

**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

**Objection Deadline: October 7, 2020 at 4:00 p.m. (ET)
Hearing Date: October 14, 2020 at 10:00 a.m. (ET)**

**MOTION OF THE OFFICIAL TORT CLAIMANTS' COMMITTEE PURSUANT TO
BANKRUPTCY RULE 2004 AND LOCAL RULE 2004-1 FOR AN ORDER
AUTHORIZING THE ISSUANCE OF SUBPOENAS FOR DISCOVERY FROM
DEBTORS AND CERTAIN LOCAL COUNCILS**

The official committee of tort claimants (consisting of survivors of childhood sexual abuse) (the "Tort Claimants' Committee" or the "TCC") appointed in the above-captioned cases (the "Cases") hereby submits this motion (the "Motion"), pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for the entry of an order (the "Rule 2004 Order"), substantially in the form annexed hereto as **Exhibit A**, authorizing the TCC to issue subpoenas to and directing discovery from Boy Scouts of America ("BSA" or the "Debtor"), members of the Ad Hoc Committee of Local Councils of the BSA (the "Local Council Committee Members"), and those local councils specifically listed on **Exhibit B** hereto (the "Additional Local Councils," together with the Local Council Committee Members, the "Local Councils" and, together 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 West Walnut Hill Lane, Irving, Texas 75038.

the BSA, the “Examinees”). In support of the Motion, the TCC respectfully represents as follows:

PRELIMINARY STATEMENT

1. The TCC seeks the entry of an order authorizing the issuance of narrowly tailored subpoenas pursuant to Bankruptcy Rules 2004 and 9016 for the production of (a) documents and information regarding assets that the Examinees contend are “restricted assets” (the “Restricted Assets,” and the documents and information concerning Restricted Assets, the “Restricted Asset Information”),² (b) troop and camp rosters (the “Rosters”), and (c) Insurance Policies for claims arising from or concerning sexual abuse (the “Insurance Policies” and, together with the Restricted Asset Information and the Rosters, the “Discovery Requests”)³ from the BSA and the Local Councils. The TCC needs to review and analyze this information so that it can participate in substantive discussions regarding a possible global resolution among the Debtors, TCC, the Local Councils, and the other mediation parties.⁴

² “Restricted Assets” are defined in the Discovery Requests to mean “(a) any real or personal property owned or controlled by [an Examinee], or owned or controlled for [an Examinee’s] benefit, (b) that [an Examinee] contend[s] was obtained or received by [the Examinee] with a restriction as to use or purpose, whether by actual or constructive trust or otherwise, (c) that [an Examinee] contends would not constitute “property of the estate” under section 541(a) of the United States Bankruptcy Code if [the Examinee] were a debtor in a bankruptcy case, and (d) that [the Examinee] reasonably believes has a fair market value equal to or in excess of \$250,000.” See Exhibit C annexed hereto at 3.

³ “Insurance Policies” are defined in the Discovery Requests to mean (a) “with respect to the BSA, all general liability or other insurance policies, or evidence of such policies, pursuant to which the BSA has coverage, or may have coverage, for any liability arising from claims of sexual abuse, including but not limited to (1) all such policies for each year prior to 1963, and (2) all policies listed on Schedule A annexed hereto, and (a) with respect to each Local Council, all general liability or other policies, or evidence of such policies, that might provide coverage for sexual abuse claims independent from the coverage provided under the BSA policies or a representation that no such policies exist.” See Exhibit C annexed hereto at 3.

⁴ The TCC acknowledges that the BSA and certain of the Examinees have produced a substantial volume of documents to date. But the Restricted Asset Information and Insurance Policies are of such vital importance that the TCC must make sure that all responsive documents and information concerning those topics are produced; and, as discussed below, the Examinees uniformly refuse to produce any of the Rosters. For the avoidance of doubt, the TCC does not seek the production of any documents or information responsive to the Discovery Requests that has previously been produced. See Exhibit C, Instructions for Document Requests No. 1 at 7 (“The Document Requests seek only documents that have *not* been previously produced by” each Examinee).

2. Specifically, the TCC needs the Restricted Asset Information to, among other things, assess (a) the merits of the Examinees' contentions that certain assets constitute Restricted Assets that are unavailable for distribution to creditors and cannot be considered in formulating a plan, and (b) the Local Councils' assets and liabilities to determine whether the Local Councils have the means to provide a substantial contribution sufficient to support a channeling injunction.

