

**UNITED STATES BANKRUPTCY COURT
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: October 5, 2021 at 2:30 p.m. (ET)

**CERTAIN INSURERS' STATEMENT CONCERNING
THE REVISED PROPOSED CONFIRMATION SCHEDULE**

Certain Insurers listed in the signature blocks below (collectively, the “Insurers”) participated in meet-and-confer sessions on October 2 and 3, along with counsel for Debtors, the TCC, the Coalition, and others, to discuss a schedule that would lead to a confirmation hearing starting on January 24, 2022, which is the date selected by the Court. Those discussions, which continued today, culminated in the revised proposed confirmation schedule that we understand will be filed later today by Debtors.

The Insurers are prepared to work as hard as possible to complete the work necessary to start the confirmation hearing on January 24. Needless to say, given a schedule as tight and demanding as the one submitted by Debtors, the January 24 date can hold only with the utmost cooperation of all parties. Any foot-dragging by Debtors or any other party in interest would make it impossible to start the confirmation hearing on schedule – a point the Court recognized when it stated that it thought a January 24 trial date is “a doable schedule with

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

cooperation.” Tr. of Sept. 28, 2021 Hrg. at 206:13-14.²

To be clear, the Insurers continue to believe that it is simply not realistic to think that there is a reasonable litigation schedule that can ultimately succeed in getting the parties and the Court to a confirmation hearing beginning on January 24, even with the utmost cooperation and good faith of all participants in the process. Just by way of example:

- The schedule builds in no time for the briefing and resolution of discovery disputes, or for any supplemental productions or discovery responses required by rulings of the Court as the result of motions to compel.
- The schedule does not allow for follow-up written discovery after October 8, even though discovery is unquestionably an iterative process that builds based on information that has been disclosed in response to previous discovery requests. The Insurers believe that the schedule should expressly permit time for reasonable follow-up discovery.³ While Debtors agreed to add language to paragraphs 6 and 7 addressing the right to seek discovery on voting issues and to seek to serve follow-up discovery, the schedule itself makes no allowance, timing-wise, for even the most

² But parties are already resisting and/or objecting to discovery. For example: Debtors have moved to bar the production of essentially all documents concerning the formulation of the Plan and the TDPs claiming mediation privilege (Dkt. No. 6288); the proposed Settlement Trustee has invoked the non-existent “in anticipation of mediation privilege” to hold back hundreds of documents (Dkt. No. 6299); the claims aggregators have objected across the board to complying with subpoenas and have declined to produce a single document (*see* Dkt. No. 6380; Tr. of Sept. Hrg. at 207:14-16); and Debtors objected to Century’s motion to compel documents concerning eve of hearing amendments to the Plan (Dkt. No. 6294).

³ Rather than wait for a scheduling order to be entered, the Insurers served comprehensive initial document requests and RFAs on Debtors on September 30. The Insurers will likewise serve comprehensive initial document requests on other parties, such as the FCR and the Coalition, this week. And, as Century’s counsel advised the Court during the disclosure statement hearing, subpoenas were previously served on certain claims aggregators.

diligent follow-up discovery.

- The proposed fact deposition cut-off is December 1 – which is the day after Debtors’ deadline for filing their Plan Supplement. The result is to eliminate, as a practical matter, any ability to take discovery relating to documents in the Plan Supplement. This is critical because the Plan Supplement will include such important items as the names of the initial Settlement Trust Advisory Committee members, the final Hartford and TCJC settlement agreements, the Document Agreement, and the form of release to be executed by holders of Abuse Claims in favor of Settling Insurance Companies. *See* Plan (Dkt. No. 6443), § I.A.190.
- The schedule allows only 16 days for fact depositions, following the substantial completion of document production on November 15. Most, if not all, of the depositions will proceed as Rule 30(b)(6) depositions. Deposing parties need some time after the document productions are complete to finalize Rule 30(b)(6) topics and serve 30(b)(6) notices, following which receiving parties have the right to meet-and-confer regarding the topics, and the parties to be deposed will have to identify, designate, and prepare their corporate representative witnesses.
- Expert reports are due only four days after the completion of fact discovery. And the expert reports are due on a Sunday, meaning that two of the four days for completing expert reports fall on a weekend.
- Rebuttal expert reports are due only 19 days after affirmative expert reports, which may not be realistic for a rebuttal expert asked to respond to a data-heavy report by an affirmative expert. And the due date for rebuttal reports is December 24, Christmas Eve.

- The deadline to complete expert depositions is January 9 – another Sunday. It is highly unlikely that any party will depose any affirmative expert before the rebuttal expert reports are filed. That means that the expert depositions – affirmative and expert – will not begin until January 4 because, as a practical matter, no expert depositions will take place between Christmas Eve and January 3, the day on which New Year’s Day is observed as a holiday in 2022. Therefore, all the expert depositions will take place during the period January 4-9, which will necessitate multiple tracking of expert depositions, including on Saturday, January 8 and Sunday, January 9.
- Finishing expert depositions on January 9 means that plan objectors will have only a single day to revise their plan objections to incorporate expert witness testimony – and, in all likelihood, plan objectors will have to do so without having transcripts for most of the depositions.

The Insurers continue to believe that the Revised Proposed Schedule set forth in their September 27 filing (Dkt. No. 6367) is the absolute minimum amount of time that could possibly be sufficient given the complexities of this case, the announced intention of Debtors and others to seek entry of the extraordinary confirmation findings discussed during the disclosure statement hearing, and the Court’s statement that “we’re going to balance, clearly the due process rights of all parties against what’s necessary in this case.”⁴ Now that the Court will have the chance to review the schedule bargained over by the parties within the constraint of a January 24 trial date, the Court may conclude that, despite the best efforts of all concerned,

⁴ Tr. of September 23, 2021 Hrg. at 229:16-17.

starting the confirmation hearing on January 24 is simply not realistic and does not protect due process rights. In that event, the Insurers would welcome whatever additional time the Court believes is appropriate.⁵

At a minimum, if the Court does decide to adopt the proposed schedule submitted today by Debtors, the Insurers respectfully request that the Court be open to later revising the schedule to the extent necessary given the impact of (i) any future lack of cooperation by Debtors or other plan supporters, (ii) any Court orders granting motions to compel and requiring that Debtors, other plan supporters, or third parties serve supplemental discovery responses and/or make supplemental document productions, or (iii) other significant developments.

DATED: October 4, 2021

Respectfully submitted,

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⁵ The Court set the January 24 trial date following colloquy during which Debtors' counsel said that revisions would be made to two of the required confirmation findings in Plan § IX.A.3 to "tighten the language," potentially reducing the amount of discovery that might be required related to those findings. (Tr. of September 28, 2021 Hrg. at 203:6.) However, after the Court announced the January 24 trial date, Debtors filed a "solicitation version" of the Plan that made no changes to the required findings. Debtors presumably concluded that there was no need to follow through by modifying or narrowing the required findings once they received a preferred trial date.

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**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

CERTIFICATE OF SERVICE

I, Robert D. Cecil, Jr., Esquire, hereby certify that on October 4, 2021, I caused a copy of Certain Insurers' Statement Concerning the Revised Proposed Confirmation Schedule to be filed through the Court's Case Management/Electronic Case File ("CM/ECF") and served on all parties who have electronically entered a notice of appearance through the notice of filing generated by the Court's CM/ECF System.

I further certify that I have served the foregoing document upon the following parties via email:

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