THE COURT: Yes, thank you.

Mr. Svirsky?

MR. SVIRSKY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SVIRSKY:

Q Good afternoon, Mr. Slanina.

A Good afternoon.

Q Do you lecture on professional responsibilities and

ethics and write a monthly ethics column in *The Journal of the Delaware State Bar Association*?

A Yes, I do.

Q And has your practice focused on professional responsibility and ethics for many years?

A For approximately the last 30 years.

Q Now, have you been listening to the testimony today?

A Yes.

Q Did you hear anything today that has caused you to change any of the opinions in the declaration that was submitted on your behalf to the Court?

A No, it did not.

Q Now, did you review Sidley's brief and supporting papers in support of this retention application?

A Yes, I did.

Q What, if anything, jumped out at you from the filings that you reviewed?

MR. DUCAYET: Your Honor, let me object to the question. Mr. Slanina has not filed any sort of supplemental declaration in this matter. He provided a declaration in connection with the Century response brief that was filed back on April 14th and so we would object to him offering any opinions that are outside the scope of his declaration, which is the only document that we have in front of us.

And to the extent that Counsel was asking him to

comment upon things that were filed after that declaration was submitted, we think would be immaterial proper, would be prejudicial, and not consistent with the rules requiring disclosure of expert opinion.

THE COURT: Mr. Svirsky?

MR. SVIRSKY: Your Honor, they -- Sidley has entered an opinion from its purported expert here and I'm asking Mr. Slanina if he has a view on that opinion, if it has caused his opinion to change as a result. I think that's proper and within the scope of this hearing.

MR. DUCAYET: Your Honor, I think it's only proper if the answer is no, because if the answer is yes, then I think we're entitled to get disclosure of those opinions.

THE COURT: Mr. Svirsky?

MR. SVIRSKY: Mr. Ducayet will have an opportunity to question him about any answers he gives, of course.

THE COURT: Okay. Well, first --

MR. DUCAYET: Your Honor, that's really not the way it works.

THE COURT: Okay. First, I'm not sure that was the actual question, but, second, I think the testimony needs to be limited to what Mr. Slanina's opinions are and that's what I'm prepared to hear.

MR. SVIRSKY: Okay. Let me try a few questions on that, Your Honor.

BY MR. SVIRSKY:

Q Mr. Slanina, did you review the SLA, service-loan agreement, in this case?

A Yes, I did.

Q And you heard the testimony about whether or not there was written consent requested and given by Century in this case?

A Yes, I did.

Q And what was -- you heard the testimony that Century never gave written consent, right?

MR. DUCAYET: Your Honor, I'm sorry to interrupt again, Your Honor, but the SLA is not identified in the declaration among the documents that he reviewed and I think this is just another way to get out an opinion that was not contained in the original declaration.

Mr. Slanina could have filed a supplemental declaration. He did not and in reliance upon him not filing a supplemental declaration, you know, we're prepared to go forward on what he originally put into the record, but Counsel's questions, I think, go beyond that.

MR. SVIRSKY: My question, Your Honor, was whether he heard the testimony that Century didn't give consent to a waiver.

THE COURT: I'm sure he heard it because we all heard it.

MR. SVIRSKY: Right.

BY MR. SVIRSKY:

Q And my next question is, what is the implication on the rules -- under the rules of ethics of that fact?

MR. DUCAYET: Again, Your Honor, I think that's -- the issue of whether there was a written waiver or not is something that could have very easily been addressed in the original opinion but was not.

THE COURT: Well, it's (indiscernible).

MR. SVIRSKY: Mr. Slanina opined about the need for informed consent, Your Honor, in his report under Rule 1.7.

THE COURT: That, he did, and that's what I'm looking for.

THE WITNESS: If I may?

BY MR. SVIRSKY:

Q Should I state the question or do you have it, Mr. Slanina?

A I think I have it and I can limit my response to what I covered in the declaration.

I knew this after reviewing certain documents and speaking to Mr. Schwartz, primarily, as a situation where there was a concurrent conflict of interest, concurrent client conflict of interest in Sidley's representation of the Boy Scouts while still representing Century. And under Rule

1.7, informed client consent confirmed in writing is required if that conflict is to be cured.

I was presented no information in preparing my declaration or after listening to the testimony today to conclude that there was informed written consent provided by Sidley to Century as part of my declaration and my analysis.

Also, I looked at Sidley's claim that this was a Rule 1.9 analysis. That Century was a former client, rather than a concurrent client, a 1.9 analysis certainly can appreciate why it is an attractive one for Sidley to argue that they were in compliance with Rule 1.9. It's a much more lenient standard. Much of their responses dealt with whether or not the BSA representation was the same (indiscernible) matter or whether their client confidence (indiscernible) --

MR. DUCAYET: Your Honor, I think the witness, at this point, is just conducting a narrative. I don't think there's really a pending question at this time.

THE COURT: Sustained. Let's ask a question, please.

BY MR. SVIRSKY:

Q Mr. Slanina, under Rule 1.7, about which you opined, is the reasonableness of a lawyer's belief or of a relevant consideration about whether or not there's a conflict?

A No.

Q Is screening an adequate remedy for a concurrent

conflict under Rule 1.7?

A No. It's not found in 1.7 at all. I consider a response to the contrary conflates a different rule, the imputation rule which does permit screening under certain circumstances, none of which I found to be present here.

MR. SVIRSKY: I have no further questions, Your Honor.

THE COURT: Mr. Ducayet?

MR. DUCAYET: Yes, and I'll be very brief, Your Honor.

And similar to what Mr. Schiavoni said with respect to Professor Rapoport, we also have objections to the testimony here and I'll just put those on the record. I'm not going to belabor the point.

Our view is that this is an opinion which is really just a legal opinion and it's improper, Your Honor, for that reason. Your Honor, of course, is the legal expert in this proceeding and Mr. Slanina's declaration and his testimony don't add anything if Your Honor can't, otherwise, resolve for herself.

But with that said, let me just ask a couple questions and we'll wrap it up.

THE COURT: Okay.

MR. SVIRSKY: Can I respond?

Your Honor, I can respond after Mr. Ducayet is

done, if you'd like to hear it on that issue.

THE COURT: Let's have the questions and then I will let you respond to the objection, which I will also take into consideration as I rule, but let's finish the testimony.

MR. DUCAYET: Very well, Your Honor.

MR. SCHIAVONI: Your Honor, just a housekeeping matter. We would like to offer the declaration into evidence.

MR. DUCAYET: And, Your Honor, we don't object to that, subject to our objections that Your Honor should not give it any weight in connection with your analysis.

THE COURT: Thank you. Then it's admitted and I'll determine how to use it.

(Slanina Declaration received in evidence)

MR. DUCAYET: Very well, Your Honor.

CROSS-EXAMINATION

BY MR. DUCAYET:

Q Mr. Slanina, just a couple questions for you.

If you look at your declaration on Page 1, actually flip the page. Page 2, Paragraph 2, do you have that in front of you?

A Yeah.

Q You say that you provided expert opinions and expert testimony at trial and by deposition in at least nine previous cases.

Do you see that?
A Yes.
Q Why do you say "at least"? Is there some reason you don't know exactly how many times you've testified as an expert?
A Well, my statement is to as to providing an expert opinion and expert testimony. Not all the time that I provided an opinion was the opinion used. There were times when I -- my clients didn't like the opinion they got and they chose not to use it or act on it. So, I've done -- I've offered the opinions, but they haven't always been used and not all the cases go to trial.
Q Well, but your sentence here reads you've provided expert opinions and expert testimony at trial or and by deposition in at least nine previous cases.
What you were just describing doesn't fit within that language, does it?
A So, is your question whether there are more than nine?
Q I'm just wondering why --
A You get the ones that I identified and I haven't kept a running track of them.
Q Oh, okay.
And based on the list that is contained in Paragraph 2, I take it you've never testified in a bankruptcy proceeding?
A I believe that is correct.

Q Okay. And now, you do provide expert testimony, but your primary employment is as a practicing attorney; is that correct?
A That is correct.
Q And your practice focuses on legal ethics matters, correct?
A It's pretty equally divided between disciplinary defense, actually representing attorneys in disciplinary matters and then doing advising and consult ing. And in the latter, I would put testifying as an expert.
Q Okay. But you're not a bankruptcy lawyer. You wouldn't characterize yourself as a bankruptcy lawyer, would you?
A Absolutely correct.
Q Okay. You have done some bankruptcy work in the past, though, haven't you?
A Not enough to really mention.
Q Well, didn't you represent the law firm in a bankruptcy matter once?
A Which law firm?
Q The firm of Paul, Hastings, Janofsky & Walker in the Northwestern Corporation matter?
A It was a bankruptcy matter, but I wasn't representing them in the context of a bankruptcy issue.
Q Right. The issue there was similar to the issue here,

it's that a party was seeking to disqualify the Paul Hastings firm, correct?
A Exactly. Just to make that point, I don't view myself as practicing bankruptcy law by being an expert in this matter.
Q Okay. And in representing Paul Hastings, you argued that that firm should not be disqualified, correct?
A I believe that's correct.
Q And among other things, you said in the papers to the Court that because motions to disqualify a debtor-in-possession counsel can be used for tactical reasons, they are frequently viewed with a certain amount of skepticism, right?
A Correct.
Q And you also argued in connection with that representation that under the Section 327 standard for an adverse interest, the relevant question is what the current interests are that are held by the firm, not what it prior representations were, right?
A I defer to your view over my recollection, but yes.
Q Okay. That --
A I (indiscernible) that to be true.
Q Okay. Very good.
MR. DUCAYET: I don't have anything further.
THE COURT: Any redirect?
MR. SVIRSKY: No, Your Honor.

THE COURT: Okay. Thank you very much, Mr. Slanina.

THE WITNESS: Thank you.

THE COURT: Your testimony is concluded and you're excused.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Witness excused)

MR. SCHIAVONI: Your Honor, would you like a response for the record on the objection to Slanina?

THE COURT: Yes, please. Thank you.

MR. SCHIAVONI: Just to make a record on that, Your Honor, Sidley hasn't argued, objected to the relevance of Mr. Slanina's testimony. He clearly possesses specialized knowledge in the area of ethics. It could assist the trier of fact here and such testimony has been accepted in Delaware, and I cite the Walt Disney case for the Court; that is 907 A.2d 693, affirmed that 906 A.2d 27, there's nothing unusual about taking guidance from an expert on ethics issues.

THE COURT: Okay. Thank you.

MR. DUCAYET: Your Honor, if I may?

THE COURT: Yes.

MR. DUCAYET: I understand it's been a long day, Your Honor; probably longer than any of us anticipated. And

I also understand Your Honor's desire to try to conclude, at least, the testimony today. That is a goal that I wholeheartedly agree with and share.

I don't know what Your Honor's schedule would permit. I would, though, ask for Your Honor's indulgence if I could just have about five minutes to consult with my colleague, and the question that we're considering is whether or not we need any rebuttal testimony; again, with a view towards trying to get everything done today and obviously cognizant of the fact that it's been a long day.

THE COURT: Yes, I'll give you five minutes and I will tell you my anticipation is not to start argument at six o'clock at night, so I would, if possible, like to conclude the evidentiary portion so we all know what the record is so that argument is fruitful.

So, yes, take five minutes. We're in recess.

MR. DUCAYET: Okay. Thank you, Your Honor.

(Recess taken at 5:59 p.m.)

(Proceedings resumed at 6:09 p.m.)

THE COURT: Okay. We're back on the record.

Mr. Ducayet?

MR. DUCAYET: Good afternoon, Your Honor. Thank you for the opportunity to consult.

I am going to do a very short rebuttal presentation and I'm going to ask Mr. Sneed to go back on the

stand.

Is Mr. Sneed on the line?

THE COURT: I see Mr. Sneed, but I don't hear you.

MR. DUCAYET: Okay.

THE COURT: Now, are you on CourtCall, Mr. Sneed?

(No verbal response)

THE COURT: Operator?

THE OPERATOR: Yes, Your Honor?

THE COURT: Can you see that Mr. Sneed's line is live?

THE OPERATOR: I'm checking now.

(Pause)

THE OPERATOR: His line is open.

MR. SNEED: Hello?

THE COURT: Yes, now I can hear you.

Okay. Thank you, Operator.

Okay. Mr. Sneed, you are still under oath.

MR. SNEED: Yes, Your Honor.

WILLIAM SNEED, REBUTTAL WITNESS FOR SIDLEY AUSTIN, PREVIOUSLY SWORN, RESUMES STAND.

THE COURT: Mr. Ducayet?

MR. DUCAYET: Sorry, Your Honor. I had it on mute again.

DIRECT EXAMINATION

BY MR. DUCAYET:

Q Good afternoon, Mr. Sneed.
A Good afternoon.
Q Did you have an opportunity to listen to the testimony of Ms. Russell and Mr. Schwartz?
A Part of Ms. Russell's and most of Mr. Schwartz. I was drawn away a couple of times, but most of it, yes.
Q Okay. I want to just ask you a couple of questions about the testimony that they provided and let me start, first of all, with the telephone call that occurred between the three of you or among the three of you on December 18th of 2019, okay.
A Yes.
Q Both Ms. Russell and Mr. Schwartz said that, in almost identical language, that you were a different person on that call and that the tone on that call was very, very different than any communication you had had with them in the past. Is that, in your mind, an accurate characterization of that telephone call?
A No, not as far as my demeanor or approach. I was very level and calm and they were quite agitated, but I got the sense -- I think I heard more of that from Ms. Russell, that after pleasantries I went and read them a speech and something. I don't agree with any of that.
Q Okay. What were you trying to accomplish on that call, Mr. Sneed?

A I was trying to get a conference or a meeting with people to discuss the issues and get past this, you know, precondition, Oh, we have to see all your analysis beforehand. I wanted to make progress to understand what their issues were and get them addressed.

And I didn't bully them or issue them ultimatums. I asked that it be moved up and that we have a conference, which is, I think, something that we'd been trying to get since late October.

Q Okay. Now, Mr. Sneed, there was also some testimony from Ms. Russell and Mr. Schwartz about the representation in the Lloyd's matter and the other reinsurance arbitration matter.

Did you have an opportunity to hear that testimony?

A Yes, I did.

Q And Ms. Russell, in particular, testified that while the list of the categories of documents that you explained to the Court that you had received from Century in connection with the representation was accurate. That you sort of walked the line and tried to minimize the significance of those documents in terms of their relevance to a potential bankruptcy filing.

Did you hear that?

A I did hear that.

Q Do you agree with that?

A No. The Lloyd's arbitration record was the main thing that we got as one category. There was nothing in the Lloyd's arbitration record about a pending sub or Century BSA-coverage dispute. It was a non-issue. It wasn't what was being fought over. And this -- those (indiscernible) coverage of the action involving BSA and Century in Texas and Illinois, I gather.

None of that information was at issue in the Lloyd's arbitration. It's never been supplied to me. I don't have anything from that case. No legal analysis about those cases has ever been supplied to us. I think Mr. Schwartz admitted that during his cross-exam.

The bulk of the second category of information was the treaty negotiations and the '50s and '60s have zero relevance and reference anything to BSA.

And I get the sense that what's being proposed to the Court is that while there was a good deal of discussion with Sidley and Mr. Sneed about the insurance coverage disputes with BSA and there was not. There was none. It wasn't the issue.

The issue was, can you put more than one molestation claim together as an event under a reinsurance contract from the '60s. That was the issue.

And that's what I addressed and, you know, there was talk about, Well, the first encounter (indiscernible) somehow

still going to be at issue in the next case?

I was like, No, it wasn't. The -- let me just read the Massachusetts Court opinion. The whole thrust of why we get to arbitrate again is that that was the only issue they ruled upon and that was a dead issue.

I think there's a good deal of characterization of things going on that I disagree with.

Q Okay. Mr. Sneed, let me just ask you this, then. One of the points that Ms. Russell made was that the fact that the arbitration sought declaratory relief was significant. Can you comment on that, is that correct, is the fact that the declaratory relief was being sought, does that somehow change the analysis in your mind?

A No.

MR. SCHIAVONI: Your Honor, if he could just break this down into two questions; one, whether, in fact, the matter seeks declaratory relief for future claims and then, second -- and then on the second question, where we can see whether the question is framed in a way to draw out confidential information, privileged information that isn't out.

THE COURT: Okay. Mr. Ducayet, the concern about confidential information, please break it down.

MR. DUCAYET: Yeah. Sure, Your Honor. Of course.

BY MR. DUCAYET:

Q Mr. Sneed, is it correct that the two arbitration proceedings included requests for declaratory relief?
A I think the second one did. I'm not sure about the first one. I didn't draft that.
Q Okay. And then with respect to the question here -- and I don't want you to reveal, you know, privileged information -- but the fact that there is a declaratory judgment request in that second arbitration proceeding, does that somehow change, in your mind, the analysis of whether or not the information that you received would have some bearing upon any of the issues in the bankruptcy proceeding?
A It does not change my view or my analysis. The DEC relief request is boilerplate. It basically means you're not paying these bills.

Once we get on the record in the arbitration, what your reasons are, we're going to ask the arbitrators to make you pay the bills and to declare that your reasons are no good. That's what the declaratory relief request is. It's a boilerplate.

And I heard a great deal of significance ascribed to it and I don't accept that. I don't think it changes anything at all. Those arbitrations dealt with claims that had already been paid and the reasons the reinsurers weren't paying those claims.
Q Mr. Sneed, let me just ask you one final question. In

the course of your representation by Century beginning all the way back in October of 2018, at any point in time, have you ever had any substantive conversation with anyone on the bankruptcy team about any of the material that you received or any of the information that you acquired from your representation?

A On the Sidley bankruptcy team?

Q Yes.

A None, zero. Not one.

Q And it's the case, is it not, that there's a screen in place, right?

A Yes.

Q And you've adhered to that screen since it was put into place?