3. The Rosters are critical to the TCC's analysis of the abuse claims against the Local Councils and the determination of whether, and to what extent, other parties may also be liable for the thousands of survivor claims involving the Local Councils. The Rosters identify, among other things, the Local Council, sponsoring organization, troop/unit number, the adult supervisors/volunteers, and the scouts/participants, at particular moments in time. This information will enable the TCC to assess the validity and strength of claims, identify other insurance policies and potential defendants, and analyze any proposed resolution against the "best interests of creditors" test.

4. And, of course, the Insurance Policies are a substantial source of recovery for the sexual abuse survivors.

5. The information sought is extremely narrow in scope and well within the confines of Rule 2004 discovery and is needed by the TCC to participate in a productive mediation. While certain of the Examinees have been working with the TCC regarding the TCC's informal document requests, the Examinees have either (a) provided insufficient information concerning certain of the Restricted Assets; (b) provided a list of Restricted Assets without documentary support for the alleged restrictions; or (c) provided no Restricted Asset

Information at all.⁵ Moreover, the Examinees have uniformly rejected the TCC's repeated requests for the Rosters. Finally, while the TCC is aware that the BSA has produced certain insurance policies and has retained an "archivist" to assist in identifying Insurance Policies, few, if any, of the Local Councils have provided any Insurance Policies even though they generally had independent insurance coverage prior to 1980. The Examinees must use their best efforts to locate and produce all Insurance Policies.

6. Since the first day of this case, the Debtor has beseeched all of the parties to move quickly towards the negotiation of a plan because it is a nonprofit entity and could not endure a lengthy and expensive chapter 11 process. That message has been echoed by the Ad Hoc Committee of Local Councils. With that exhortation comes the responsibility to provide prompt and fulsome discovery responses. The Examinees have slow-walked information on the Local Councils' Restricted Assets and stonewalled on the Roster requests, and the TCC has no confidence that all of the Insurance Policies have been produced. The Examinees have failed to hold up their end of the bargain and erected roadblocks to the TCC's ability to perform the due diligence required in the performance of its fiduciary duties.

7. For the reasons set forth above and below, the Motion should be granted.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue of the Debtor's bankruptcy case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

⁵ The issue of whether assets are "restricted" is of vital importance because if validly asserted, such assets would be unavailable for distribution to creditors. Thus, the Restricted Asset Information generally includes (a) interrogatories seeking the identity of Restricted Assets and the basis for each Examinee's contentions that such assets are "restricted," and (b) documents and communications concerning the purported Restricted Assets that have not been previously produced.

9. The statutory predicates for the relief sought herein are section 105 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 2004 and 9016, and Rule 2004-1 of the Local Rules.

BACKGROUND

A. Case Background

10. On February 18, 2020 (the “Petition Date”), the BSA and Delaware BSA, LLC commenced the Cases by filing voluntary petitions for relief under Chapter 11 of Title 11, United States Code (the “Code”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate as debtors in possession.

11. On March 4, 2020 the United States Trustee (the “U.S. Trustee”) formed the Tort Claimants’ Committee consisting of nine survivors of childhood sexual abuse and the official committee of unsecured creditors (the “UCC”).

B. Requests for Production

12. On March 25, 2020, shortly after its formation, the TCC sent its initial set of informal document requests to the BSA which included, among other things, the following:

(a) “[a]sset listings / schedules detailing unrestricted (including designated), temporarily restricted and permanently restricted assets owned or controlled by the BSA or any of the BSA Related Entities,” (b) “[a]ll supporting documentation for assets referred to in the prior request, including but not limited to wills, bequests, letters, and correspondence,” (c) “[t]roop rosters for the BSA and each of the BSA Related Parties,” and (d) “[a]ll insurance policies for the BSA and each of the BSA Related Parties.” The Local Councils fell within the definition of “BSA Related Entities.”

13. On March 30, 2020, at the BSA’s request, the TCC sent a follow-up set of “priority” requests that included, among other things, the following: (a) “[d]etailed asset listings

/ schedules detailing each and every unrestricted (including board designated and donor advisory funds), temporarily restricted and permanently restricted assets owned or controlled by the BSA or any of the BSA Related Entities,” (b) “[t]o the extent not already in the data room, all documents that the Debtors contend support their position that the ‘Identified Property’ ‘is subject to enforceable use restrictions,’ as alleged in the *Debtors’ Motion for Entry of an Order (I) Scheduling Certain Deadlines in Connection with Potential Disputes Regarding the Debtors’ Identified Property and (II) Granting Related Relief*, filed at Docket No. 19,” and (c) “[t]o the extent not already in the data room, all insurance-related documents.”