A Yes. And beforehand there was never any discussion.

MR. DUCAYET: Okay. I have nothing further, Your Honor.

MR. SCHIAVONI: I have a few questions, Your Honor.

THE COURT: Yes?

CROSS-EXAMINATION

BY MR. SCHIAVONI:

Q You spoke -- this is Tancred Schiavoni, Mr. Sneed. Good afternoon.

A Good afternoon.

Q You spoke to Mr. Conlan in 2018 on the Boy Scouts matter; am I right?

A I spoke with him on December 14th of 2018 about *The Wall Street Journal* article and our representation of Century against Lloyd's on reinsurance about the underlying lawsuit of Boy Scouts.

Q And you spoke to Mr. Conlan again on November 3, is that right, 2019, about the Boy Scouts?

A I don't know the exact date, but I did speak with him in November, early November of 2019.

Q And you spoke to Mr. Andolina -- well, let me ask it a little differently, a little more precisely.

Did you exchange communications with Mr. Andolina or receive communications from him on November 3?

A No.

Q Okay. And have you spoken to him?

A I don't think I ever have. The only hesitation I have is when Jim Conlan called me in November of 2019. There might have been another lawyer on the line, but the only one who spoke was Jim Conlan.

Q Okay. So, now let me just ask you about the foundation for your testimony about whether or not there could really be harm to Century.

Did you ask the Boy Scouts or any of the Sidley people working on Boy Scout matters why it was that the Boy Scouts

served discovery that targeted specifically three insurance matters that you were working on?

A Did I ask the Boy Scouts? Yeah.

Q Did you ask either, the Boy Scouts or any of the Sidley lawyers, why is it that the Boy Scouts are seeking discovery targeted specifically at the work that Sidley is doing for Chubb?

A Well, I think there's a few facts assumed --

Q Well, it's a yes-or-no question in the first instance. Did you ask them?

A I'm going to answer. I'd like to answer. I think there's a few facts --

Q Well, did you speak to them?

A I never spoke to Boy Scouts at anytime, anyplace, anywhere. Never spoke to anyone from Boy Scouts ever. I never spoke to --

Q All right.

A -- a Sidley lawyer. I'm trying to finish my answer. I never spoke to any Sidley lawyer representing Boy Scouts in the bankruptcy about anything to do with what was going on in the bankruptcy or the insurance-coverage litigation. It never happened. I never had such a discussion.

Q Okay. And you also never had any discussion with anybody at the Boy Scouts or any Sidley lawyers about why it

is that the Boy Scouts have propounded discovery specifically targeted at your work for Chubb?

A I think I've already answered that, but the problem that I have with the question, besides that I already answered it, is that you keep saying, specifically targeted at our work for Chubb.

I thought that the discovery was directed at that first arbitration, which we were involved with.

Q Doesn't it seek all documents related in any way to the Lloyd's work?

A I don't know.

Q Well, you just testified that you thought it was limited.

A The reason --

Q Did you not know when you offered that testimony?

A No, I did know, but I'd like to explain.

The only contact I ever had, and this is in my declaration, regarding the coverage dispute between Boy Scouts and Century was Josh Schwartz sent me a couple of discovery requests in one of those litigations and said, Because this seeks information regarding your first arbitration with Lloyd's, we have under a confidentiality agreement with them, the requirement to notify them and so I did and that was it.

And that's why I think or thought those discovery

requests were directed at the first arbitration with Lloyd's, which we had no involvement in.

Q They're much broader than that, aren't they?

A I don't know.

The reason I received them was to give notice to Lloyd's.

Q Okay. So, let me just get back to this question, because it really is key; it goes to the what the foundation is for your testimony, all right.

Do you know why it is that the Boy Scouts are seeking discovery about anything having to do with the reinsurance work that you were associated with for Chubb?

A I don't know why the Boy Scouts propounded their discovery requests. I don't agree with your characterization of what those requests are routed to and I won't quibble with you with it, but I have no idea why the Boy Scouts propounded the discovery requests they propounded.

Q Okay. And I think you never asked anyone, either, right?

A No.

Q And your testimony about the relationship of the two matters, it's, in part -- it's given without you knowing why it is that the Boy Scouts are seeking that information, right?

A I'm not sure how to answer that. The -- I know what's

at issue in those reinsurance arbitrations. I know very well what's at issue.

Q But my point is, you don't know what your partners have put at issue in the bankruptcy and you don't know what the Boy Scouts have put at issue because if we are to believe what you've said, you haven't asked them and you haven't spoken to them, right?

A Whatever has been put at issue in the bankruptcy or by the Boy Scouts in this insurance coverage litigation, it's got to come from someone other than me. I'm not aware of it. But I can tell you what the reinsurance contract is.

Q That's right.

A I can.

Q So -- and let me just say two other things about this Boy Scout discovery.

I'm correct, am I not, that the Boy Scouts haven't withdrawn that discovery and it remains outstanding as we speak?

A I don't know.

Q And Sidley has been told that to the extent they put you up on the stand and they went forward with this, that it -- they were -- the consequence might follow from that, right?

A I don't understand that. What was -- can you rephrase it?

MR. SCHIAVONI: I -- so, I think we've had enough. I think it's -- I have no further questions.

Mr. Sneed, thank you very much for confirming you don't understand why it is that the Boy Scouts have propounded that discovery.

MR. DUCAYET: Objection; I'd move to strike. It's argumentative.

THE COURT: The last comment is argument. Thank you.

MR. DUCAYET: Your Honor, just one question for Mr. Sneed.

REDIRECT EXAMINATION

BY MR. DUCAYET:

Q Mr. Sneed, you were asked some questions about conversations that you had with Mr. Conlan.

Do you recall that?

A Yes.

Q Did you ever disclose to Mr. Conlan any of the substance of the communications that you had with Century in connection with any of your insurance matters?

A No, never did.

MR. DUCAYET: Nothing further.

RECROSS-EXAMINATION

BY MR. SCHIAVONI:

Q Well, I mean, hold on.

Mr. Sneed, didn't you convey to him that Chubb had complained about a contract?

A The October 29 email to me, I flip to the OTC. I assume Mr. Conlan became aware of it thereafter, but I didn't talk to Jim Conlan about that email or that call.

Q Your communications were to the general counsel at Sidley?

A My communication of that email to me was to my firm's Office of General Counsel.

Q And do you know whether the Office of General Counsel has communicated with Mr. Conlan about the conflict matters that Chubb has raised?

A I don't know.

MR. SCHIAVONI: Okay. Thank you.

THE COURT: Thank you.

Thank you, Mr. Sneed.

THE WITNESS: Can I depart, Your Honor?

THE COURT: You can. You're excused. Thank you.

(Witness excused)

THE COURT: Okay. Anything further, Mr. Ducayet, by way of rebuttal?

MR. DUCAYET: No, Your Honor.

THE COURT: Okay. Thank you.

Okay. So, as I said, I wasn't going to start at 6:00 and I'm not starting at 6:30 with argument on this

matter, but I do want argument. I'm sure I have questions for both, Sidley and Chubb, and so the question is, when can we schedule it?

I believe my Wednesday is now cleared up. Although, I need to issue some orders, I think my contested hearing on Wednesday has come off and I believe I have time Thursday afternoon.

Do either of those days and times work for counsel?

MR. DUCAYET: Your Honor, this is Jim Ducayet from Sidley. Both of those work for me.

MR. ABBOTT: Your Honor, Derek Abbott. Wednesday is better for me than Thursday, but I'll make either work if I need to.

THE COURT: Okay.

MR. BUCHBINDER: Your Honor, this is Dave Buchbinder. I have a matter at 10:30 on Wednesday morning, otherwise, Wednesday is clear. And Thursday, I'm actually not here, I'm not available Thursday, but Ms. McCollum is.

THE COURT: Okay. Mr. Schiavoni, how does Wednesday afternoon look?

MR. SCHIAVONI: We'll make ourselves available at the Court's convenience, Your Honor. Thank you.

And the one thing I think all six of us, if there were six of us, agree on is that it's a little bit of a

challenge presenting this way, but we all know it's more of a challenge for Your Honor to go into court and you have our collective thanks.

THE COURT: Okay. Then let's -- it was the morning, Mr. Buchbinder, right, that you had --

MR. BUCHBINDER: Correct. I have a matter at 10:30 that shouldn't last any more than an hour would be my guess, if it will last that long --

THE COURT: Okay. Let's --

MR. BUCHBINDER: -- otherwise, I'm clear.

THE COURT: Let's schedule argument at two o'clock on Wednesday and as I said, I'm not sure either party really addressed what I do in a situation where the lawyer and the client disagree about whether there's a conflict. And I'm not saying that's the definitive question, but it is certainly an issue that's, I think, raised here by the testimony, among other issues that I've thought about as I've gone through these papers, but, in particular, that situation, I don't recall being addressed in any of the submissions. If I'm wrong and someone can point me to it, that's great, but I'll tell you that in my years of practice, I did not encounter that, so -- I encountered many conflict issues, but not that one.

So, I will have more questions regarding the papers and what was argued, but if people have thoughts on

that, I'd love to hear them on Thursday, or I'm sorry, on Wednesday, even if not raised in the papers.

Okay. Anything else we can accomplish this evening?

MR. ABBOTT: Your Honor, this is Derek Abbott. I don't believe so.

THE COURT: Okay.

MR. DUCAYET: Your Honor, Jim Ducayet from Sidley.

Just one housekeeping matter. We would move the introduction of Mr. Sneed's declaration into evidence.

THE COURT: Yes. It's admitted.

(Sneed Declaration received in evidence)

THE COURT: And I have declarations -- well just go through this. Well, I have the original declaration of Ms. Boelter that was filed with the application. I assume I can look at that and nobody has a problem with that.

Then I have, in no particular order: Ms. Rappleye's declaration, which I think we addressed; Mr. Slanina's objection, which we had objections to, but it's been addressed; Mr. Celentano's declaration; Mr. Sneed's declaration; Ms. Rapoport's declaration; Mr. Whittman's declaration; and Ms. Boelter's declaration made specifically in connection with this contested matter, Docket 500. And I believe that's all.

Did I miss any declarations?

MR. SCHIAVONI: Your Honor, forgive me, but I may not -- I may just be tired, but did you have Josh Schwartz on that list?

THE COURT: Did I have who?

MR. SCHIAVONI: Joshua Schwartz, his declaration?

THE COURT: Oh, sorry. It's important, yes. He's the one I didn't take out. Yes, I have Mr. Schwartz's declaration, as well. Thank you.

MR. SCHIAVONI: Your Honor, there is one more thing if you're -- I'm sorry, I didn't mean to interrupt -- if you're not finished, Your Honor.

THE COURT: I actually have one other thought of information I didn't get today if the parties can agree to it and that is how many other insurers are involved in the case?

So, if there's -- I'm making up numbers -- if there were $10 million in available insurance, or arguably available insurance, is Century 8 million of it or are they 500,000 of it? I don't have a sense of the magnitude of the Century and Chubb's available insurance versus the entirety of the insurance available.

And I don't know -- it's important, but it is something that has crossed my mind as I was reading this.

So, if the parties agree on that and can let me know on Wednesday, that would be great.

MR. SCHIAVONI: Your Honor, we'll meet-and-

confer -- this is Mr. Schiavoni -- we'll meet-and-confer with Mr. Ducayet on that.

I will tell you that there's a -- is -- in our -- in the declaration of Janine Panchok-Berry, attached to part of our --

THE COURT: And I didn't mention hers. I didn't mention hers and, yes, I've got her declaration, as well, that attaches the documents in other cases.

MR. SCHIAVONI: Right. Her -- and she's not a witness, so to speak --

THE COURT: Right.

MR. SCHIAVONI: -- really. She's just authenticating with the documents.

THE COURT: Yes.

MR. SCHIAVONI: But there's a chart attached to her initial declaration that shows the insurers in the Boy Scout actions, in the coverage actions in one column and then in -- the debtor disclosed being a debtor in those actions.

In another column, that cross-references to Ms. Boelter's 2014 disclosure indicating that Chubb -- that Sidley has represented them or currently represents them. It's just sort of unclear to us, but when you look at that chart, because one of the things we complained about the 2014 disclosures, there's significant overlap, I mean, to the numbers of carriers that are engaged in the coverage actions

and the ones that show up on the 2014; again, it's not clear to me whether they're current or former in each instance, but that's presented in that chart.

THE COURT: I do recall that and I did look at Ms. Boelter's declaration that was filed with the retention application and I see the pages, I think there's about two and a half pages of insurers that are listed and there's, on the Schedule 1, a whole list of insurance companies that I suppose were submitted by Boy Scouts (indiscernible) with a current conflict search.

But the amount of insurance to me is a different, slightly different question that, again, if there's an answer, fine. If there's not (indiscernible) that's okay, too. It's just something that came to mind.

Mr. Abbott?

MR. ABBOTT: Thank you, Your Honor.

Just logistics. We'll send out a notice appearing for two o'clock on Wednesday, but given that we've gotten the evidentiary record out of the way, did the Court want to do this by CourtCall or Zoom and CourtCall, and if Zoom, could we prevail on Ms. Johnson to shoot us a note to get everybody lined up for that?

THE COURT: Yes. I prefer Zoom. I prefer seeing people, even at argument. So, I would prefer that we do it by Zoom and CourtCall.

And people who aren't arguing, however, can certainly just be on CourtCall.

MR. ABBOTT: Thank you, Your Honor. And we'll (indiscernible) from her.

THE COURT: I want to make sure that I can see all the people who are arguing. The amount of people we had on today was fine and I did figure out how to do the split screen so I could see everybody and the documents, but that really is about the apex of my technological ability. So, I just want to make sure I can see those people who need to argue.

MR. ABBOTT: Thank you, Your Honor.

THE COURT: Okay. Anything else?

(No verbal response)

THE COURT: And Ms. Johnson will send around a Zoom information that you can put on that notice for everyone.

MR. ABBOTT: Thank you, Your Honor.

THE COURT: Okay. Anything else?

(No verbal response)

COUNSEL: No, Your Honor.

THE COURT: Okay. Thank you.

We're adjourned. Everyone have a good evening.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 6:42 p.m.)

CERTIFICATE

We, MARY ZAJACZKOWSKI and WILLIAM GARLING, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski May 6, 2020
Mary Zajaczkowski, CET**D-531

/s/William J. Garling May 6, 2020
William J. Garling, CE/T 543

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 **Ref. Docket No. 17**

SUPPLEMENTAL BRIEF IN SUPPORT OF CENTURY'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF REVISED MEDIATION ORDER FILED ON MAY 15, 2020 [DKT. 640] SEEKING (I) APPOINTING A JUDICIAL MEDIATOR, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF

STAMOULIS & WEINBLATT LLC
800 N. West Street
Third Floor
Wilmington, Delaware 19801

O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036-6537

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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company ("Century")

TABLE OF CONTENTS

Page

STATEMENT OF FACTS 1

ARGUMENT 2

A. The Candidates for Mediator Should Be Required to Disclose Potential Conflicts. 2

B. The Court Should Consider Alternative Candidates. 5

C. Any Mediation Order Should Include Three Basic Safeguards of Fundamental Fairness. 6

1. Common Interest Material Generated in the Defense Should Be Barred From Being Given to the Tort Claimants Under the Guise of a "Mediation Communication." 6

2. Any Proposed Order Should Include a Provision Requiring the Insurers Be Given the Same Information As the Tort Claimants. 7

3. Any Proposed Order Should Include a Provision Ensuring that Mediation Confidentiality Is Not Misused. 8

D. The Debtors Should Disclose Whether Boy Scouts Lenders Will Be Mediation Participants And, If Not, Why. 8

E. The Debtors Will Not Suffer Prejudice By a Short Adjournment. 9

CONCLUSION 9

TABLE OF AUTHORITIES

Page(s)

Cases

In re Babcock & Wilcox Co.,
274 B.R. 230 (Bankr. E.D. La. 2002) 3

In re Federal-Mogul Glob. Inc.,
330 B.R. 133 (2005) 3

In re Fuller-Austin Insulation Co.,
No. 98-02038-JJF (Bankr. D. Del.) (Sept. 11, 1998) 3

In re Kensington Int'l, Ltd.,
368 F.3d 289 (3d Cir. 2004) 4

In re Met-Coil Sys.,
No. 03-12676-MFW (Bankr. D. Del.) (Oct. 20, 2003) 3

In re Mid-Valley,
305 B.R. 425 (Bankr. W.D. Pa. 2004) 3

In re Smith,
524 B.R. 689 (Bankr. S.D. Tex. 2015) 2

In re Specialty Products Holding Corp.,
No. 10-11780-LSS (Bankr. D. Del.) (Oct. 28, 2010) 3

Other Authorities

Amended Standing Order 09-04 (Bankr. D. Mass. 2010) 2

Voluntary Mediation Program and Procedural Requirements (Bankr. W.D. La. 2005) 2

Voluntary Mediation Program Procedural Requirements (Bankr. E.D. Wash. 2000) 2

Rules

Fed. R. Bankr. P. 2014(a) 2

Century Indemnity Company (collectively, "Century") respectfully submits this supplemental brief in support of Century's objection to Debtors' Motion for Entry of an Order (I) Appointing a Judicial Mediator, (II) Referring Certain Matters to Mandatory Mediation, and (III) Granting Related Relief [ECF No. 17] ("Motion").

STATEMENT OF FACTS

The insurers requested that Debtors afford them the opportunity to participate in the selection of an appropriate mediator.[1] Debtors declined to do so. On April 13, 2020, just two days prior to the last omnibus hearing, Debtors provided Hartford and Century with a proposed order. That order identified Eric Green and Paul Finn as mediators for this case. That was the first time that Debtors mentioned to the insurers that Mr. Green and Mr. Finn were even under consideration, or that they had been selected without any input from the insurers. The insurers asked who else had been proposed. The Debtors declined to respond. The insurers asked the Debtors to consider other candidates. They declined.