14. On May 10, 2020, the TCC wrote to counsel for the Local Council Committee Members concerning its request for Rosters and stated as follows: “The TCC needs the Troop Rosters from each Local Council going back as far as they are available. This was part of the TCC’s original requests and, as we presume [Debtor’s counsel] has conveyed to you, an issue we have frequently pressed. The Troop Rosters provide information concerning, among other things, potentially responsible parties (*e.g.*, sponsoring organizations) that is frequently unknown to survivors but that is critical with statutes of limitation expiring in various jurisdictions at various times. We don’t believe this is a burdensome request, but note that Troop Rosters were not among the categories of information included in the information spreadsheet provided to Local Councils.”⁶

15. On or about July 16, 2020, counsel for the TCC sent letters to each of the Local Council Committee Members requesting the informal production of documents, including,

⁶ Without any discussion with the TCC or its advisors, at the outset of these Cases (or perhaps before) counsel to the Ad Hoc Local Council Committee provided a spreadsheet to all of the Local Councils that sought a very narrow set of documents and information. To the TCC’s frustration, the responses by the Local Councils to even this narrow set of documents and information have been extremely inconsistent.

among other things, the Restricted Asset Information, the Rosters, and the Insurance Policies.⁷ Counsel for the TCC and each Local Council Committee Member have had at least two “meet and confer” telephone conferences and have exchanged numerous written communications regarding the TCC’s requests. While each Local Council Committee Member has provided (and in some cases, continues to provide) documents responsive to at least some of the requests, most have not provided the underlying support for asset restrictions (including, for examples, copies of the key source documents such as wills, bequests, and agreements). In addition, none of the Local Council Committee Members have demonstrated an ability to specifically identify and trace restricted funds from origination to current date (including, for example, the identification of the account where the asset was originally deposited, transferred to, or now resides and whether the asset has been commingled with non-Restricted Assets), nor have any of the Local Council Committee Members produced any information concerning the Insurance Policies or any Rosters.

16. On July 28, 2020, after learning from certain Local Council Committee Members that the BSA possessed certain of the documents requested, counsel for the TCC emailed the BSA’s counsel regarding the production of documents related to the Local Council Committee Members, including the Rosters. Counsel met and conferred on August 13, 2020. The Debtors have produced certain documents, but have refused to produce the Rosters.

17. On September 4, 2020, the TCC wrote to each of the Additional Local Councils and included informal document requests that specifically sought, among other things,

⁷ The TCC specifically requested, among other things, (a) copies of all “insurance policies in effect at any time from 1950 through the present issued to, sold to, acquired by, purchased by, or naming or including any Local Council as an insured, named insured or additional,” (b) “[a]sset listings / schedules detailing unrestricted (including designated), temporarily restricted and permanently restricted assets owned or controlled by each Local Council,” and “[a]ll supporting documentation” for such assets, and (c) “Troop / unit rosters (including names, troop / unit numbers, time periods covered, etc.).”

the Restricted Asset Information, the Rosters, and the Insurance Policies. None of the Additional Local Councils responded.

C. Document Requests

1. Restricted Asset Information

18. The TCC seeks Restricted Asset Information from the Examinees. The Additional Local Councils were identified based on the number of claims that have been filed or are currently expected to be asserted against such Additional Local Councils and their respective assets as reported in their IRS Forms 990.

19. The TCC needs the Restricted Asset Information to assess the factual and legal basis for any claimed restriction for the purpose of making an accurate financial assessment of each Local Council. Determination of whether donor-restricted assets should be excluded from a financial analysis is complicated, and may require some or all of the following information:

- The donor or source of the asset;
- The identity of the initial recipient of each asset;
- Whether the recipient entity was independent from BSA or was a trust for which the trustee was unrelated to BSA;
- The source, manner, and timing of conveying any alleged donor restriction;
- The nature and specific language of such alleged donor restriction;
- Whether the donor restriction expressly indicated that BSA or its related party was to hold the asset in trust;
- The type of asset (*e.g.*, cash or real property);
- How the assets were and are now held; and
- Whether the assets were commingled or transferred or spent such that their continued existence cannot be proven.

20. Donative restrictions may include language in the relevant instrument making a donation an endowment (*e.g.*, only the income or return can be used) or limiting the purposes for which the asset may be used (*e.g.*, by mandating it must be used for a particular purpose, such as construction of a building, or by prohibiting its use to pay debts). While donor-imposed restrictions on gifts may prevent creditors from being able, non-consensually, to gain access to such funds, the TCC must be able to make an independent assessment rather than being forced to accept the Examinees' contention that any such assets are restricted.

21. Without the facts in hand, the parties' mediation may stall. The Restricted Asset Information will help facilitate a possible global resolution because the TCC will be able to assess whether a Local Council is making a substantial contribution that supports a channeling injunction with respect to that Local Council. Further, BSA creditors may be entitled to be paid from the Local Councils' unrestricted assets because (a) the BSA has the power to revoke or terminate the Local Councils' charters or let them expire by refusing to renew, which causes the Local Councils' assets to revert to BSA in accordance with the BSA's and Local Councils' by-laws and regulations, (b) the BSA may have claims against the Local Councils arising from the BSA's general liability insurance program (GLIP) and / or pension plan or may have received fraudulent transfers that they are obligated to pay over to BSA, or (c) the Local Councils could be directly liable to survivors or BSA's other creditors. It is impossible for the TCC participate in the mediation or other settlement regarding a plan without reviewing the Restricted Asset Information.

2. Rosters

22. The TCC seeks the Rosters from the Local Councils and BSA,⁸ who the TCC is informed has the Rosters in its possession, custody and control. The Rosters will enable the TCC to verify and assess the value and scope of abuse claims against the BSA, Local Councils, and chartered organizations. In addition, the Rosters will help the TCC determine which sponsoring or chartered organizations may be implicated in abuse claims and whether such organizations have insurance policies available to satisfy the abuse claims.

23. Abuse survivors may have a legal claim against at least three different entities recognized in the BSA Charter and By-laws and its Rules and Regulations: (a) the BSA; (b) a “local council” that managed all Boy Scouting units (*e.g.*, a Boy Scout Troop or a Cub Scout Pack) in a defined geographic area; and (c) a “chartering organization”, such as a school or church, that operated a particular Boy Scout unit in conjunction with the Local Council and BSA.

24. Boy Scout units are usually created when a youth-serving organization, such as a ward or parish of a church or community organization decides to offer a Scouting unit to its members. The youth-serving organization visits the Local Council for its geographic area and applies for a “charter” to operate a Scouting unit. The Local Council transmits the application to the BSA for review and approval. If the application for a charter is approved by the BSA, the organization pays a fee and becomes the “chartered organization” for its particular Scouting unit. Pursuant to BSA Rules and Regulations and its Charter and Bylaws, the BSA assigns to the chartered organization responsibility (subject to approval by BSA and the Local Council) for staffing its Scouting unit with adult volunteers, including any Scoutmaster,

⁸ Through counsel, the BSA has represented that it possesses most Rosters for the past twenty years.

Assistant Scoutmasters, and other Scout leaders, and for recruiting children to become Scouts of the Scouting unit.

25. The charter organization is responsible for collecting a fee from every adult volunteer and every child who participates in the Scouting unit. The sponsoring organization then transmits the collected fees to the local council, who then transmits a portion of the fees to the Debtor. This is one of the main ways that the Debtor generates revenue -- by collecting a fee from every adult and every child who participates in the Scouting program.

26. In order to collect the appropriate fees, the Debtor requires the sponsoring organizations to renew their charters on an annual basis and to submit rosters that include the names of each adult volunteer and each child member. This is done every year and the sponsoring organization must submit a fee for each adult and each child. Most Rosters clearly provide the following information for the Scouting unit:

- a. The city, state, and county of the Scouting unit;
- b. The local council responsible for the Scouting unit;
- c. The name, city, state, and address of sponsoring organization responsible for the Scouting unit;
- d. The executive officer or other person from the sponsoring organization who was responsible for the Scouting unit (the “institutional representative”);
- e. The location the Scouting unit held its meetings;
- f. Each child member in the Scouting unit, including their name, age, address, and contact information;

- g. Each adult volunteer in the Scouting unit, including their name, address, contact information, and leadership position (e.g., Scoutmaster);
- h. The name of each adult volunteer in the Scouting unit;
- i. The “expiration” date for the roster;
- j. The Troop or Pack or Explorer number.

27. As a rule, Rosters clearly identify the local council and charter organization that may be liable for abuse by a Scout leader on the roster or for abuse of a Scout member on the Roster. Many of these councils and charter organizations may want to participate in the Debtor’s bankruptcy and obtain the benefits of a channeling injunction, which means the TCC needs to know their identity and must be able to evaluate their respective liabilities to determine whether they have made a substantial contribution to the cases.