Hartford filed a timely objection on March 11, 2020 [ECF No. 161] expressing concern that Debtors failed to allow the insurers to participate in the selection of a mediator, which Century joined in a separate submission. [ECF No. 388].

On May 11, 2020, after repeated requests by Century, Debtors provided "disclosures" concerning Mr. Green and Mr. Finn.[2] Those disclosures—each no more than a page long—raise more concerns than they answer and are inadequate for the reasons explained below and in Hartford's supplemental objection.

---

1 *See* May 15, 2020 Declaration of Janine Panchok-Berry Ex. 1.
2 *See* P. Finn Disclosure and E. Green Disclosure (Weinberg Decl., Exs. 5–6).

ARGUMENT

Debtors' counsel's attempt to cloak essentially the entirety of the plan formulation process in confidentiality and bind all parties in interest to a mandatory mediation before persons selected as mediator by Debtors and Tort Claimants without Century or any other insurer's consent, or even consultation, is inappropriate. Century joins Hartford in requesting that the Court not enter Debtors' order at this time, but rather should (1) require all prospective mediator candidates to make conflicts disclosures along the lines of that required under Rule 2014; and (2) open the process to consider alternative candidates. If an order is entered, it should contain the basic safeguards of fundamental fairness set out in Section C below.

A. The Candidates for Mediator Should Be Required to Disclose Potential Conflicts.

The Court should require Debtors to submit disclosures for Mr. Green and Mr. Finn consistent with Rule 2014(a), which requires disclosure of "all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. P. 2014(a).[3] The Court's analysis in *In re Smith*, 524 B.R. 689, 694 (Bankr. S.D. Tex. 2015), holding that Rule 2014(a) disclosures should be made by a mediator, is directly on point

[3] While § 327 of the Code and Rule 2014(a) do not expressly state whether a mediator is a "professional" that is subject to disclosure requirements, numerous courts, including this Court, have required disclosures of professionals even when not "employed" by a party, such as the appointment of the future claims representative. Moreover, at least one bankruptcy court has concluded that a mediator is a professional required to make Rule 2014 disclosures, and a number of bankruptcy courts have local rules to the same effect. *See In re Smith*, 524 B.R. 689, 694 (Bankr. S.D. Tex. 2015) ("the Court finds that the substantial discretion a mediator has in helping to resolve a bankruptcy dispute is sufficiently significant to the overall administration of the estate to require court approval under § 327(a) and Rule 2014(a)."); *see also* Amended Standing Order 09-04 (Bankr. D. Mass. 2010); Voluntary Mediation Program and Procedural Requirements (Bankr. W.D. La. 2005); Voluntary Mediation Program Procedural Requirements (Bankr. E.D. Wash. 2000).

here; the mediator(s) that the Court selects ultimately will have substantial opportunity to affect the manner in which abuse claims are resolved as the reorganization goes forward.

Irrespective of whether § 327 and Rule 2014(a) strictly apply to mediators in all cases, such disclosures are appropriate here. Debtors are attempting to cloak essentially the entire plan formation process in mediation secrecy by moving to appoint persons who were selected by a process from which Century and the other insurers were completely excluded. Despite multiple requests, Debtors provided Century belatedly with the most minimal of information concerning what—if anything—was done to consider potential conflicts that Mr. Green and Mr. Finn may have or whether they could serve as disinterested, neutral mediators.

As Hartford explains in more detail in its supplemental objection, the information that is available about Mr. Green raises concern about his ties to other parties in this case and impartiality. Mr. Green has served as the FCR representing future tort claimants in six mass tort trusts involving claims for injury arising from asbestos and/or silica.[4] Mr. Patton's law firm, Young Conaway, represented Mr. Green in four of the bankruptcy cases that led to the establishment of those trusts.[5]

---

[4] *See In re Specialty Products Holding Corp.*, No. 10-11780-LSS (Bankr. D. Del.) at Order Appointing Eric. D. Green as Legal Representative for Future Claimants (Oct. 28, 2010) [ECF No. 449]; *In re Federal-Mogul Glob. Inc.*, 330 B.R. 133 (2005); *In re Mid-Valley*, 305 B.R. 425 (Bankr. W.D. Pa. 2004); *In re Babcock & Wilcox Co.*, 274 B.R. 230 (Bankr. E.D. La. 2002); *In re Met-Coil Sys.*, No. 03-12676-MFW (Bankr. D. Del.) at Order Authorizing the Appointment of Eric D. Green as Legal Representative for Future Claimants (Oct. 20, 2003) [ECF No. 205]; *In re Fuller-Austin Insulation Co.*, No. 98-02038-JJF (Bankr. D. Del.) at Order Signed Re: Motion for Order Approving and Authorizing Appointment of Legal Representative [Professor Eric D. Green, Esq.] (Sept. 11, 1998) [ECF No. 8].

[5] *See In re Specialty Products Holding Corp.*, No. 10-11780-LSS (Bankr. D. Del.) at Order Authorizing Retention and Employment of Young Conaway Stargatt & Taylor LLP as Attorneys for the Proposed Future Claimants' Representative *Nunc Pro Tunc* to September 8, 2010 (Oct. 28, 2010) [ECF No. 450]; *In re Federal-Mogul Glob. Inc.*, 330 B.R. 133 (2005); *In re Babcock & Wilcox Co.*, 274 B.R. 230 (Bankr. E.D. La. 2002); *In re Met-Coil Sys. Corp.*, No. 03-12676-MFW (Bankr. D. Del.) at Order Authorizing Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Attorneys for Legal Representative for Future Claimants (Oct. 20, 2003) [ECF No. 206].

While those trusts do not involve sexual abuse claims, mass tort litigation involves similar issues, ranging from issues in the bankruptcy case (*e.g.*, bar dates and proofs of claim) to liability issues (*e.g.*, statutes of limitation and determining an appropriate quantum of proof) to treatment of insurance. And Mr. Patton has served as Mr. Green's lawyer before the Third Circuit in a writ proceeding regarding impartiality and recusals in mass tort cases. *See In re Kensington Int'l, Ltd.*, 368 F.3d 289 (3d Cir. 2004). Without full disclosure, Century has no way of knowing whether and the extent to which Mr. Green has ongoing relationships with the parties whose disputes he has been nominated to mediate.[6]

Nor does Century, the U.S. Trustee, or the Court have adequate information concerning potential conflicts in Mr. Green's current professional experience. The conduct of Mr. Green (and Mr. Patton) was not at issue in the *Kensington* appeal. But there, the Third Circuit held that two FCRs to asbestos trusts had a conflict of interest that prevented them from serving as "neutral" advisors in an unrelated asbestos case. *See id.* at 304 ("By their very position as representatives of the future asbestos claimants in *G-I Holdings*, . . . they could not be non-partisan, benign, or neutral.").

Even less information is available regarding Mr. Finn, and Debtors have provided the most minimal of information concerning his connections to the Debtors, their creditors, the committees, and their respective attorneys. Without the disclosures that Rule 2014(a) contemplates, this Court has no assurance that the persons Debtors have nominated are neutral, particularly when parties in interest, including Century and the other insurers, have been excluded from the selection process.

---

[6] Mr. Green also has connections to Debtors' counsel. He is the Trustee of the Takata Airbag Tort Compensation Trust Fund, a fund created in the Takata bankruptcy, where Sidley Austin served as debtors' counsel. The full extent of connections between Mr. Green and Debtors' counsel, however, requires disclosures from Mr. Green himself.

B. The Court Should Consider Alternative Candidates.

The Court should consider alternative candidates to serve as mediators given the mandatory nature of the mediation, the extraordinary breadth of the confidentiality over the plan formation process sought, and the fact that Debtors and tort claimants did not follow the process set out in the Debtors' motion for selecting a mediator. In the Motion, Debtors indicate that the mediator(s) will be selected in one of two ways: (1) agreement on a mediator by the "Mediation Parties" prior to the hearing (Motion ¶ 16); or (2) appointment of a sitting bankruptcy judge if the Mediation Parties cannot agree on a mediator (Motion ¶ 13). Mr. Green and Mr. Finn were not selected by the process that Debtors' counsel outlined in their motion. In choosing to exclude the insurers from the selection process, there is no agreement among all of the "Mediation Parties" regarding the selection of the mediator(s).[7]

Century (like other insurers that are parties in interest here) has a direct and material interest in ensuring that a plan of reorganization is formulated by a process that is free of collusion. The all-encompassing nature of the order that is sought would cloak essentially all the dealings between Debtors and tort claimants in mediation secrecy. This could be prejudicial to Century. If the Court is inclined to grant Debtors' motion, Century is concerned that any person selected to oversee the formation of a plan as a "mediator" is both well-qualified and free from any conflicts that would prevent them from being truly neutral.

In the absence of agreement among all parties, the Court should consider candidates from all the parties, particularly when mediation will be ordered by the Court. There are retired Circuit Court judges who merit consideration such as Hon. Timothy Lewis (Retired 3rd Cir.) and

---

[7] Century is one of the "Mediation Parties" referenced in the Motion. *See* Motion ¶ 14 ("The Debtors request that the following parties be directed to participate in the mediation (collectively, the "Mediation Parties"): . . . (e) applicable insurers under one or more insurance policies that afford the Debtors rights, benefits, indemnity or insurance coverage with respect to abuse claims . . . .").

individuals with a national reputation such as Ken Feinberg (appointed by Congress as 9/11 mediator).[8] There may be additional candidates for the Court to consider, and all of the parties in interest, as well as the United States Trustee, should have the opportunity to consider the nominees with full disclosure of their connections to the parties and to this case.

The Court should decline to enter any order appointing a mediator until the nominee has made full disclosure of his or her interests in accordance with Rule 2014(a) and all parties have had a full and fair opportunity to provide candidates to the Court.

C. Any Mediation Order Should Include Three Basic Safeguards of Fundamental Fairness.

The proposed order that the Debtors sent to the insurers rejects three provisions critical to ensuring a fair process.

1. Common Interest Material Generated in the Defense Should Be Barred From Being Given to the Tort Claimants Under the Guise of a "Mediation Communication."

Century and the other insurers share a common legal interest with the Debtors in the defense of the underlying claims. Century seeks the addition of the following clause in any proposed order to ensure that the terms of a mediation order are not misconstrued or misused to allow for privileged material to be conveyed to the tort claimants compromising the defense.

> The Debtors shall not as part of the Mediation or otherwise provide the TCC and/or FCR or their counsel with any materials created or used in the defense and resolution of abuse claims that may be subject to an attorney-client privilege, attorney work product privilege, common interest privilege or other rule of privilege or confidentiality, unless Debtors first

---

8 Ken Feinberg served as Special Master of the U.S. government's September 11th Victim Compensation Fund (chronicled in his book *What is Life Worth?* (2005), a role in which he served pro bono for almost three years. He was later appointed Special Master for the TARP Executive Compensation initiative and, in June 2010, was named to run the BP Deepwater Horizon Disaster Victim Compensation Fund, a $20 billion fund to pay claims resulting from the BP Gulf oil spill. He has also managed compensations systems relating to the Aurora and Virginia Tech shootings and the Boston Marathon bombing.

> share those materials with the Insurers and the Insurers consent to the disclosure of those materials.

See Appendix A, Blackline of Proposed Order ¶ 7.

The cloak of confidentiality that the Debtors seek should not be used as an end run around the common interest privilege.

2. Any Proposed Order Should Include a Provision Requiring the Insurers Be Given the Same Information As the Tort Claimants.

For any mediation to have a prospect of success, there should be a level playing field of information. It should also be clear that privileged information was not turned over by Sidley to the tort claimants prior to any mediation, but, if it was, that disclosure should be made before mediation. Century seeks the addition of the following clause in any proposed order to ensure it is given the same documents as are provided to the tort claimants:

> Prior to the commencement of the mediation, Debtors shall make available to the Insurers all documents and other materials that Debtors have provided to the TCC or the FCR (or their pre-petition predecessors) whether pre- or post-petition.

See id.[9]

This request should be non-controversial as there is no sound reason for the Debtors to give documents to the tort claimants and not insurers. The Debtors shared documents with the tort claimants pre-petition and post-petition in connection with efforts to reach a global settlement. While Century was recently given access to the "data room," it does not contain everything that the Debtors gave the tort claimants.

[9] The Debtors refused to accept a provision requiring Debtors to share the same documents with the insurers that have been and are provided to the TCC and/or the FCR (excepting privileged coverage analysis) so that the playing field is level.

3. Any Proposed Order Should Include a Provision Ensuring That Mediation Confidentiality Is Not Misused.

The insurers also requested that the order preserve the right to take discovery regarding the mediation *solely in the limited circumstance where the good faith conduct of the mediation is at issue*. *See id.* ¶ 8. Century seeks the addition of the following clause in any proposed order:

> The provisions of Local Rule 9019-5(d) pertaining to "Confidentiality of Mediation Proceedings" shall govern the Mediation provided, however, that if a Mediation Party puts at issue any good faith finding concerning the Mediation in any subsequent action concerning insurance coverage, the parties' right to seek discovery, if any, is preserved.

See id. ¶ 8. This protection is necessary to ensure that the parties do not use the mediation as a vehicle to cloak collusive settlements in confidentiality.

D. The Debtors Should Disclose Whether Boy Scouts Lenders Will Be Mediation Participants and, If Not, Why.

If a mandatory mediation order is entered, it should identify to whom it applies. Debtors' counsel concurrently represents the Boy Scouts' lender.[10] The Boy Scouts have a significant amount of debt issued after claims arose. The Debtors' motion is silent as to what procedures will apply to it and what disclosures will be made about the prepetition debt. As the lender appears to be a current client of Sidley, whether it is included in the mediation or has been excused is all the more important to be disclosed.

[10] *See* Declaration of Jessica C. K. Boelter in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date ¶ 21, ECF No. 204-3 ("The following parties that are Potential Parties in Interest or known affiliates of Potential Parties in Interest represented one percent or more of Sidley's annual revenue in 2019: JPMorgan Chase & Co. . . . .").

E. The Debtors Will Not Suffer Prejudice By a Short Adjournment.

The Debtors will not suffer prejudice from this Court entering a short adjournment to give potential mediator candidates, including Mr. Green and Mr. Finn, time to submit Rule 2014 disclosures.

This chapter 11 case is in its preliminary stages. The Debtors have not yet given all the insurers access to the documents they provided to the tort claimants. Most importantly, the Debtors' motion to set a bar date has not yet been decided, and even if it had, the parties are at least seven to ten months away from knowing how many individuals will file proofs of claim in this case, or what types of injuries and damages they will claim. Debtors cannot engage in meaningful settlement discussions without information on the claims being settled.

Debtors cannot complain that delaying the selection of a mediator by several weeks, or even a month or two, will hamper its reorganization efforts. Mediation is normally not ordered until after the parties have negotiated and narrowed their differences. None of that has happened here.

CONCLUSION

Century respectfully requests that the Court sustain Century's objections as stated herein and decline to enter Debtors' proposed order and, if it does enter the order, that it do so with the provisions set out in Section C above.

Dated: May 15, 2020

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*)
Janine Panchok-Berry (*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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company ("Century")

APPENDIX A

Blackline of Proposed Order

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 **Related Docket No. 17, 161, 164, 166, and 316**

ORDER (I) APPOINTING MEDIATORS, (II) REFERRING CERTAIN MATTERS TO MANDATORY MEDIATION, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Boy Scouts of America (the "BSA") and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the "Debtors"), for entry of an order (this "Order") directing the Mediation Parties to participate in mediation (the "Mediation") regarding the Mediation Issues, as more fully set forth in the Motion [Docket No. 17]; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and entry of this Order directing the Mediation Parties (as defined herein) to participate in the Mediation being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Debtors' consent to entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§

[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 West Walnut Hill Lane, Irving, Texas 75038.

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. ~~1.~~ The Motion is GRANTED as set forth herein.

2. ~~2.~~ ~~Paul Finn and Eric Green~~[INTENTIONALLY LEFT BLANK] are appointed as mediators (together, with Timothy Gallagher, the "Mediators") for the ~~purpose of mediating the comprehensive resolution of issues and claims in BSA's chapter 11 case through a chapter 11 plan (the "~~Mediation Issues~~"), which includes~~. The Mediation Issues include all matters that may be the subject of a motion seeking approval by the Court of solicitation procedures and/or forms of plan ballots, a disclosure statement, or confirmation of a chapter 11 plan (the "Direct Plan Actions")~~. Timothy Gallagher is appointed as a Mediator, only to mediate the insurance issues among the Mediation Parties and any Additional Mediation Parties (each as defined below), along with the other two Mediators.~~, as well as all other matters related to the comprehensive resolution of claims relating to historical acts of abuse in the BSA's Scouting programs through a chapter 11 plan of reorganization.

3. ~~3.~~ The Debtors are responsible for timely payment of the fees and costs of ~~Paul Finn and Eric Green~~[the Mediators identified in Paragraph 2] on the terms and conditions of the attached agreement(s), the amounts of which shall be payable without further application or order

from the Court.

4. ~~4.~~ Except as otherwise provided herein, the following parties (each a "Mediation Party" and together the "Mediation Parties") are directed to participate in the Mediation: (a) the Debtors; (b) the Ad Hoc Committee of Local Councils; (c) the Future Claimants' Representative; (d) the Official Committee of Tort Claimants, including its members, professionals, and the individual members' professionals; (e) the Official Committee of Unsecured Creditors; and (f) each of the insurers set forth on Exhibit 1 hereto (the "Insurers,"). Other parties who are necessary to or who wish to participate in the Mediation including, without limitation any additional insurers, shall be included in the Mediation if (i) all of the Mediation Parties agree to include such additional parties in the Mediation; or (ii) the Court orders that such additional parties participate in the Mediation upon further notice and a hearing or at the request of any of the Mediators. Any other party who participates in the Mediation in accordance with the immediately preceding two sentences shall be referred to herein as the "Additional Mediation Parties."