28. Even if a council or charter organization does not choose to participate in the Debtor’s bankruptcy, the TCC needs to know their identities so that it can explore whether these entities have insurance that may provide coverage for claims made in the bankruptcy. For example, it appears these entities may have purchased their own insurance separate and apart from the Debtor’s insurance, including insurance that may have listed the Debtor as an additional insured.

29. Second, the charters and Rosters will help the TCC, the Debtor, and other interested parties to corroborate certain claims, particularly if a claimant does not recall certain information about their Scouting unit. For example, from the thousands of claims that have already been submitted, the TCC is aware that many claimants do not recall their Scouting unit number (e.g., Boy Scout Troop #23), the name of the local council who was responsible for their

Scouting unit, or the name of the chartered organization that sponsored their Scouting unit.

Others do not recall the specific year(s) of the sexual abuse (which may be relevant to insurance coverage issues). Some claimants do not recall the names of adults who received complaints and ignored them or saw “red flag” behavior and ignored it.

30. Since the vast majority of claimants were children and teens when they were abused, it is completely understandable that they would not be able to recall this information -- some of the claimants were in second or third grade when they were sexually abused. The claimants also generally lack any meaningful ability to obtain the information because of the automatic stay and the injunction -- claimants who have filed state court actions cannot issue discovery to the Debtor or the Local Councils to obtain this information for use in filling-out their claim forms.

31. On the other hand, these claimants are struggling to recall and provide important information that is contained in the charters and Rosters. For example, Rosters may help such claimants recall or identify information such as the Troop number, the name of the camp, the sponsoring organization, the Scout leader’s name, the particular year(s) of abuse or the location of the incident(s). Furthermore, where a claimant alleges he was abused in a Council Camp but cannot recall the name, Roster would also be helpful to identify the name of the Camp and may assist in identifying perpetrators and witnesses not associated with the Camp.

32. Third, and related, the Debtor and other interested parties have suggested they may object to claims if the claimant is unable to provide some of the information that many claimants are already struggling to provide. Not only does the TCC need this information in order to identify third parties who may want to participate in the bankruptcy, or who may have insurance that covered the Debtor and/or parties who choose to participate, but no party has an

interest in waiting to obtain the charters and Rosters until the Debtor or third parties start objecting to claims. The claimants should have a fair opportunity to provide as much information as possible to avoid claim objections and the substantial amount of time and money that could be devoted to objections that will easily be rejected once the claimant is provided with the charters and/or rosters.

33. Fourth, and also related, the Debtor and other interested parties have suggested they may object to claims if a claimant and/or their alleged abuser are not listed on the roster(s) for their Scouting unit. As noted above, for many claimants this could simply be a result of the claimant believing they were a Boy Scout in Troop #75 in 1975 when they were actually a Boy Scout in Troop #75 in 1976. A review of the rosters for Troop #75 would quickly reflect the (understandable) error. On the other hand, many claimants may have joined a Scouting unit in-between the annual registration period, been abused, and then dropped out before the next registration period. Such claimants may not appear on the roster for that Scouting unit, but the other people identified on the unit's roster would be able to corroborate that the person was in the Troop with them.

34. The Rosters are necessary for the TCC to understand the potential claims and contributions, whether from insurance proceeds or third parties, without which the TCC may be unable to support a global resolution of the Debtors' cases. The TCC recognizes that the importance of the Rosters to the validation of claims against the Debtors could be incorporated into trust distribution procedures or a post-confirmation vetting process. However, in light of the insurance companies' incessant attacks on the credibility of the claims, which is subsumed in their Rule 2019 motions/objections, the Rosters should be produced now so that those attacks can be addressed.

3. Insurance Policies

35. There is no dispute that the Insurance Policies are a potential source of recovery for the survivors of sexual abuse.

36. TCC acknowledges that the BSA has produced certain insurance policies and has retained an “archivist” to assist in identifying Insurance Policies. While it remains to be seen what work the “archivist” has done, the BSA has not produced (a) any Insurance Policies from prior to 1963, or (b) any of the Insurance Policies listed on Schedule A of the Discovery Requests. Moreover, none of the Local Councils have provided any Insurance Policies even though they generally had independent insurance coverage prior to 1980.

37. Given the importance of the Insurance Policies, the TCC believes that formal discovery is warranted and that the Examinees must use their best efforts to locate and produce all Insurance Policies.

RELIEF REQUESTED

38. The TCC moves for the entry of an order authorizing the issuance of subpoenas to each of the Examinees pursuant to Bankruptcy Rules 2004 and 9016 for the production of Restricted Asset Information and Rosters, as set forth in the Discovery Requests attached hereto as **Exhibit C**. The TCC further requests that documents and information responsive to the Discovery Requests be delivered to James E. O’Neill, Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington DE 19801 within fourteen (14) days after entry of an order granting this Motion or at such other place and time as the parties may agree.