5. ~~5.~~ The Gallagher Law Group (Timothy Gallagher) is appointed as a Mediator to address insurance issues during the Mediation. The Insurers who are Mediation Parties are responsible for timely payment of one-half of the fees and costs incurred by Mr. Gallagher. The Debtors are responsible for timely payment of the other half of such fees and costs. All such amounts shall be payable, on the terms and conditions of the attached agreement, without further application or order from the Court.

6. ~~6.~~ ~~In their respective roles, the~~The Mediators, including Mr. Gallagher, shall work with the Mediation Parties and/or Additional Mediation Parties on ~~the~~all matters concerning the Mediation, including: (a) the structure and timing of Mediation ~~procedures,~~sessions, including, without limitation, the attendance of specific Mediation Parties and/or any Additional Mediation Parties at particular Mediation sessions; and (b) the timing, general content, and manner of any

submissions to the Mediators. The Mediators shall have the authority to determine participation in Mediation sessions, but the Mediation Parties, including the Insurers, shall be given full opportunity to participate in mediation of all Mediation Issues. Any formal or informal global settlement offers, demands or responses thereto, either to or from the Debtors, shall be shared with the Insurers.

7. Prior to the commencement of the mediation, Debtors shall make available to the Insurers all documents and other materials that Debtors have provided to the TCC or the FCR (or their pre-petition predecessors) whether pre- or post-petition. The Debtors shall not as part of the Mediation or otherwise provide the TCC and/or FCR or their counsel with any materials created or used in the defense and resolution of abuse claims that may be subject to an attorney-client privilege, attorney work product privilege, common interest privilege or other rule of privilege or confidentiality, unless Debtors first share those materials with the Insurers and the Insurers consent to the disclosure of those materials.

8. ~~7.~~ The provisions of Local Rule 9019-5(d) pertaining to "Confidentiality of Mediation Proceedings" shall govern the Mediation provided, however, that if a Mediation Party puts at issue any good faith finding concerning the Mediation in any subsequent action concerning insurance coverage, the parties' right to seek discovery, if any, is preserved. During the Mediation process, the Mediators also may make applicable or direct the use of such other provisions of Local Rule 9019-5 as they deem necessary or appropriate; provided that concerns arising from COVID-19 shall be taken into account as to the requirements of attendance in person in connection with the Mediation and no such attendance in person shall be required while the Bankruptcy Court is not permitting in-person appearances.

9. ~~8.~~ Notwithstanding the foregoing, this Order (a) does not require any Mediation Party or any Additional Mediation Parties to submit a dispute as to any matter to a Mediator (other than a matter that would be the subject of a Direct Plan Action) before filing a pleading with the

Bankruptcy Court or any other court of competent jurisdiction, and (b) is without prejudice to any party's objection to the continuance of the preliminary injunction in or other matters with respect to adversary proceeding number 20-50527 (LSS).

10. ~~9.~~ All rights of the Mediation Parties are preserved and shall not be prejudiced by participation in the Mediation, including, without limitation, any rights to: (i) have final orders in non-core matters entered only after a *de novo* review by a District Court Judge; (ii) seek withdrawal of the reference of any matter subject to mandatory or discretionary withdrawal; (iii) seek remand of any removed matter; (iv) oppose venue transfer of any removed matter; (v) demand arbitration or a jury trial in any proceeding; and (vi) contest the jurisdiction of the bankruptcy court to enter any order concerning any alleged insurance coverage that is the subject of the Mediation.

11. ~~10.~~ The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Order in accordance with the Motion, including executing agreements with Resolutions LLC, Mr. Gallagher, and Commonwealth Mediation on the terms set forth in the attached forms of agreement, on substantially similar terms, or on terms more favorable to the estates and/or, as applicable, to the Insurers.

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

Dated: _____, 2020
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

1. ~~1.~~ The Chubb Group of Insurance Companies, including but not limited to Insurance Company of North America.
2. ~~2.~~ The Hartford Companies, including but not limited to Hartford Accident and Indemnity Company and First State Insurance Company.
3. ~~3.~~ Allianz Global Risks US Insurance Company
4. ~~4.~~ National Surety Corporation.
5. ~~5.~~ Liberty Mutual Insurance Company.
6. ~~American International Group, Inc. entities, including National Union Fire Insurance Company of Pittsburgh, PA; Lexington Insurance Company; Landmark Insurance Company; The Insurance Company of the State of Pennsylvania~~

Summary report: **Litera® Change-Pro for Word 10.9.0.460 Document comparison done on 5/14/2020 7:41:00 PM**	
Style name: OMM Standard	
Intelligent Table Comparison: Active	
Original filename: Debtors 5-13 proposed mediation order.docx	
Modified filename: BSA Mediation Order 4_27 (004) VERSION TWO .DOCX	
Changes:	
Add	35
~~Delete~~	26
~~Move From~~	1
Move To	1
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	63

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BOY SCOUTS OF AMERICA AND DELAWARE Boy Scouts, LLC, Debtors.	Chapter 11 Case No. 20-10343 (LSS) Jointly Administered **Ref. Docket No. 18, 557, and 630**

CENTURY'S JOINDER IN PART TO HARTFORD'S OBJECTION [DKT. 651] AND OBJECTION TO DEBTORS' MOTION, 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 FOR AUTHORITY TO (I) ESTABLISH DEADLINES FOR FILING PROOFS OF CLAIM, (II) ESTABLISH THE FORM AND MANNER OF NOTICE THEREOF, (III) APPROVE PROCEDURES FOR PROVIDING NOTICE OF BAR DATE AND OTHER IMPORTANT INFORMATION TO ABUSE VICTIMS, AND (IV) APPROVE CONFIDENTIALITY PROCEDURES FOR ABUSE VICTIMS

For the following reasons, Century[1] objects to the Debtors' Motion.[2]

A. The Proof of Claim Form Is Not Properly Before the Court.

As a threshold matter, the proof of claim form for which the Debtors now seek approval is not properly before the Court. Debtors' Motion seeks approval of an Abuse Proof of Claim Form "*substantially in the form* annexed hereto as Exhibit C-2."[3] But Exhibit C-2 to the Motion contained nothing except a statement that the substance of the form would later be "supplemented."[4] On May 4, 2020, Debtors submitted a "supplement" that for the first time

1 "Century" refers to Century Indemnity Company and those other entities identified in the signature block as Century.

2 The "Motion" is Debtors Motion, 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 For Authority to (I) Establish Deadlines for Filing Proofs of Claim, (II) Establish the Form and Manner of Notice Thereof, (III) Approve Procedures for Providing Notice of Bar Date and Other Important Information to Abuse Victims, and (IV) Approve Confidentiality Procedures for Abuse Victims (Feb. 18, 2020) [ECF No. 18] (the "Motion").

3 Motion at 4–6 [ECF No. 557] (emphasis added).

4 *See* Motion Ex. C-2 [ECF No. 18-6].

provided a proposed proof of claim form.[5] This form was filed following discussions between Debtors' proposed counsel with Sidley Austin and the Tort Claimants to the exclusion of Century and the other insurers.[6] On the evening of May 14, 2020, four days before the hearing, Debtors filed a further revised proposed order and proof of claim form.[7]

In short, the substantive relief that the Debtors will seek at the hearing—approval of the questions in the proof of claim form—was not part of the original motion and the relief that is actually sought remains uncertain. This falls short of Rule 9013's requirement that motions "set forth the relief or order sought."[8] As the Motion did not set forth the Form, Century respectfully submits that this aspect of the relief sought—approval of the form of the proof of claim—is not properly before the Court.

Any relief sought for the questions that were not part of the proof of claim filed with the Motion is also not properly before the Court for another even more basic reason. The form of the proof of claim and the questions presented by it is the product of the Sidley firm, which drafted the form and is rushing ahead with it to the hearing while its retention application is under submission. During the retention hearing, Sidley represented it would not be involved in issues implicating the rights of its insurer clients. At the same time, however, it has acknowledged that the questions appended to the proof of claim form are directed, in part, with

---

5 *See* Supplement to Debtors' Bar Date Motion (May 4, 2020) [ECF No. 557].

6 *See* Combined First Monthly Application of James L. Patton, Jr. as the Legal Representative for Future Claimants and Young Conaway Stargatt & Taylor, LLP as Counsel to the Legal Representative for Future Claimants for Allowance of Compensation and Reimbursement of Expenses for the Period from February 18, 2020 through April 30, 2020, Ex. A at 12, 20 [ECF No. 633-2].

7 *See* Debtors' Further Revised Proposed Order Ex. 7 (Sexual Abuse Survivor Proof of Claim Form) [ECF No. 632-1].

8 Fed. R. Bankr. P. 9013; *see In re Garcia*, No. 12-93049-E-11, 2016 WL 7324153, at *2 (Bankr. E.D. Cal. Dec. 14, 2016) ("As with any request for an order, the court begins with the Motion itself, which *must state with particularity not only the relief requested*, but the grounds upon which such relief is based." (emphasis added) (citing Fed. R. Bankr. P. 9013, 9014).

the insurers in mind. In rushing this forward, Debtors' proposed counsel are doing what they said they would not do.

B. Any Order Must Clarify the Purpose for Which the Proofs of Claim Will Be Used.

Should the Court find that the proof of claim form is properly before it, the starting point for resolving the instant Motion is the purpose of the proof of claim form and the questions posed in it. The Debtors told Century and other insurers that they do not view the Motion or the proof of claim form as intended to establish the presumptive allowance of abuse claims or prima facie evidence of the validity and amount of the claim under Rule 3001(f).[9] Rather, the Debtors have indicated that they intend the proof of claim merely as a means for claimants with possible claims to preserve their claims prior to a bar date and as a mechanism to collect basic information for mediation.[10]

The Tort Claimants approach the Motion in the same way, as the central thrust of their objection is that the proof of claim ought to be as easy to submit as possible; not that the questions posed should differentiate between claims with legal merit and those without.[11] The fact that the expert declaration offered by the Tort Claimants is by a social worker and not a liability expert goes to this point.[12]

---

9 Nothing in the Debtors' Motion or the supplement proof of claim form they submitted sought this relief.

10 This is underlined by text of the Debtors' proposed order, which states that: "The allowance, and the process for allowance, of Sexual Abuse Claims and the treatment thereof will 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." Debtors' Further Revised Order ¶ 11 [ECF No. 632-1].

11 *See* Objection of the Tort Claimants' Committee to Debtors' Motion and Supplement to Debtors' Bar Date Motion ("TCC Objection") at 3 [ECF No. 601] ("The proof of abuse claim form is worse – it is insulting to survivors of child sexual abuse and poses unnecessary questions that are more pertinent to obtaining discovery for defense of claim purposes than for eliciting information regarding the basis for the claim.").

12 *See* Declaration of Jon R. Conte in Support of TCC Objection ¶ 9.c [ECF No. 601-6] ("The Proof of

Recognizing that the proof of claim form could not represent the last word on whether individual claims would be allowed or paid in this case, Century and Hartford proposed that the Bar Date Order provide that any questions posed with the proof of claim are not intended to replace the process for determining claims. The Court should adopt this clarification in any order it may issue because it properly puts context around the claim form in this case, which was not part of the Motion.

> *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.*

Without clarity on his point, the Motion should be denied with respect to the form of the proof of claim. The claim forms may be an aid to mediation in this case and placeholders that represent the claimants' claims. However, the claims may be disputed and are not simply deemed allowed because a proof of claim is filed. While proofs of claim have been used in abuse cases where there are a discrete number of claimants associated with a dioceses, school, or hospital, in virtually all these cases other procedures have been adopted to assess and determine liability and value claims.[13]

C. <u>If Proofs of Claim Will Establish the Prima Facie Validity of a Claim, a More Detailed Form is Required.</u>

If proofs of claim will be used, not just for mediation, but also to presumptively establish a claim, then the proof of claim form would have to contain all of the information that may be

---

Claim form is: (i) confusing; (ii)fails to actually define abuse; (iii) uses overlapping terms for the same behavior; (iv) confuses abuse with reasons that an adult may abuse a child; (v) asks questions which appear more appropriate to discovery: (vi) asks questions which have a high likelihood of triggering traumatic reactions in Survivors or discourage them from submitting a proof of claim; (vii) asks potential Survivors to provide detailed information which goes beyond what is necessary to describe the basis of a claim . . . .").

[13] Virtually all of the seventy-plus mass tort bankruptcy cases where an FCR has been appointed have not employed bar dates or required proofs of claim. The *Imerys* case is one such example.

necessary to resolve all elements of liability and damages and allow for discovery. This includes detailed information to establish not only Boy Scouts' liability and its co-defendants but also when abuse or injury took place and the extent to which the Boy Scouts and/or councils had knowledge of, or were warned about, a particular perpetrator.[14] The Debtors' proof of claim does not do this.

Tort claims such as the abuse and other claims at issue here require multi-faceted proof particularized to each individual and specific as to the defendant.[15] This is especially true here given the broad definition of sexual abuse employed, ranging from purely verbal abuse to behavior that merely "led up to abuse, regardless of whether or not such behavior was itself sexual or against the law, and regardless of whether you thought the behavior was sexual abuse at the time" to physical abuse.[16] The simple check-the-box form proposed is insufficient to

---

[14] *See, e.g., In re USA Gymnastics*, Case No. 18-09108 (RLM) (Bankr. S.D. Ind. Feb. 25, 2018) [ECF No. 301] (approving proof of claim form for claimants asserting claims relating to sexual misconduct that required claimants to, among other things, provide documentation and written responses to approximately thirty separate questions regarding the nature of their claims, the damages asserted, their connections to the debtors, and the procedural history of their asserted claims).

[15] A proof of claim must provide adequate notice of the existence, nature, and amount of the claim and provide facts of sufficient particularity to establish the claim. *Aetna Cas. & Sur. Co. v. LTV Steel Co. (In re Chateaugay Corp.)*, 94 F.3d 772, 777 (2d Cir. 1996); *see also Gens v. Resolution Trust Corp.*, 112 F.3d 569, 575 (1st Cir. 1997) (proof of claim must give "adequate notice of the existence, nature, and amount of the claim"); *In re O'Malley*, 252 B.R. 451, 456 (Bankr. N.D. Ill. 1999); *In re Rimsat, Ltd.,* 223 B.R. 345, 348 (Bankr. N.D. Ind. 1998) (creditor must "provide some kind of factual context" for the debtor's liability); *In re Grocerland Coop., Inc.*, 32 B.R. 427, 437 (Bankr. N.D. Ill. 1983) (proof of claim must supply "facts of sufficient particularity" to put parties on notice).

[16] "For the purposes of this Sexual Abuse Survivor Proof of Claim, **sexual abuse** is defined as sexual conduct or misconduct, sexual abuse or molestation, sexual exploitation, sexual touching, sexualized interaction, sexual comments about a person's body, or other verbal or non-verbal behaviors that facilitated, contributed to, or led up to abuse, regardless of whether or not such behavior was itself sexual or against the law, and regardless of whether you thought the behavior was sexual abuse at the time. Sexual abuse includes behavior 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. It involves behaviors including penetration or fondling of the child's or non-consenting adult's body, other body-on-body contact, or non-contact, behaviors such as observing or making images of a child's or non-consenting adult's naked body, showing or making

establish all the elements of liability and damages for the range of different types of claims at issue. *See In re Nortel Networks, Inc*., 469 B.R. 478, 497 (Bankr. D. Del. 2012) (applying Rule 12(b)(6) standards to a proof of claim involving tort claims noting that greater specificity required).

Far more detailed questions and documentary support would be required to satisfy the requirements of the bankruptcy code. As a start, detailed questionnaires in addition to a proof of claim have been deemed "essential". *A.H. Robins Co., Inc.*, 862 F.2d 1092, 1095 (4th Cir. 1988).

In *A.H. Robins*, the district court (sitting in bankruptcy) established a two-step process by which claimants would first file a statement of intent to make a certain type of claim along their name and address, and then later would be required to fill out a detailed questionnaire. *Id.* at 1093. The questionnaire requested information related to the claim, such as dates of use of the product, the type of injury alleged, and details about any medical attention sought. *Id.* The Fourth Circuit upheld the district court's decision to disallow claimants who failed to complete the questionnaire on the grounds that, without answers to the questionnaire's more detailed inquiries, the "initial statement of intention to make a claim would be insufficient as valid proof of claim." *Id.* at 1096.

Absent the clarification sought, the Court also will be faced with extensive discovery that will be both burdensome and expensive for many parties. And parties may then be forced to file and respond to numerous claim-disallowance motions in advance of the Plan process. None of

---

pornography, or having children behave in sexual behavior as a group." Debtors' Further Revised Proposed Order Ex. 7 (Sexual Abuse Survivor Proof of Claim Form) at 2 [ECF No. 632-1].

this is necessary if the Court confirms in its order that the form is to be used just to preserve claims and for mediation.

In the alternative, if the Court declines to enter Century's proposed language as part of the Proposed Bar Date Order, then Century joins Hartford in respectfully requesting that the Court permit Century and Hartford to propound additional questions on the issues reflected in Exhibit A to Hartford's supplemental objection and on the matters addressed in Appendix A hereto. In this event, Century further requests that it be permitted to submit additional requests designed to elicit documentary support corroborating the claimants' claims of abuse and injury.

CONCLUSION

Century respectfully requests that the Court modify the Proposed Bar Date Order to clarify that: "*The proof of claim is not intended as prima facie evidence of the validity and amount of the claim.*" In the alternative, Century respectfully joins Hartford in requesting that the Court require Debtors to include the questions identified on Exhibit A to Hartford's supplemental objection and on the matters addressed in Appendix A hereto.

Dated: May 15, 2020
Wilmington, Delaware

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*)
Janine Panchok-Berry (*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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company

Appendix A

1. Did you or anyone on your behalf ever contact the BSA about the abuse? If yes, who was contacted at BSA and when and what was BSA told?

2. Did you or anyone on your behalf ever write to the BSA about the abuse?

3. If you wrote or someone on your behalf wrote the BSA about the abuse, please attach copies of that correspondence.

4. Do you know personally or have any reason to believe that the BSA knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including:

    a. Who at the BSA knew that your abuser was abusing you or others?

    b. How did such person(s) at the BSA learn this information?

    c. When did such person(s) at the BSA learn this information?

    d. What was the person(s) from the BSA told or what did they observe?

    e. How did you come to have the information provided in response to the questions above?

5. Did you or anyone on your behalf ever contact the Local Council with which your Scouting unit was affiliated ("Affiliated Local Council") about the abuse?

6. Did you or anyone on your behalf ever write to the Affiliated Local Council about the abuse?

7. If you or someone on your behalf wrote to the Affiliated Local Council about the abuse, please attach copies of that correspondence.

8. Do you know personally or have any reason to believe that the Affiliated Local Council knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including:

    a. Who at the Affiliated Local Council knew that your abuser was abusing you or others?

    b. How did such person(s) at the Affiliated Local Council learn this information?

    c. When did such person(s) at the Affiliated Local Council learn this information?

d. What was the person(s) from the Affiliated Local Council told or what did they observe?

e. How did you come to have the information provided in response to the questions above?

9. Did you or anyone on your behalf ever contact the organization that chartered or sponsored your Scouting unit ("Sponsoring Organization") about the abuse?

10. Did you or anyone on your behalf ever write to the Sponsoring Organization about the abuse?

11. If you or someone on your behalf wrote to the Sponsoring Organization about the abuse, please attach copies of that correspondence.

12. Do you know personally or have any reason to believe that the Sponsoring Organization knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including:

    a. Who at the Sponsoring Organization knew that your abuser was abusing you or others?

    b. How did such person(s) at the Sponsoring Organization learn this information?

    c. When did such person(s) at the Sponsoring Organization learn this information?

    d. What was the person(s) from the Sponsoring Organization told or what did they observe?

    e. How did you come to have the information provided in response to the questions above?

13. Have you asserted or filed a claim alleging abuse in any other case or bankruptcy? If so, which case or bankruptcy?

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)

CENTURY'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING CONFIDENTIALITY AND PROTECTIVE ORDER [DKT. 613]

STAMOULIS & WEINBLATT LLC
800 N. West Street
Third Floor
Wilmington, Delaware 19801

O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036-6537

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, Ace Insurance Group Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company ("Century")

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

BACKGROUND 3

BSA is in possession of privileged information generated in the course of the defense of BSA *3*

BSA's lawyers are in possession of Chubb's privileged communications about BSA and information Chubb shared with Sidley about BSA *3*

Chubb participated in BSA's defense in the tort system. *4*

Chubb presently administers claims for BSA under contract pursuant to the Shared Services Order. *5*

The Proposed Protective Order does not contain necessary protections. *6*

Century met and conferred with Debtors to incorporate protections into the Proposed Protective Order *6*

ARGUMENT 6

I. THE ADDITION OF THREE NARROWLY TAILORED PROTECTIONS ARE WARRANTED TO ENSURE THAT CENTURY'S PRIVILEGED INFORMATION AND PRIVILEGED MATERIAL ABOUT THE DEFENSE IS NOT DISCLOSED. 6

A. Privileged information concerning the defense of the underlying abuse claims should be protected and not shared with the tort claimants. 7

B. Debtors should not share with the tort claimants documents protected by orders entered by other courts. 8

C. The clawback provision should be amended to track the protections afforded by Fed. R. Civ. P. 26(b)(5)(B). 10

II. CENTURY HAS A MATERIAL INTEREST IN THE PROTECTIONS SOUGHT FOR PRIVILEGED INFORMATION. 10

CONCLUSION 14

TABLE OF AUTHORITIES

Page(s)

Cases

Bank of America, N.A. v. Superior Court,
2013 WL 151153 (4th Dist. Jan. 15, 2013) 9

Director, Office of Thrift Supervision v. Vinson & Elkins, LLP,
124 F.3d 1304 (D.C.Cir.1997) 12

Excelsior College v. Frye,
233 F.R.D. 583 (S.D.Cal.2006) 11, 12

Holmgren v. State Farm Mut. Auto. Ins.,
976 F.2d 573 (9th Cir.1992) 12

In re Cherokee Simeon Venture I, LLC,
No. 12-12913 (KG), 2012 WL 12940975 (Bankr. D. Del. May 31, 2012) 10

In re Grand Jury Investigation,
599 F.2d 1224 (3d Cir. 1979) 12

In re Madrid,
242 S.W.3d 563 (Tex. App. 2007) 10, 11

In re Martin Marietta Corp.,
856 F.2d 619 (4th Cir.1988) 12

Intel Corp.,
258 F.R.D. 12

John Morrell & Co. v. Local Union 304A of United Food & Commercial Workers, AFL-CIO,
913 F.2d 544 (8th Cir. 1990) 3, 7

May Dep't Stores Co. v. Ryan,
699 S.W.2d 134 (Mo. Ct. App. 1985) 11

Midwest Feeders, Inc. v. Bank of Franklin,
No. 5:14CV78-DCB-MTP, 2016 WL 7422561 (S.D. Miss. June 28, 2016) 10, 11

Native Am. Arts, Inc. v. Bundy–Howard, Inc.,
No. 01 C 1618, 2003 WL 1524649, 2003 U.S. Dist. LEXIS 4393 (N.D.Ill. Mar. 20, 2003) (unpublished) 11, 12

Raytheon Co. v. Superior Court,
256 Cal. Rptr. 425 (Cal. Ct. App. 1989) 9

TABLE OF AUTHORITIES
(continued)

Page(s)

Schipp v. Gen. Motors Corp.,
457 F. Supp. 2d 917 (E.D. Ark. 2006) 10

Sierrapine v. Refiner Prod. Mfg., Inc.,
275 F.R.D. 604 (E.D. Cal. 2011) 11

Static Control Components, Inc. v. Lexmark Int'l, Inc.,
250 F.R.D. 575 (D. Colo. 2007) 9

Steinrock Roofing & Sheet Metal, Inc. v. McCulloch,
965 N.E.2d 744 (Ind. Ct. App. 2012) 10

Strack & Van Til, Inc. v. Carter,
803 N.E.2d 666 (Ind. Ct. App. 2004) 10

Taylor v. Temple & Cutler,
192 F.R.D. 552 (E.D. Mich. 1999) 9

Tele globe Communs. Corp. v. BCE, Inc. (In re Teleglobe Communs. Corp.),
493 F.3d 345 (3d Cir. 2007) 10

United States v. McPartlin,
595 F.2d 1321 (7th Cir. 1979) 9

United States v. Pizzonia,
415 F. Supp. 2d 168 (E.D.N.Y. 2006) 9

Upjohn Co. v. United States,
449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) 12

Visual Scene, Inc. v. Pilkington Bros.,
508 So. 2d 437 (Fla. Dist. Ct. App. 1987) 9

Weitzman v. Blazing Pedals,
151 F.R.D. 125 (D.Colo.1993) 9

Other Authorities

§ 250:19.View That Communications Are Privileged When They Concern Potential Suit,
17A Couch on Ins. 12

In re Imerys,
Adv. No. 19-50115-LSS, Dkt. 159, Order on Privileged Documents 3, 7, 12

Century objects to the Proposed Form of Protective Order (Dkt. 613) ("Debtors' Proposed Order")[1] and proposes instead that the proposed order attached in Appendices A (redline) and B (clean copy) be applied to these Chapter 11 proceedings. The changes sought are essential to protect Chubb's privileged information and privileged information generated in the defense and assessment of underlying abuse claims asserted against Debtors.

PRELIMINARY STATEMENT

Throughout the course of the proceedings concerning the motion by the Debtors to retain Sidley Austin, the Debtors proposed counsel represented in their briefs and at the hearing (with the Debtors' concurrence) that they would abide by any reasonable limitations to assure the maintenance of privilege. That is not what happened with the Protective Order.

The Debtors aligned themselves with the Tort Claimants in refusing to accept any revisions the proposed Protective Order that would prohibit Sidley or the Debtors from sharing Chubb's privileged information or privileged information concerning the underlying defense with the Tort Claimants. Further, Sidley and the Boy Scouts aligned themselves with the Tort Claimants in insisting on terms that purport to override orders entered by other courts that Sidley was bound to support.

Debtors' proposed Protective Order lacks basic protections designed to prevent disclosure of privileged information. Various provisions of Debtors' proposed Order state that the Debtors may share any document or information with the Tort Claimants just on their agreement to do so. For example, section 7.2(o) of Debtors' Proposed Order permits broad disclosure of all Discovery Materials to any party on consent of the Producing Party. Most importantly, the

[1] Debtors extended the deadline for objections to the Proposed Protective Order to May 27, 2020 at 11:00 AM. *See* May 27, 2020 Declaration of Janine Panchok-Berry ("Panchok-Berry Decl.") Ex. 1 (May 26, 2020, 3:05 PM email from K. Basaria).

Protective Order does not include a clause precluding the Debtors / Sidley from sharing Chubb's privileged information or privileged information generated in the underlying defense.

Chubb participated in the defense of the Boy Scouts in the tort system through Century prior to the filing of this bankruptcy and, through another Chubb affiliate, ESIS, Inc., is presently administering claims for BSA under contract pursuant to the Shared Services Order. The tripartite privilege maintains as privileged information generated in the course of a common defense and shared among insurers, the companies defending claims, and underlying defense counsel in the course of that defense. This privilege may not be waived by any party without the other's consent.

Any protective order should prohibit the disclosure of Chubb's privileged information and privileged information concerning the defense of the underlying abuse claims absent leave of Court for the Debtors to do otherwise. This is particularily appropriate here given the extraordinary fact that the Debtors' counsel has represented or represents virtually all of the Debtors insurers.

Any protective order should also not include a provision -- such at Section 5.2 of the proposed order -- that asks this Court to eviscerate the orders of other courts especially given that those orders have not even been identified or disclosed to this Court or Century. 28 U.S.C. § 1334(c)(2) requires that this Court abstain from granting this relief.

As Debtors' Proposed Order does not include these protections, we request that the Court enter the Protective Order attached as Appendix B. The Order attached as Appendix B contains certain additional protections that should be incorporated into the Proposed Protective Order.

BACKGROUND

BSA is in possession of privileged information generated in the course of the defense of BSA.

The Debtors possess the work product of underlying defense counsel, information generated in connection with the defense, and documents databases that contain the statements, opinions, and work product of defense counsel. The Debtors have not sought, and Chubb and Century have not granted, their consent to share this information or the information that Sidley learned in its representation of Chubb and Century with others. The protection of this privileged information is vital to the defense of claims.

BSA's lawyers are in possession of Chubb's privileged communications about BSA and information Chubb shared with Sidley about BSA.

As Century's counsel, Sidley Austin was privy to highly confidential information about Chubb's insurance coverage for the Boy Scouts and agreements concerning it.[2] This includes privileged information concerning the disputes between Century and the Boy Scouts over its insurance coverage, Century's legal analysis of the Boy Scouts' claims, and Century's legal strategies and defenses in these matters.[3] While some issues were disputed at the May 4, 2020 Hearing on Sidley' retention, the testimony from Chubb's witnesses that they conveyed privileged information to Sidley about BSA was unrefuted.[4]

---

2 *See* April 9, 2020 Declaration of Joshua R. Schwartz ("Schwartz Decl.") ¶¶ 5, 26–27 [Dkt. 539].

3 *Id*.

4 *E.g.*, Tr. of May 4, 2020 Hr'ng on Sidley Retention, at 134:24–135:7 [Dkt. 572] (Testimony of Ms. Christine Russell: "And we really have to -- we struggle, you know, with sharing our information that is privileged. And we certainly share it with our own counsel and then we have to decide how much of that we can share with the reinsurers. So, it's a very delicate balance, but certainly it's always shared with our counsel. I mean there is no doubt about that. They can't help us evaluate the claim without understanding our privileged analysis."); *see also id.* at 207:2–4 (Testimony of Mr. Joshua R. Schwartz: "I had a number of conversations with [Mr. Sneed] about a whole host of issues. So, he was privy to privileged information.").

Chubb participated in BSA's defense in the tort system.

Debtors, Century, and underlying defense counsel coordinated on the defense of abuse claims asserted against Debtors in the tort system pre-petition. Aligned in a common interest these parties shared privileged legal analysis of the underlying tort claims. Debtors thus possess communications that contain attorney work product, including the mental impressions and opinions of underlying defense counsel relating to the underlying tort litigation and settlement negotiations. Debtors also possess attorney-client communications that include Century and other insurers where underlying defense counsel were included. These communications are protected by the common interest privilege, which cannot be waived by any one party.[5] The protection of this privileged information is vital to the defense.

Debtors acknowledge that Century has been involved in defense and settlement of underlying claims.[6] They state that BSA explored settlement with a substantial number of abuse victims involving several meetings with attorneys of those abuse victims, including at a two-day mediation in early November 2019, which "was attended by a prepetition future claims representative and some of BSA's insurers."[7]

---

5 *See In re Imerys*, Adv. No. 19-50115-LSS, Dkt. 159, Order on Privileged Documents at 10[QUERY: Is this cite complete?]; *John Morrell & Co. v. Local Union 304A of United Food & Commercial Workers, AFL-CIO,* 913 F.2d 544, 556 (8th Cir. 1990) (holding that one party cannot waive common interest privilege of a document shared by another party, noting that "[i]t is fundamental that the joint defense privilege cannot be waived without the consent of all parties to the defense") (internal quotation marks and citation omitted).

6 *See* Declaration of Brian Whittman in Support of the BSA's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code dated February 18, 2020 (the "Whittman Decl.") ¶ 18 ("…BSA facilitated the retention of joint defense counsel, coordinated with insurance carriers..).

7 Debtors' Informational Brief at 5 [Dkt. 4].

Chubb presently administers claims for BSA under contract pursuant to the Shared Services Order.

BSA contends that its obligation to provide liability insurance and financial and other claims support for the BSA Related Parties arise out of certain shared services arrangements between the Debtors and the BSA Related Parties (the "Shared Services Arrangements"). On April 8, 2020, the Bankruptcy Court entered an order [Dkt. 369] (the "Shared Services Order") authorizing BSA to continue performing its obligations under the Shared Services Arrangements in the ordinary course of operations, subject to limitations set forth in the Shared Services Order.[8]

ESIS, a subsidiary of Chubb, services the claims that are not stayed by the preliminary injunction[9] and those claims for which the automatic stay is lifted as a third-party claims administrator pursuant to the terms of certain Claims Service Contracts that require the maintenance of confidentiality/privilege.[10] The non-stayed claims are proceeding against Non-Debtor Insureds notwithstanding the Bankruptcy Court Preliminary Injunction, and Old Republic and ESIS are being asked to continue to provide for the defense of, settlement, and pay out on such claims that are covered under BSA's insurance program.[11]

---

8 Declaration of Jessica C. K. Boelter in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession, *Nunc Pro Tunc* to the Petition Date ¶ 22 [Dkt. 204-3] ("In addition, ESIS Inc., a Chubb affiliate, is a third party claims administrator utilized by the BSA and certain of its insurers.").

9 *See* Old Republic Motion for an Order Modifying the Automatic Stay to Permit Payments of Claims Against Non-Debtor Insured and Related Defense Costs Under Insurance Policies, at fn. 3. [Dkt. 678] (explaining that the non-stayed claims include non-abuse claims against Non-Debtor Insureds, as well as certain abuse claims against Non-Debtor Insureds under the Bankruptcy Court Preliminary Injunction).

10 *Id*. at ¶¶ 10–11.

11 *Id.*

The Proposed Protective Order does not contain necessary protections.

Debtors' Proposed Protective Order lacks basic protections designed to prevent disclosure of privileged information. Various provisions of Debtors' Proposed Order state that the Debtors may share any document or information with the Tort Claimants just on their agreement to do so. For example, section 7.2(o) of Debtors' Proposed Order permits broad disclosure of all Discovery Materials to any party on consent of the Producing Party. Most importantly, the Protective Order does not include a clause precluding the Debtors / Sidley from sharing Chubb's privileged information or privileged information generated in the underlying defense.

Century met and conferred with Debtors to incorporate protections into the Proposed Protective Order

Century sought assurance that the Debtors / Sidley would not share privileged information generated in the defense with the Tort Claimants. The Debtors / Sidley refused to entertain any provision that might preclude its sharing of privileged information with the Tort Claimants.[12]

ARGUMENT

I. THE ADDITION OF THREE NARROWLY TAILORED PROTECTIONS ARE WARRANTED TO ENSURE THAT CENTURY'S PRIVILEGED INFORMATION AND PRIVILEGED MATERIAL ABOUT THE DEFENSE IS NOT DISCLOSED.

Century seeks to protect the defense of underlying claims by (i) prohibiting the disclosure of privileged information about the underlying abuse claims, (ii) striking a provision that would have this Court override unidentified orders by other courts, and (iii) revising the inadvertent

[12] *See* Panchok-Berry Decl. Ex. 1 (May 27, 2020 email from M. Andolina).

claw back provision to bring it into accord with Fed. R. Civ. P. 26(b)(5)(B). The below sections explain the limited changes Century proposes.

A. Privileged information concerning the defense of the underlying abuse claims should be protected and not shared with the tort claimants.

Section 8.3 should be revised to preclude the Debtors' and/or Sidley's disclosure of privileged information about the defense of abuse and other tort claims to claimants by the addition of the following clause:

> "The Debtors shall not produce documents or information subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege generated in connection with the defense of the underlying Abuse Claims against the Debtors or privileged as to Chubb without notice to all parties and an opportunity for the Debtors' insurers to be heard by the Court with notice beforehand."

See Appendix A, §8.3.