BASIS FOR RELIEF

39. Bankruptcy Rule 2004 provides that the Court may order the examination and the production of documentary evidence of “any entity” concerning any matter that relates

“to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or . . . any matter relevant to the case or the formulation of a plan.” Fed. R. Bankr. P. 2004(b); *see also Harrow v. Street (In re Fruehauf Trailer Corp.)*, 369 B.R. 817, 827-28 (Bankr. D. Del. 2007) (noting the “extensive document discovery” that occurred pursuant to a subpoena issued under Fed. R. Bankr. P. 2004).

40. The scope of a Rule 2004 examination is “unfettered and broad,” as the plain language of the rule indicates. *See In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008). Indeed, Bankruptcy Rule 2004 affords parties-in-interest an extremely broad right of discovery and “is even broader than that of discovery permitted under [the Federal Rules of Civil Procedure], which themselves contemplate broad, easy access to discovery.” *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (citations omitted). *See also In re Teleglobe Communications Corp.*, 493 F.3d 345, 354 n. 6 (3rd Cir. 2007) (Rule 2004 allows parties with an interest in the bankruptcy estate to conduct discovery into matters affecting the estate); *In re Washington Mutual*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (a “Rule 2004 [examination] is commonly recognized as more in the nature of a ‘fishing expedition’”) (citations omitted).

41. Plainly, the broad access afforded by Rule 2004 extends to third parties such as the Local Councils that are critical to the Debtors’ “formulation of a plan” and that have information relating to the Debtors’ financial affairs and other actions taken on behalf of the Debtors. *See e.g., In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985) (Bankruptcy Rule 2004 examination “may extend to creditors and third parties who have had dealings with the debtor”). This is because “[t]he clear intent of Rule 2004 . . . is to give parties in interest an opportunity to examine individuals having knowledge of the financial affairs of the debtor in

order to preserve the rights of creditors.” *In re GHR Cos., Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984).

42. The non-Debtor Local Councils are not just any “third parties.” Rather, they are central to the resolution of these Cases as intended beneficiaries of (a) the extension of the automatic stay sought by the Debtors at the outset of these Cases,⁹ and (b) the channeling injunction that is a material element of the Debtors’ proposed plan of reorganization.¹⁰

43. Thus, an order pursuant to Rule 2004 directed to the Local Councils is both appropriate and necessary. Specifically, the Discovery Requests will enable the TCC to assess the Local Councils’ assets and liabilities to determine whether the Local Councils have provided a contribution sufficient enough to support a channeling injunction. The Restricted Asset Information is needed to determine the available *assets* of each Local Council, and the credibility of each Local Council’s assertion that certain assets are restricted and should not be considered in assessing its ability to contribute to a plan.

44. The Rosters are critical to analyzing the Local Councils’ liabilities. These Rosters identify the Local Council, sponsoring organization, troop/unit number, the adult supervisors/volunteers, and the scouts/participants, and will enable the TCC to resolve claims, identify applicable insurance policies and co-defendants who could be contributing to a global

⁹ See *BSA’s Opening Brief in Support of Motion for Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code*, filed on February 18, 2020, at Docket No. 7 in Adv. Pr. 20-50527 (the “Adversary Proceeding”). See also the consent order and stipulations that extended the automatic stay to November 16, 2020, for the benefit of, among others, the Local Councils, filed at Docket Nos. 54, 71, and 77, respectively, in the Adversary Proceeding.

¹⁰ See *Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LCC*, filed on February 18, 2020 [Docket No. 20], Article IV.E at 28 (“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, relating to, or in connection with any Abuse Claims.”). The Local Councils are “Protected Parties” under the Debtors’ proposed plan. *Id.* Article I.A.107 at 14-15. See also *Id.* Article X.D, E at 50-52 for the exhaustive description of the scope of the Debtors’ proposed Channeling Injunction which will inure to the benefit of, among others, each non-Debtor Local Council.

settlement or who have liability that must be calculated into the best interests test. This inquiry falls squarely within the permissible scope of discovery under Bankruptcy Rule 2004.

Accordingly, issuance of subpoenas to access the Restricted Asset Information and Rosters is necessary for the TCC to obtain the discovery it seeks.¹¹

45. Finally, the Examinees must identify and produce all Insurance Policies because they are a significant source of recovery for survivors of sexual abuse. Indeed, insurance policies are so fundamental to civil litigation that they “must” be disclosed “without awaiting a discovery request.” Fed. R. Civ. P. 26(a)(1)(A)(iv).

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1

46. Attached hereto as **Exhibit D** is a certification of James E. O’Neill, counsel to the TCC, demonstrating compliance with Local Rule 2004-1, and stating that prior to the filing of this Motion, counsel for the TCC communicated with counsel or representatives of the Examinees with respect to the subject matter of this Motion and no agreement was reached.

NOTICE

47. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Debtor; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Local Council Committee Members; (c) the Additional Local Councils, and their counsel to the extent known; and (d) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The TCC submits that, in light of the nature of the relief requested, no other or further notice need be given.

¹¹ The TCC recognizes that the Rosters contain sensitive and confidential information and proposes that any “below the line” information (*i.e.*, the identities of boys in a Scouting Troop) be marked as “HIGHLY CONFIDENTIAL” pursuant to the *Order Approving Confidentiality and Protective Order* entered on June 8, 2020, at Docket No. 799.

NO PRIOR REQUEST

No prior request for the relief requested herein has been presented to this or any other court.

Date: September 29, 2020

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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Counsel for the Tort Claimants' Committee

**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

Objection Deadline: October 7, 2020 at 4:00 p.m. (ET)

Hearing Date: October 14, 2020 at 10:00 a.m. (ET)

**NOTICE OF MOTION OF THE OFFICIAL TORT CLAIMANTS' COMMITTEE
PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL RULE 2004-1
FOR AN ORDER AUTHORIZING THE ISSUANCE OF SUBPOENAS
FOR DISCOVERY FROM DEBTORS AND CERTAIN LOCAL COUNCILS**

PLEASE TAKE NOTICE that on September 29, 2020, the official committee of tort claimants (consisting of survivors of childhood sexual abuse) (the "Tort Claimants' Committee"), appointed in the above-captioned cases, filed the attached *Motion of the Official Tort Claimants' Committee Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 for an Order Authorizing the Issuance of Subpoenas for Discovery from Debtors and Certain Local Councils* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any response or objection to the Motion must be filed with the Bankruptcy Court on or before **October 7, 2020 at 4:00 p.m. prevailing Eastern Time.**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) the Office of the United States Trustee for the District of Delaware: United States Trustee, J. Caleb Boggs Federal Building, 844 North King

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.

Street, Suite 2207, Lockbox #35, Wilmington, DE 19801 (Attn: David L. Buchbinder, Esq. (david.l.buchbinder @usdoj.gov) and Hannah Mufson McCollum, Esq. (hannah.mccollum@usdoj.gov)); and (ii) counsel to the Tort Claimants' Committee: Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) (Attn: James I Stang, Esq. (jstang@pszjlaw.com) and James E. O'Neill, Esq. (joneill@pszjlaw.com)).

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER APPROVAL OF THE MOTION WILL BE HELD ON **OCTOBER 14, 2020 AT 10:00 A.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN, UNITED STATES BANKRUPTCY JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM NO. 2, WILMINGTON, DELAWARE 19801.**

[Signature on next page.]

Dated: September 29, 2020

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

James I. Stang (CA Bar No. 94435)
John A. Morris (NY Bar No. 2405397)
James E. O'Neill (DE Bar No. 4042)
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Counsel for the Tort Claimants' Committee

EXHIBIT A

Proposed Rule 2004 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

**ORDER AUTHORIZING THE ISSUANCE OF SUBPOENAS FOR DISCOVERY FROM
DEBTORS, MEMBERS OF THE AD HOC COMMITTEE OF LOCAL COUNCILS,
AND CERTAIN LOCAL COUNCILS**

Upon consideration of the *Motion of the Official Tort Claimants' Committee Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 for an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Discovery from Debtors, Members of the Ad Hoc Committee of Local Councils, and Certain Local Councils* (the "Motion")² filed by the Tort Claimants' Committee appointed in the Cases, and any responses to the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 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 consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the Court having

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² Capitalized terms not defined herein shall have the meanings set forth in the Motion.

determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The TCC is authorized under Bankruptcy Rules 2004 and 9016 to issue such subpoenas as may be necessary to compel the production of documents and information responsive to the Discovery Requests.
3. Each of the Examinees are directed to produce all documents and information responsive to the TCC's Discovery Requests and to deliver such documents and information to the attention of James E. O'Neill, at Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P O Box 8705, Wilmington, DE 19801 within fourteen (14) days after entry of this order or at such other place and time as may be agreed upon by the parties.
4. The TCC's rights are reserved to request additional discovery and/or examination in connection with this matter, including, without limitation, requests based on any information that may be revealed as a result of the examination authorized pursuant to this Order.
5. This Court retains jurisdiction to resolve any disputes arising under or related to this Order, including any discovery disputes that may arise between or among the parties, and to interpret, implement and enforce the provisions of this Order.