And the remainder of Section 8.3 should be modified to track the text adopted by the Court in *In re Imerys* that makes clear that nothing contained in the Protective Order authorizes a Producing Party to disclose any privileged information.

> "Nothing contained in this Protective Order authorizes a Producing Party to disclose to any Official Committee, the FCR or any other party or entity, or their Retained Professionals, another party's or entity's privileged information generated in connection with the defense of Abuse Claims that is subject to a shared Privilege or Protection as between the Producing Party and such party or entity."

See Appendix A, §8.3.

In reconciling a protective order in *In re Imerys*, this Court made clear that the Protective Order did not absolve anyone from the obligation not to produce privileged information.[13] Century similarly seeks the Court's assistance in protecting these documents from disclosure to

[13] *Id.* at 18:24–25 and 19:1–7 ("I'm not absolving, you know, anybody of by this protective order of their obligation not to share information that they're under an obligation not to share.").

prevent harming the defense of the underlying tort claims.

The communications among insurers and Debtors about the underlying claims and their defense are privileged as to the Tort Claimants, as this Court held in *In re Imerys*.[14] As the Court held there, because "any documents produced . . . in this litigation will come into the hands of an adversary in the underlying tort litigation," certain privileged documents may not be produced, including insurer-insured communications containing legal analysis and attorney work product regarding underlying tort litigation.[15] The ruling applied to attorney-client communications involving underlying defense counsel and communications between insurers and Debtors that contained privileged attorney work product that could not be disclosed to the Debtors' adversaries in the tort system.[16] A protective order should ensure that these privileges are not compromised by being shared with the Tort Claimants.

These discrete changes are essential given that Sidley is in possession of privileged information from Chubb. Nor should Sidley be heard to complain as it represented it was open to any protective measures the Court might implement to ensure that privilege is maintained.

B. Debtors should not share with the tort claimants documents protected by orders entered by other courts.

Section 5.2 of the proposed Protective Order would have this Court override unidentified confidentiality orders, entered by unidentified state and federal courts, involving unidentified

---

[14] *See In re Imerys*, Adv. No. 19-50115-LSS, Dkt. 159, Order on Privileged Documents at 10; *John Morrell & Co. v. Local Union 304A of United Food & Commercial Workers, AFL-CIO,* 913 F.2d 544, 556 (8th Cir. 1990) (holding that one party cannot waive common interest privilege of a document shared by another party, noting that "[i]t is fundamental that the joint defense privilege cannot be waived without the consent of all parties to the defense") (internal quotation marks and citation omitted).

[15] *Id*. at 13.

[16] *See In re Imerys*, Adv. No. 19-50115-LSS, Dkt. 159, Order on Privileged Documents at 14-15 (concluding that the coverage/reservation of rights letters are work product and may not be disclosed to the Tort Claimants).

parties and third parties without disclosure as to what documents these orders address or whether they apply to clawed back privileged documents or documents produced by third parties not before this Court.[17]

Pursuant to 28 U.S.C. § 1334(c)(2), this Court "*shall* abstain" if the criteria for mandatory abstention are met as they are here with respect to those orders entered by state court that the Debtors and Tort Claimant seek to override. This sort of comprehensive affirmative relief is not properly sought without identifying the orders at issue, the parties to the orders, and the courts that entered them. Indeed, the compulsory turn-over of documents is not even properly part of a protective order.

Section 5.9 should be amended as follows to require that the Debtors give notice of the orders it seeks to override issued to prevent inadvertent disclosure of privileged information:

> ". . . the BSA and the Insurers consent to the delivery of Prepetition Confidential Documents to the TCC Representatives (as defined below) after notice and an opportunity to review any documents that are proposed to be provided, in which case BSA agrees that the delivery of the Prepetition Confidential Documents to the TCC Representatives shall not constitute a breach of any Existing Confidentiality Agreement."

Id. at §5.9.

Alternatively, Section 5.9 should be struck as it eviscerates orders of other unidentified courts and confidentiality rights without disclosure even of the orders that are at issue and the parties to those orders.

---

[17] Section 5.2 would allow all documents subject to "prepetition Confidentiality Orders to [be] shared among the TCC's Counsel and Other Retained Professionals, the Members of the TCC, the UCC's Counsel and Other Retained Professionals, the FCR and the FCR's Counsel, the Local Council Committee's Counsel and Other Retained Professionals, and the Insurers' Outside Counsel and Other Retained Professionals."

C. The clawback provision should be amended to track the protections afforded by Fed. R. Civ. P. 26(b)(5)(B).

Sections 10.1 should be revised to track the corresponding text of the Protective Order in *Imerys* and bring the section into accord with Fed. R. Civ. P. 26(b)(5)(B).

Under Fed. R. Civ. P. 26(b)(5)(B), after a party is notified there has been an inadvertent disclosure, that "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."

The Tort Claimants modified the text of Section 10.1 to introduce a loophole that allows them "to retain any document subject to challenge" without limit. The alternative the Rule offers to return or destruction is to "promptly present the information to the court under seal for a determination of the claim."

II. CENTURY HAS A MATERIAL INTEREST IN THE PROTECTIONS SOUGHT FOR PRIVILEGED INFORMATION.

The tripartite privilege protects from disclosure privileged information generated by underlying defense counsel or communicated among the insurer, its insured, and underlying defense counsel.[18] The privilege protects attorney-client communications even where interests of the clients may conflict in part.[19]

---

[18] *Taylor v. Temple & Cutler*, 192 F.R.D. 552, 558 (E.D. Mich. 1999) (protections of the attorney-client privilege and the work product doctrine extended to private communications between legal malpractice insurer and insureds and their counsel, and to documents created in anticipation of malpractice litigation, including those created during an adversarial period between insurer and insured when insurer sought declaration of noncoverage); *Weitzman v. Blazing Pedals*, 151 F.R.D. 125, 126 (D.Colo.1993) ("files generated during the [insurer's] investigation of third party claims are made in anticipation of litigation and are not discoverable" to third parties); *Bank of America, N.A. v. Superior Court*, 2013 WL 151153 (4th Dist. Jan. 15, 2013).

[19] *See United States v. McPartlin*, 595 F.2d 1321, 1336 (7th Cir. 1979); *Static Control Components, Inc. v. Lexmark Int'l, Inc.*, 250 F.R.D. 575, 578-79 (D. Colo. 2007); *United States v. Pizzonia*, 415 F. Supp. 2d 168, 178 (E.D.N.Y. 2006); *Raytheon Co. v. Superior Court*, 256 Cal. Rptr. 425, 428-29 (Cal. Ct. App. 1989); *Visual Scene, Inc. v. Pilkington Bros.*, 508 So. 2d 437, 440 (Fla. Dist. Ct. App. 1987).

The tripartite privilege prevents tort claimants from gaining access to documents among the insurer, insured, and defense counsel because disclosure could prejudice the defense against those same tort claimants. Thus, courts around the country hold that these insurer-insured communications are privileged in tort litigation, as they are privileged here.[20] *See Schipp v. Gen. Motors Corp.*, 457 F. Supp. 2d 917, 924 (E.D. Ark. 2006) ("In short, documents prepared by Kennedy's insurer, on the facts of this case, are protected by the work-product doctrine because they were prepared in anticipation of litigation and because GM has failed to demonstrate a substantial need for them."); *Strack & Van Til, Inc. v. Carter*, 803 N.E.2d 666 (Ind. Ct. App. 2004) (Grocery store's accident investigation report to its liability insurer was privileged in customer's slip and fall negligence action, even though the report included conclusions by a store supervisor that were based on statements by a store employee.); *Steinrock Roofing & Sheet Metal, Inc. v. McCulloch*, 965 N.E.2d 744 (Ind. Ct. App. 2012) (Claims file information from homeowner's insurance carrier, which determined that homeowner's roof required replacement as result of windstorm and made payments for work performed by contractor, was privileged in contractor's suit to recover unpaid balance on contract for roof replacement, as claims file would have included statements between homeowner and insurer.).

Communications between the Debtors and Century about the underlying claims are not discoverable to Tort Claimants.[21] Federal Rule of Civil Procedure 26(b)(3) stipulates that a party

---

[20] *See In re Cherokee Simeon Venture I, LLC*, No. 12-12913 (KG), 2012 WL 12940975, at *3 (Bankr. D. Del. May 31, 2012) (communications exchanged between Debtor and Debtor's manager about litigation strategies were covered by common interest privilege); *Tele globe Communs. Corp. v. BCE, Inc. (In re Teleglobe Communs. Corp.)*, 493 F.3d 345, 363-65 (3d Cir. 2007) (waiving privilege requires the consent of all parties to the communication).

[21] For instance, even a reservation of rights letter, prepared by an insurer and sent to the insured and their attorney, may constitute work product. *Midwest Feeders, Inc. v. Bank of Franklin*, No. 5:14CV78-DCB-MTP, 2016 WL 7422561, at *5 (S.D. Miss. June 28, 2016) citing *In re Madrid*, 242 S.W.3d 563, 568-69 (Tex. App. 2007).

may not discover documents and tangible things that are prepared *in anticipation* of litigation or for trial by or for another party or its representative, including the other party's attorney, consultant, *surety, indemnitor, insurer, or agent*. It is for this precise reason that the court in *Midwest Feeders, Inc. v. Bank of Franklin* denied a motion to compel, explaining that,

> The document at issue here was prepared by the Bank's insurer, addressed and sent to the Bank's attorney, and was prepared by the insurer due to the commencement of the action. This appears to fall squarely within the confines of Rule 26(b)(3).[22]

Any such communication between an insured and insurer that relates to the duty to report incidents and the latter's defense or indemnity falls within the attorney-client privilege.[23] In reaching its holding, the court in *Midwest Feeders, Inc*. relied upon and adopted the reasoning in *In re Madrid*, which determined that such things as reservation of rights letters do not only constitute privileged work product but that they are not discoverable because they are, in any event, wholly irrelevant.[24]

It is for reasons like these that district courts have concluded that the plain language of then-numbered Rule 26(a)(1)(D) "merely requires the disclosure of an insurance policy or other agreement that gives rise to an insurer's obligation to indemnify or hold its insured harmless for judgment, and does not require the production of all agreements relating to insurance."[25] It is thus clear why the Court in *Native American Arts v. Bundy-Howard*, for example, found that Rule 26(a)(1)(D)'s reference to "any insurance agreement" did not embrace an insurer's

---

22 *Id.*

23 *See May Dep't Stores Co. v. Ryan*, 699 S.W.2d 134, 136 (Mo. Ct. App. 1985).

24 *In re Madrid*, 242 S.W.3d 563, 568 (Tex. App. 2007).

25 *Sierrapine v. Refiner Prod. Mfg., Inc.*, 275 F.R.D. 604, 612 (E.D. Cal. 2011) citing *Excelsior College v. Frye,* 233 F.R.D. 583, 585–86 (S.D.Cal.2006); *accord Native Am. Arts, Inc. v. Bundy–Howard, Inc.,* No. 01 C 1618, 2003 WL 1524649, at *1–2, 2003 U.S. Dist. LEXIS 4393, at *5–6 (N.D.Ill. Mar. 20, 2003) (unpublished) (concluding that then-numbered Rule 26(a)(1)(D) does not require disclosure of a 'reservation of rights' letter)…"

communications about claims and held that plaintiff was entitled to nothing more than the insurance policies themselves.[26]

This Court has held that communications in furtherance of the defense of underlying claims may contain opinion work product.[27] The Third Circuit recognizes that documents that contain "pure legal opinion" are "opinion work product" that "is the most sacrosanct of all forms of work product."[28] It encompasses an attorney's mental impressions, conclusions, opinions, or legal theories. A document may contain both fact work product and opinion work product, and if such statements are intertwined it may be impossible to sort between the two.[29]

Communications protected by attorney-client privilege are also generally "absolutely immune from discovery."[30] The attorney-client privilege applies to communications between an insured and its liability insurer based on the recognition that communications about an event giving rise to liability are predominantly intended to be transmitted to the insurer's attorney, or one assigned by it, to defend the ultimate claim against the insured.[31] This is because the "the insured is contractually bound to cooperate in that defense."[32]

---

26 *Excelsior Coll. v. Frye*, 233 F.R.D. 583, 585–86 (S.D. Cal. 2006) citing *Native American Arts v. Bundy–Howard,* 2003 WL 1524649, 2003 U.S. Dist. LEXIS 4393 (N.D.Ill.2003).

27 *See In re Imerys*, Adv. No. 19-50115-LSS, Dkt. 159, Order on Privileged Documents at 14-15.

28 *In re Grand Jury Investigation,* 599 F.2d 1224, 1231 (3d Cir. 1979).

29 *Intel Corp.,* 258 F.R.D. at 294[QUERY: Could not locate the long cite for this case.]. Debtors and the Tort Claimants must show a "substantial need and undue hardship" before any factual work product may be discovered and, further, mental process work product is afforded ***nearly absolute protection***. *See In re Martin Marietta Corp*., 856 F.2d 619, 624 (4th Cir.1988); *Upjohn Co. v. United States*, 449 U.S. 383, 400, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981); *Holmgren v. State Farm Mut. Auto. Ins*., 976 F.2d 573, 577 (9th Cir.1992) (holding that work product "may be discovered and admitted when mental impressions are at issue in a case and the need for the material is compelling"); *see also Director, Office of Thrift Supervision v. Vinson & Elkins*, LLP, 124 F.3d 1304, 1307 (D.C.Cir.1997) ("virtually undiscoverable").

30 *Id*.

31 § 250:19.View That Communications Are Privileged When They Concern Potential Suit, 17A Couch on Ins.

32 *Id.*

Debtors' communications with Century regarding the underlying claims, whether or not the communications include underlying defense counsel, contain the mental impressions of underlying defense counsel about the abuse claims asserted against Debtors. These communications incorporate the opinion work product and factual work product of defense counsel and are thus protected from disclosure to the Tort Claimants under Third Circuit precedent. Communications with underlying defense counsel are also protected as attorney-client communications.

CONCLUSION

WHEREFORE, Century objects to the Debtors' / Tort Claimant Proposed Protective Order and requests that it only be entered with the modifications indicated in the blacklined version attached as Appendix A and that the proposed clean form of order attached as Appendix B be entered instead.

Dated: May 27, 2020

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*)
Janine Panchok-Berry (*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, Ace Insurance Group, Westchester Fire Insurance Company, and Westchester Surplus Lines Insurance Company

OMM_US:77977228.9

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,	)	Case No. 20-10343 (LSS)
	)	
	)	Jointly Administered
Debtor.	)	
	)	**Re: Docket No. 204**

BENCH RULING DELIVERED MAY 29, 2020
ON DEBTORS' APPLICATION TO RETAIN SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION

This is my ruling on Debtors' application to retain Sidley Austin as their restructuring counsel under section 327(a) of the Bankruptcy Code. The sole objection to Sidley's retention was filed by Century Indemnity Company, a subsidiary of Chubb, and one of Debtors' many insurers. I held an evidentiary hearing on May 4, entertained argument on May 6 and took the matter under advisement.

Facts

While the witness testimony reflects vastly different views of the dealings between Century and Sidley, based on the record before me, the following facts are largely undisputed, but in any event, I find that:

- Chubb is a longtime client of Sidley's Insurance and Financial Services Group. Over the years, Sidley represented Chubb and/or its predecessors and subsidiaries on various reinsurance matters, including both specific arbitration proceedings and general counseling matters.
- On October 5, 2018, Century retained Sidley in connection with Century's efforts to obtain reinsurance from Lloyd's of London for claims Century paid or in the future would pay to BSA under insurance policies Century issued to BSA. Sidley was brought on to review the work of previous counsel which had resulted in an arbitration award adverse to Century. That arbitration proceeding is the subject of a

decision of the United States District Court for the District of Massachusetts styled *Certain Underwriters at Lloyd's, London v. Century Indemnity Company* and found at 2020 WL 1083360.

- In August, 2019, Century again retained Sidley in connection with Century's efforts to obtain reinsurance from another insurer for claims Century paid or in the future would pay to BSA under insurance policies Century issued to BSA.
- At substantially the same time that Sidley took on its first BSA-specific engagement for Century, Sidley's restructuring group was hired by BSA to render restructuring planning, advice and implementation.
- At no time did Sidley obtain from Century a waiver of any conflict with respect to its concurrent representation of Century in reinsurance matters and BSA in restructuring matters.
- On January 16, 2020, Sidley wrote Chubb stating its intention to withdraw from all of its pending representations of Century and Chubb and set out a timeframe and methodology for that process. The last action taken to withdraw from any Chubb matter was either on February 20 or 24, 2020.
- In the meantime, BSA filed its bankruptcy petition on February 18, 2020.
- Century's insurance policies with BSA are assets of the BSA bankruptcy estate. Those policies include the same underlying Century/BSA insurance policies for which Century sought to collect reinsurance from Lloyds and the second reinsurer.
- The operative agreement between Sidley and Century with respect to the Sidley engagement on reinsurance matters is a 2015 Service Level Agreement. Generally, Chubb's service level agreement is Chubb's standard agreement by which it engages counsel. Chubb has chosen not to negotiate separate engagement letters with each law firm it engages.
- The 2015 Service Level Agreement with Sidley provides that if Century and Sidley are unable to resolve any dispute with respect to a matter handled by the law firm, the sole means for redressing that dispute shall be an arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Century is pursuing this remedy.

Parties' Positions

Century argues that Sidley's retention application cannot be granted because Sidley does not meet the standard of section 327 as Sidley's representation would violate Rule 1.7 of the Rules of Professional Responsibility in that Sidley would be representing one current client—BSA—against another current client—Century.

Sidley argues that Rule 1.7 is not relevant to its retention. It argues that Century is a former client, not a current client, and that under Rule 1.9 of the Rules of Professional Responsibility, Sidley does not need a waiver from Century because Sidley's representation of BSA in its restructuring is not substantially related to its previous representation of Century in reinsurance matters. It further argues that it does not hold or represent any interest adverse to the BSA estate and is disinterested. Finally, Sidley argues that Sidley was never adverse to Chubb/Century even when Century was a client because Haynes and Boone is BSA's insurance coverage counsel in connection with the restructuring.

Debtors argue that they will be severely prejudiced if they cannot retain Sidley because of the extensive work that Sidley performed in preparing BSA for these chapter 11 cases and in representing BSA both pre- and post-petition in negotiations with all relevant constituencies over the past 18 months. Replacing Sidley would not only delay the restructuring, but impose additional significant expense on BSA. The impact of the covid-19 pandemic has caused BSA to close almost all of its 175 Scout Shops and BSA is facing the potential cancellation or reduction of its programming at its high adventure facilities this summer. These events have or will cause a significant decrease in BSA revenue.

Discussion

A. Section 327

The starting point for a professional retention is section 327(a). In *BH&P*,[1] the Third Circuit states that § 327(a) creates a two-part test. To be employed, a professional (i) may not hold or represent an interest adverse to the estate and (ii) must be disinterested. The

[1] *In re BH & P, Inc.*, 949 F.2d 1300 (3d Cir. 1991) (addressing a professional's concurrent representation of related bankruptcy estates).

purpose behind these requirements is to ensure effective representation of the estate; in other words, it is to ensure that the professional is able to act in the best interest of the estate and can competently and vigorously represent the trustee or debtor-in-possession.

This purpose is also consistent with subsection 327(c). Subsection (c) provides that a professional is not disqualified for employment solely because of such person's representation of a creditor unless there is an objection by another creditor or the UST and there is an actual conflict of interest. Again, the concern embodied in subsection (c) is that the estate be adequately represented.

Section 327 does not seek to vindicate the rights of non-debtor entities. The Third Circuit cases interpreting section 327 bear out this perspective. In *BH&P*, the Third Circuit examined whether a single trustee could be appointed to represent multiple related debtors and whether his counsel could be approved under section 327 to concurrently represent related bankruptcy estates. The Court did not find error in the bankruptcy court's factual findings that the existence of current inter-debtor disputes created an actual conflict of interest because of "the possibility that [the professionals] would favor one estate over the other in their attempt to serve all of them." In *Pillowtex*, the Third Circuit examined whether a professional against which a "facially plausible claim of a substantial preference" exists may hold an interest adverse to the estate. The Court recognized that if a transfer is avoided, the professional will become a creditor of the estate.[2] And, in *Marvel Entertainment*, the Third Circuit reversed the district court, and permitted the debtor's retention of its chosen law firm over objection notwithstanding that prepetition the firm represented a

[2] *In re Pillowtex, Inc.*, 304 F.3d 246, 255 (3d Cir. 2002).

major secured creditor of the estate; the firm's representation was on matters unrelated to the bankruptcy case, and the attorney client relationship had been consensually severed in anticipation of the firm's retention in the bankruptcy case.[3] In each instance, the Court looked at the factual scenario in front of it from the perspective of the estate.

Here, the only party objecting to Sidley's retention is Century. Neither the UST nor another creditor has objected to Sidley's retention and the only party arguing that Sidley cannot adequately represent the estate is Century. Under these circumstances, even assuming an actual conflict, the per se disqualification rule of section 327(c) does not kick in. And, I am in no way convinced that Sidley generally cannot effectively represent BSA. This is not a situation where the court is concerned that proposed counsel has a bias in favor of a non-debtor entity such as a parent or significant creditor.

Further, and important in the context of the arguments made here, section 327 (including both subsections (a) and (c)) are written in the present tense. As Judge Walrath observed in *In Re Muma Services, Inc.*, Congress' use of a verb tense is significant in construing statutes, and section 327 is phrased in the present tense.[4] Quoting from the Second Circuit's *AroChem* decision, Judge Walrath agreed that "counsel will be disqualified under § 327(a) only if it **presently** 'holds or represents an interest adverse to the estate,' notwithstanding any interests it may have held or represented in the past."[5] So, section

---

[3] *In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 477 (3d Cir. 1998).
[4] *In re Muma Servs., Inc.*, 286 B.R. 583, 591 (Bankr. D. Del. 2002) (citing *United States v. Wilson*, 503 U.S. 329, 333 (1992).
[5] *Muma* at 591 quoting *Bank Brussels Lambert v. Coan (In re AroChem Corp.)*, 176 F.3d 610, 623 (2d Cir. 1999); 11 U.S.C. § 101(14)(B) (emphasis added):

> The term 'disinterested person' means a person that—
> (A) is not a creditor, an equity security holder, or an insider;

327's prohibition against representing an adverse interest does not work to prohibit Sidley's retention because of its previous representation of Chubb. Whether the attorney-client relationship ended as Sidley asserts with its January 16, 2020 letter to Chubb, or as Century asserts several days after the bankruptcy petition was filed is of no consequence. For purposes of section 327, the attorney-client relationship has ended. I note that Chubb has not cited any case law to the contrary. Therefore, I conclude that Sidley meets the two-part test of section 327 in that it does not hold or represent an interest adverse to the estate and it is disinterested.

Nonetheless, the Rules of Professional Responsibility are not irrelevant to a retention application. First, there are some decisions in which courts have denied retention because of a professional's violation of its ethical responsibilities that do not implicate section 327. These courts generally rely on the court's ability to monitor the conduct of the attorneys practicing before it or note an impact on the integrity of the bankruptcy process. For example, in *Universal Building Products*,[6] Judge Walrath denied the committee's application to retain a law firm that violated professional rules of conduct in soliciting committee members. Second, Chubb argues that Sidley is not capable of effectively representing the debtors because whether Chubb is a current client or a former client, Sidley cannot be adverse to Chubb in this bankruptcy case. Chubb contends that insurance issues in a mass

---

(B) is not **and was not**, withing 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or *for any other reason.*

[6] *In re Universal Building Products*, 486 B.R. 650 (Bankr. D. Del. 2010) (denying retention application in part because of violations of Rules 7.3 and 8.4 of the Model Rules of Professional Conduct).

tort case are so pervasive that Sidley's inability to be adverse to Chubb means Sidley's retention cannot be approved. Thus, a review of Rules 1.7 and 1.9 are necessary.

B. The Model Rules of Professional Conduct of the American Bar Association

Unlike section 327 of the Bankruptcy Code, Rules 1.7 and 1.9 of the Model Rules of Professional Responsibility address the attorney-client relationship.

Rule 1.7 looks out for the interest of the client. It prevents an attorney from representing one current client against another current client absent a written waiver. As the comments to Rule 1.7 make clear "a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated."[7] Thus, Rule 1.7 reflects the complete and undivided loyalty an attorney owes to its client: a lawyer can never be adverse to a current client.

Rule 1.9 similarly looks out for the interest of the client. It provides that a lawyer cannot represent a party against a former client in the "same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client." The rule is designed to serve three purposes: (i) to prevent even the potential that a former client's confidences and secrets may be used against him; (ii) to maintain public confidence in the integrity of the bar; and (iii) to uphold the duty of loyalty owed to a client.[8]

---

[7] Model Rules of Prof'l Conduct R. 1.7 cmt. 6 (2019).

[8] *Golden Guernsey Dairy, LLC*, 2015 WL 3669932, at *4 (Bankr. D. Del. June 12, 2015) (citing *In re Corn Derivatives Antitrust Derivatives Litig.*, 748 F.2d 157, 162 (3d Cir. 1984)).

To determine whether a "substantial relationship" exists, courts generally look to three factors: (i) the nature and scope of the prior representation, (ii) the nature and scope of the current representation; and (iii) the possibility that the former client disclosed confidences to his attorney in the prior representation which could be relevant to the current action and used to the detriment of the former client in the current action.[9] Simply put, the question is whether the attorney learned things in the prior matter that would give the lawyer's new client an advantage in the current matter. In assessing the nature of the action and the types of information that might be disclosed to a lawyer in that action, the former client need not disclose the privileged information imparted. Rather, the court should make a realistic appraisal of the possibility that confidences have been disclosed which would be harmful to the client in the other matter.[10]

The testimony of Mr. Sneed, Ms. Russell and Mr. Schwartz addressed all three factors. Mr. Sneed drew a bright line between reinsurance and the underlying claims for which reinsurance is sought. Mr. Sneed's testimony is that his work on reinsurance matters is never adverse to the insured on the underlying policy (here, BSA). He testified that a reinsurance dispute involves only a dispute on the reinsurance contract between the ceding insurer (here, Century) and the reinsurer (here, Lloyds of London and a second reinsurer) and that matters related to the underlying insurance claims are not implicated. Mr. Sneed also testified that in the two BSA-related reinsurance matters he was handling for Century he received a

---

[9] *Talecris Biotherapeutics, Inc. v. Baxter Healthcare LLC*, 491 F.Supp. 2d 510, 514 (D. Del. 2007).
[10] *Golden Guernsey*, 2015 WL 3669932, at *4.

limited and extremely narrow set of documents, the documents did not implicate the underlying claims and that the arbitration proceeding only included claims that Century had already paid, not future claims. Any declaratory relief regarding future BSA claims in the reinsurance matter was boilerplate.

Ms. Russell's testimony was directly to the contrary. She testified that although a reinsurance claim does involve the interpretation of the reinsurance contact, in order to properly advise a client on reinsurance matters, a lawyer must familiarize himself with the underlying claims. She further testified that while Mr. Sneed testified truthfully about the categories of documents he received from Century in the BSA-related reinsurance matters, he downplayed the significance of what he received. She further testified that he did receive information regarding the underlying insurance that Century issued to BSA. And, that in the BSA-related reinsurance matters, the relief sought included not only relief with respect to claims already paid under the policy Century issued to BSA, but claims that BSA would make under the policy in the future. Ms. Russell further testified that those future claims were significant assets of Chubb. Finally, Ms. Russell testified that no decisions had been made about how to approach the second Lloyd's arbitration, rather that was exactly what Chubb would be discussing with counsel.

A review of the District Court's decision[11] regarding the arbitration against Lloyds of London that Sidley was engaged to take over in October 2018 supports Ms. Russell's testimony. The District Court states that in the arbitration Century sought an award requiring Lloyds to pay all outstanding bills and requiring Lloyd's to pay any future billings

[11] *Certain Underwriters at Lloyd's, London v. Century Indemnity Company*, 2020 WL 1083360 (D. Mass. Mar. 6, 2020).

related to BSA molestation claims. Further, in its recitation of facts, the District Court describes the First Encounter Agreement entered into between BSA and Century in 1996 which sets forth a methodology for allocating molestation claims made against BSA under the insurance policies issued by Century to BSA. The Court then sets forth a portion of the Final Award entered in the reinsurance arbitration, as follows:

> Century has not demonstrated that the **First Encounter Agreement** ("FEA") that it entered into with BSA is the product of a reasonable and business-like investigation. Accordingly, Underwriters are not bound to follow the FEA. And thus, Century's Billings for sexual molestation claims submitted in this matter under [the Reinsurance Contracts] are not covered by those treaties.[12]

The District Court's description of the reinsurance matter shows that it did not involve only the reinsurance contract. It also involved an agreement between BSA and Century—the First Encounter Agreement. The First Encounter Agreement has already been the subject of testimony in this court in connection with the BSA's motion for preliminary injunction with respect to the abuse victims' lawsuits.

Further, the evidence shows that in the BSA coverage action brought against Century in Texas, BSA propounded discovery to Century seeking all documents and communications between Century and its reinsurers involving sexual abuse claims against BSA, including in connection with Century's arbitration against Lloyds described in the District Court opinion. Century's response to the discovery was that it was not relevant to the coverage action. Accordingly, there is a disagreement on relevancy.

Based on the record before me, I conclude that the reinsurance litigation could be "substantially related" to at least some aspects of Boy Scout's bankruptcy case for purposes of Rule 1.9. Specifically, I find that Sidley received from Century information relevant to

---

[12] *Id.* at *2.

the BSA bankruptcy, but it is less clear exactly how that information could be used to Century's detriment in the bankruptcy case.

Sidley, however, contends that it is not representing BSA on any aspect of the bankruptcy case that could be an issue. The question becomes therefore whether, as Sidley contends, conflicts counsel solves any ills here.

C. Conflicts Counsel

Conflicts counsel is often used by debtors when their main restructuring counsel cannot be adverse to a particular party in a bankruptcy case. As noted by both Professor Rapoport in her declaration and by courts struggling with retention issues, mega bankruptcies can pose retention issues for debtors.

Here, from the outset and as reflected in Sidley's engagement letter with BSA, Sidley carved out from its engagement any advice on insurance coverage issues. The evidence is unrefuted that Haynes & Boone has taken the lead on all coverage-related matters, is the firm charged with both analyzing BSA's insurance policies and negotiating with its insurers. And, Haynes & Boone drafted the portions of BSA's placeholder plan of reorganization pertaining to insurance neutrality. Haynes & Boone was involved from the outset of the restructuring negotiations and initiated substantive discussions with BSA's insurers, including Century.

Further, both Mr. Sneed and Ms. Boelter testified that there have been no substantive discussions between Sidley's reinsurance group and BSA's restructuring team. Mr. Sneed has not passed on any information he received in the course of his representation of Century in the reinsurance matters. And, an ethical screen has been in place since November 4,

2019. While a retroactive ethical screen may not work for purposes of violations of the Rules of Professional Conduct, based on the unrefuted testimony, I conclude that any confidential or privileged information that Mr. Sneed received in his representation of Century in its reinsurance matters has not and will not be passed along to Sidley's restructuring team. I do not find this surprising given the nature of large firms with specialized departments.

Also, one of Ms. Russell's primary concerns appears to be that the bankruptcy itself could hurt Century in its reinsurance collections. As Ms. Russell put it: "certain things that could be said in the bankruptcy action by Sidley could harm us in our reinsurance [collection] . . . and our [ceded] asset, our reinsurance collections are an important asset to Chubb and that we could be harmed in that collection by things Sidley would say."[13] This is also consistent with the position taken by Century's counsel in argument that even if Sidley had not taken on the two BSA-related reinsurance engagements, Sidley would still be prohibited from representing BSA in this bankruptcy case.

It may be that certain legal positions taken in the bankruptcy case regarding the BSA/Century insurance policies could be harmful to Century's efforts to collect on its insurance—I make no conclusions on that. But, if that is the case, that is a function of the Bankruptcy Code and law, and not any information learned by Sidley in the reinsurance litigation.

Accordingly, I conclude that Sidley may continue to represent BSA generally in this bankruptcy case.

[13] Retention Hr'g Tr. 147:11-148:5, May 4, 2020, D.I. 572.

This decision is consistent with the numerous cases cited to me addressing disqualification of counsel in the context of conflicts of interest with current or former clients. Disqualification is never automatic.[14] Indeed, I was surprised with the overwhelmingly body of caselaw (including in this district) in which courts deny disqualification motions in the face of what appear to be obvious conflicts.[15] In doing so, courts consider the facts and circumstances of each case and are particularly mindful of a party's right to counsel of its choice.[16] Courts also consider the prejudice that could inure to a client if it is required to obtain new counsel.[17]

---

[14] *Golden Guernsey*, 2015 WL 3669932, at *2 ("Although disqualification ordinarily is the result of a finding that a disciplinary rule prohibits an attorney's appearance in a case, disqualification never is automatic." (quoting *United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980))); *Elonex I.P. Holdings, Ltd. v. Apple Computer, Inc.*, 142 F.Supp.2d 579, 583 (D. Del. 2001) ("Although disqualification is ordinarily the result of a finding that an ethical rule has been violated, disqualification is never automatic.").

[15] *Apple Computer, Inc.*, 142 F.Supp.2d at 583 ("Even if the court were to find that there was no waiver and that [conflicted counsel] has violated Rule 1.7(a), disqualification is not warranted in this case. As the court has already stated, disqualification is a severe sanction."); *Boston Scientific Corp. v. Johnson & Johnson Inc.*, 647 F.Supp.2d 369 (D. Del. 2009) (finding a violation of Rule 1.7, but denying disqualification motion); *End of Road Trust v. Terex Corporation*, 2002 WL 242464 (D. Del. 2002); *TQ DELTA, LLC, Plaintiff; v. 2WIRE, INC.*, 2016 WL 5402180, at *6-7 (D. Del. 2016) (finding violation of Rule 1.9, but denying disqualification motion). *See Airgas, Inc. v. Cravath, Swaine & Moore LLP*, 2010 WL 3046586 at *2 n.3 (E.D. Pa. Aug. 3, 2010) (recognizing that Delaware Chancery Court determined it need not resolve question of whether law firm breached its ethical obligations in denying disqualification motion). *But see Intellectual Ventures I LLC v. Checkpoint Software Technologies*, 2011 WL 2692968, at *15 (D. Del. 2011).

[16] *TQ DELTA, LLC*, 2016 WL 5402180, at *6-7 ("[S]ome of the factors weighed by courts in the Third Circuit: attorney loyalty, prejudice to parties, protection of the integrity of the judicial process, geography, timing of disqualification motion, duration of prior representation, delay, stage of proceedings, whether confidential information from the prior representation had passed to the client, cost to obtain new counsel, complexity of the case, size of the firm, nature and degree of prior involvement, and whether there was any ulterior motive for filing the motion to disqualify. . . . I am cognizant of the need to balance 'the sacrosanct privacy of the attorney-client relationship (and the professional integrity implicated by that relationship) and the prerogative of a party to proceed with counsel of its choice.'" (citation omitted)).

[17] *Apple Computer, Inc.*, 142 F.Supp.2d at 584 ("Also, in light of [conflicted counsel's] knowledge of the case, it is certain that [client] will be prejudiced if it has to retain new counsel. There is no doubt that it will be both inefficient and costly for [client] to get new counsel up to speed in this matter.").

Here, once again, the testimony was unrefuted. Mr. Whittman's declaration describes the significant prejudice that would befall BSA if it is forced to replace Sidley, which has been working with BSA for almost 18 months.

Having concluded that Sidley may remain BSA's restructuring counsel, Haynes and Boone must handle all matters adverse to Century that address the substantive treatment of BSA's insurance policies with Century, claims thereunder, proceeds therefrom or that otherwise implicate insurance coverage. This is consistent with the self-imposed restriction in Sidley's engagement letter with BSA that does not permit Sidley to work on coverage matters. I believe that conflicts counsel can work here given Haynes & Boone's involvement with the restructuring since its inception. Both Sidley and Haynes & Boone will need to continue to be tuned in to their respective scope of work.

Permitting Sidley to continue to work on the BSA bankruptcy case does not leave Chubb without further remedies. As already stated, the 2015 Service Level Agreement contains an arbitration provision and Chubb is invoking it. Violations of the professional rules of conduct will be addressed in that forum, which was Chubb's chosen forum for Sidley's breach of the terms of engagement.

In all events, I am comfortable that no privileged information that Sidley obtained in its work for Century can or will be used in this bankruptcy case in any way.

Chubb contends that my approval of Sidley's retention will encourage law firms to impermissibly drop clients in order to take on more lucrative bankruptcy cases. Perhaps I should be more cynical, but I still believe the law is a profession and persons take their

professional obligations seriously. I do not think any law firm wants to become embroiled in disqualification motions or in arbitrations or lawsuits with their clients or former clients.

D. Three Final Items

Finally, I note three more items.

i. Disclosures

First, Century objected to Sidley's Rule 2014 disclosure of its connections. Having reviewed the disclosures, I find them sufficient. Paragraph 22 of Ms. Boelter's declaration specifically addresses Chubb and Century. While Chubb quarrels with the characterization of the representation, it accurately reflects Sidley's view of the representation and provides parties and the court with enough information to ask questions.

ii. Waiver / Tactical Use of Objection to Retention

Second, in its pre-hearing submission and in the testimony adduced at the hearing, Sidley spent significant time arguing and adducing evidence to support its position that Chubb knew of Sidley's representation of BSA in December, 2018 and that its delay in taking any action regarding the alleged conflict was either tactical or constitutes a waiver. At argument, however, Sidley abandoned any argument that Chubb's pre-bankruptcy conduct constituted a waiver, and instead argued that Chubb waited too long post-bankruptcy filing to raise the matter. While Chubb could have been more proactive once the bankruptcy case was filed, it filed a timely objection to Sidley's retention. Having heard the evidence, I do not find that Chubb's actions, or lack thereof, postpetition, amount to a waiver of its position.

iii. Expert Opinions

Third, each side objected to the admission into evidence of the declaration of the other's expert and/or the consideration of his/her respective testimony. I took the objections under advisement. I overrule both objections, but quite frankly find that neither opinion aided my consideration. This was through no fault of the respective experts. Both were hamstrung by the assumptions they were asked to make and the limited facts they were provided. I appreciate their time and would have liked to hear their respective views on the issues I struggled with it coming to my conclusion. Unfortunately, I don't get to frame the questions they opine on.

Dated: June 2, 2020

Laurie Selber Silverstein
United States Bankruptcy Judge

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) **Ref. Docket No. 204 & 755**

ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION, *NUNC PRO TUNC* TO THE PETITION DATE

Upon the application (the "Application") of the Boy Scouts of America and Delaware BSA, LLC for entry of an order ("Order") authorizing Debtors to retain and employ Sidley Austin LLP ("Sidley") as their attorneys, *nunc pro tunc* to the petition date, pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-2; and based on the findings of fact and the reasoning set forth in my Bench Ruling delivered May 29, 2020 [D.I. 755] it is **HEREBY ORDERED THAT**:

1. The Application is GRANTED as set forth herein.

2. Debtors are authorized to retain and employ Sidley as their attorneys under section 327(a) of the Bankruptcy Code, *nunc pro tunc* to the petition date, in accordance with the terms and conditions set forth in the Application and consistent with the Bench Ruling.

3. Sidley shall apply for compensation earned for professional services rendered and reimbursement of expenses incurred in connection with Debtors' chapter 11 cases in compliance with sections 330 and 331 of the Bankruptcy Code and the applicable provisions of the Bankruptcy Rules, the Local Rules and any other applicable procedures and orders of the Court. Sidley shall also make a reasonable effort to comply with the requests for

information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and all applications for compensation and reimbursement of expenses filed by Sidley in these chapter 11 cases.

4. Notwithstanding anything in the Application or the declarations in support thereof to the contrary and after reconciliation of any unpaid prepetition fees and expenses with the retainer held by Sidley, Sidley shall apply any remaining amounts of the retainer toward postpetition fees and expenses after such postpetition fees and expenses are allowed against Debtors' estates, including pursuant to any interim compensation procedures approved by the Court, until the remaining amount of such retainer is exhausted. No additional retainer amounts shall be paid to Sidley postpetition.

5. Debtors and Sidley are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

6. To the extent there is any inconsistency between the Application, the Declarations and this Order, the provisions of this Order shall govern.

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

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

Dated: June 2, 2020

Laurie Selber Silverstein
United States Bankruptcy Judge

Sneed Exhibit 13

SIDLEY

SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036

AMERICA • ASIA PACIFIC • EUROPE

February 26, 2020

By Email

Joshua R. Schwartz
Chubb
Managing Counsel - Director of Reinsurance Litigation
436 Walnut Street
Philadelphia, PA 19106

Re: Sidley Representation of Chubb Companies

Dear Josh:

We acknowledge receipt of your January 30, 2020 letter and respond below.

As an initial matter, we too see no utility in debating further the points made in Linton Childs's January 16, 2020 letter. We do not agree that you have a right to see our firm counsel's internal legal analysis, but nevertheless have repeatedly offered to discuss with you the basis for our position. That invitation stands. We also do not accept your characterization respecting why Sidley has withdrawn from representation of Chubb and Century and refer you to my January 16, 2020 letter.

With respect to the withdrawals set forth in our January 16, 2020 letter, our preference has been to work cooperatively with Chubb and Century. However, we fundamentally disagree that Chubb or Century has a right to insist that we remain as counsel where, as here, its interests are fully protected and there is no legitimate basis for a claim of material prejudice. Moreover, with respect to disclosure, we cannot agree to communications to third parties (whether arbitrators or opposing counsel) that do not accurately disclose the role of our firm going forward. Where necessary, and with appropriate notice to you, we have reached out to arbitrators to correct any misapprehensions in that regard.

We also disagree with your chronology on the retention of our firm regarding reinsurance contract disputes with Lloyd's. Century did not retain our firm in September 2018 to serve as arbitration counsel against Lloyd's. There was no arbitration against Lloyd's in September 2018. Century demanded that arbitration on or about November 9, 2018. The firm authoring that demand was [redacted] not Sidley. Century subsequently retained our firm with respect to that arbitration.

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships.

SIDLEY

However, whether and how that arbitration goes forward is going to be decided by the federal court in Massachusetts. We have now withdrawn our appearance in the Massachusetts action, which the Court has approved; and Century's replacement counsel (including both national and local counsel) has now formally appeared in the case. Following our replacement, we informed the arbitrators appointed by Century of our withdrawal. They should be in communication with Century's counsel respecting the status of the arbitrations, which is dependent on how the Massachusetts court rules. Also, we have now been informed that Century has hired separate counsel to handle any ensuing arbitration with Lloyd's.

We do not believe there is a basis for claiming that Century has been or would be materially prejudiced by reason of our withdrawal in light of the fact that the Massachusetts court has yet to rule and given Century's hiring of replacement counsel.

With respect to the [redacted] Arbitration, we did not attempt to withdraw in the middle of discovery. On the contrary, we proposed to withdraw *after* the completion of discovery. Chubb rejected that offer, instead choosing to have different counsel take over discovery and request a new schedule, while inaccurately suggesting to opposing counsel and then the panel that our firm might not withdraw at all.

With respect to the [redacted] matter mentioned in your letter, we last recorded time to it more than two years ago; and there is nothing we have been asked to do. To the extent Chubb considers it an open, unresolved matter, we confirm that we are withdrawing from it as well.

Finally, we note your reference to "the dispute resolution mechanism in the Service Level Agreement (SLA)," but do not understand it and do not agree that our withdrawal is governed by any dispute resolution mechanism in an SLA.

Thank you for the opportunity to represent Century and Chubb in these matters. Please let us know if you require any additional information or would like to discuss any of the foregoing. We reserve all rights.

Very truly yours,

William M. Sneed

William M. Sneed

EXHIBIT 1

Acknowledgement Form

By clicking this button, I accept all of the terms and conditions of the Service Level Agreement ("SLA") and I represent to ACE INA Holdings Inc., (hereinafter referred to as "Chubb" as further defined in the SLA) that I have authority to act on behalf of my firm. I also acknowledge that my firm's acceptance of the SLA is a condition precedent to serving as Chubb's legal counsel.

SLA Guidelines Acknowledged?: Yes

Acknowledgement Date: 9/4/2015

Is your law firm currently providing, or planning to provide, legal services to Chubb on matters subject to HIPAA privacy requirements?

HIPAA: No

HIPAA Date:

Please refer to the Document Library to view each regions Service Level Agreement ("SLA"), as well as view or print Chubb's HIPAA Business Associate Agreement ("BAA"), if applicable.

SERVICE LEVEL AGREEMENT FOR THE PROVISION OF NON-CLAIMS LEGAL SERVICES

Between

ACE INA Holdings Inc.
(Hereinafter referred to as "ACE")

and

_____
(Hereinafter referred to as the "Law Firm")

Dated: _____

Service Level Agreement for the Provision of Non-Claims Legal Services

Contents

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

[redacted]

[redacted]

[redacted]

[redacted]

4.13 Conflicts of Interest

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Service Level Agreement for the Provision of Non-Claims Legal Services

1. Introduction

1.1. Definitions, Statement of Purpose, Privilege and Confidentiality, Safeguarding Client Information, Media Contact/Public Disclosure and Conflicts of Interest

1.1.1. Definitions: This section defines some capitalized terms used in this Service Level Agreement ("SLA") and certain other terms and conditions.

"ACE Group Company"	ACE or any of its parents, subsidiaries or other affiliates (at any time during the period of the Law Firm's representation of the Client)
"ACE Group of Companies"	all ACE Group Companies taken together (at any time during the period of the Law Firm's representation of the Client)
"ACE Liaison"	the Client's in-house lawyer or other principal liaison to the Law Firm
[redacted]	[redacted]
"Client"	any ACE Group Company that retains the Law Firm to provide Non-Claims Services with respect to any matter
"Non-Claims Services"	services performed by the Law Firm for a Client that are unrelated to the defense of an insurance claim or a related insurance coverage claim
[redacted]	[redacted]

1.1.2. Statement of Purpose: This SLA pertains to Non-Claims Services that are performed by the Law Firm for any one or more ACE Group Companies. The Law Firm's acceptance of an assignment from an ACE Group Company is expressly conditioned upon, and shall be deemed to constitute, your agreement to abide by the provisions set forth in this SLA. Notwithstanding the foregoing, this SLA should not be taken as any form of instruction to limit your role or to reduce the quality of the representation provided. Rather, it should be regarded as a reasonable managerial requirement which provides a template for your representation of a Client. There is clearly a degree of flexibility in the application of this SLA to specific situations and you are therefore encouraged to discuss any questions of your engagement with your ACE Liaison should a situation arise that is not specifically addressed in the following sections. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

1.1.6. Conflicts of Interest: In addition to the Law Firm's ethical responsibilities to avoid conflicts of interest, the ACE Group of Companies generally applies a Group-wide approach to conflict analysis. The interests of all ACE Group Companies must be taken into account in analyzing whether a particular representation of a Client presents a conflict of interest. Updated lists of all ACE Group Companies are filed with ACE Limited's SEC Forms 10-K and may be accessed via the www.acegroup.com and/or www.sec.gov websites. The ACE Group of Companies does not generally consider conflicts to result solely from representation of its business competitors, but specific circumstances can cause conflicts to arise in such situations. In all cases, it is the responsibility of the Law Firm to identify and bring to the attention of the Client, in writing, any circumstances that may create or involve a conflict of interest as herein described. Any Law Firm that is newly retained by an ACE Group Company is requested to confirm the absence of any conflicts of interest to the ACE Liaison. If the Law Firm identifies a potential conflict after it has begun work for the Client, it shall make all reasonable efforts to resolve that conflict in a manner that will allow the Law Firm's continued representation of the Client. Any request by the Law Firm for the client to waive a real or potential conflict of interest must be in writing and directed to the ACE Liaison. Regardless of the nature or timing of any conflict, the Client shall not be deemed to have waived any conflict unless the Client provides a waiver in writing.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

4.13. Conflicts of Interest

4.13.1. The Law Firm is required, without charge to the Client, to conduct or have conducted appropriate searches and inquiries with regard to any actual or potential conflict of interest, and to consult with the Client accordingly (as further directed in section 1.1.6 above).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

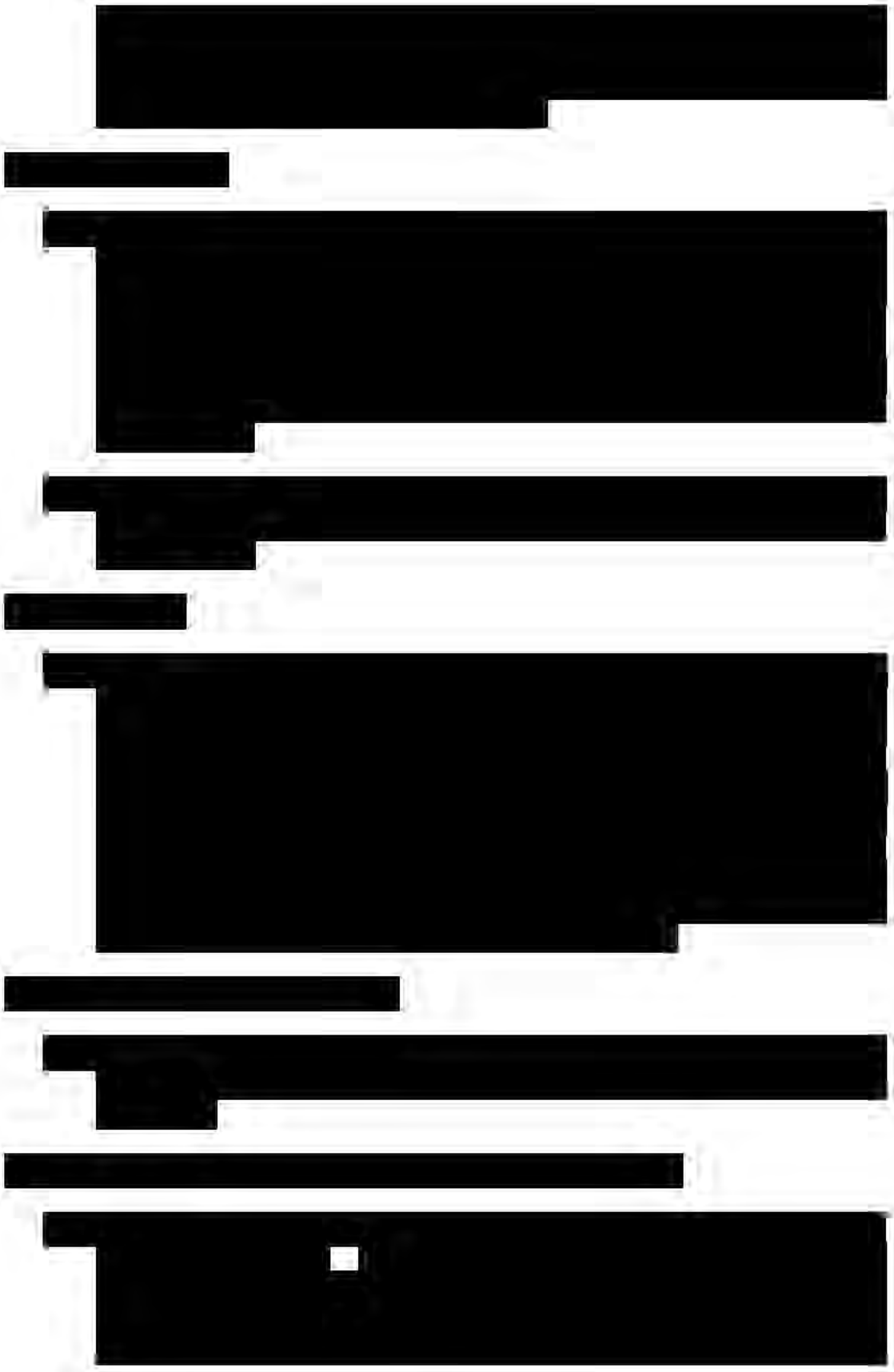
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

7. Governing Law; Dispute Resolution

[redacted]

7.2. If a dispute arises related to this SLA with respect to any matter handled by the Law Firm for a Client, senior representatives of both parties, vested with authority to settle the dispute, will meet or speak and attempt in good faith to resolve the dispute. The meeting or conversation will be held reasonably promptly (which the parties believe should be achieved within 10 working days) at the request of either party.

7.3. If the parties are unable to resolve a dispute by negotiation as set forth in section 7.2 above, and the dispute relates to a matter handled by the Law Firm within the United States of America ("US Dispute"), either party may submit the dispute to be finally settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, in Philadelphia, Pennsylvania, U.S.A., by a single arbitrator selected in accordance with R-11. All US Disputes related to this SLA shall, if not resolved between the parties as provided under section 7.2, be resolved by arbitration as provided herein, and arbitration shall be the sole means for redressing any dispute. Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees. The parties waive their respective rights to damages for "bad faith," punitive damages, statutory damages or penalties or other exemplary damages. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted] [redacted]

[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

	[redacted]
	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]