EXHIBIT B

Additional Local Councils

EXHIBIT B

Additional Local Councils

1. Alamo Area Council
2. Aloha Council
3. Andrew Jackson Council*
4. Atlanta Council*
5. Baltimore Area Council
6. Bay-Lakes Council
7. California Inland Empire Council
8. Capitol Area Council
9. Cascade Pacific Council
10. Chief Seattle Council
11. Circle Ten Council
12. Connecticut Rivers Council
13. Cradle Of Liberty Council
14. Crossroads of America*
15. Crossroads of the West Council
16. Daniel Webster Council
17. Denver Council*
18. Golden Gate Area Council
19. Grand Canyon Council*
20. Greater Los Angeles Area Council
21. Greater New York Council*
22. Greater Niagara Frontier Council
23. Greater St. Louis Area Council
24. Greater Tampa Bay Area Council
25. Heart of America Council
26. Indian Nations Council
27. Lake Erie Council
28. Last Frontier Council
29. Laurel Highlands Council
30. Lincoln Heritage Council
31. Michigan Crossroads Council
32. Mid-America Council*
33. Middle Tennessee Council
34. Minsi Trails Council*
35. Montana Council
36. Narragansett Council
37. National Capital Area Council
38. Northern New Jersey Council, BSA
39. Northern Star Council
40. Orange County Council
41. Pathway to Adventure Council
42. Patriots' Path Council
43. Sam Houston Area Council
44. San Diego Imperial Council
45. Silicon Valley Monterey Bay Council
46. Simon Kenton Council
47. The Spirit of Adventure Council

*** Indicates member of the Ad Hoc Local Council Committee**

EXHIBIT C

Discovery Requests

**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

**TORT CLAIMANTS' COMMITTEE'S FIRST SET OF DISCOVERY REQUESTS TO
THE BSA AND CERTAIN LOCAL COUNCILS**

The official committee of survivors of childhood sexual abuse (the "Tort Claimants' Committee" or the "TCC"), hereby requests, pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 26, 33, and 34, as made applicable herein by Federal Rules of Bankruptcy Procedure ("Fed. R. Bank. P.") 7026, 7033, and 7034, that the debtor, Boy Scouts of America ("BSA") and each of the Local Councils (as that term is defined below) (a) produce all documents and things responsive to the requests (the "Document Requests"), and (b) respond to the interrogatories (the "Interrogatories" and together with the Document Requests, the "Discovery Requests"), as 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.

DEFINITIONS APPLICABLE TO THE DOCUMENT REQUESTS AND INTERROGATORIES

1. “Communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise, either orally or in writing), including but not limited to correspondence, packages, conversations, meetings, discussions, telephone calls, telegrams, telexes, teletypes, seminars, conferences, text messages (whether by SMS, applications such as “WhatsApp,” or otherwise), messages, notes, e-mails and memoranda. The transmission of documents or things by mail, courier or electronic service or otherwise is included, without limitation, in the definition of “Communication(s).”

2. “Concerning” or “concerning” shall mean relating to, referring to, in connection with, in respect of, describing, evidencing, or constituting.

3. “Document(s)” shall include ESI (as defined below) and is used in its customary broad sense. It shall not be limited in any way with respect to the process by which any Document was created, generated, or reproduced, or with respect to the medium in which the Document is embodied; and shall include, by way of example and without any limitation, all “documents,” “electronically stored information,” or “tangible things” as referenced in Rule 34 of the Federal Rules of Civil Procedure, as well as all “writings,” “recordings,” and “photographs” as defined by Rule 1001 of the Federal Rules of Evidence, and any kind of tangible material in any medium of any type, upon which intelligence or information is recorded, or from which intelligence or information can be perceived, whether in writing, recorded, stored, microfilmed, microfiched, photographed, computerized, reduced to electronic or magnetic impulse, or otherwise preserved or rendered. Documents further include, without limitation, materials maintained in electronic, magnetic or other storage media, including those maintained

in computers, electronic or magnetic tapes or diskettes, and any on-site or off-site backup or so-called “erased” or “deleted” computer information that may be susceptible to retrieval.

4. “ESI” has the meaning ascribed to that term in Fed. R. Civ. P. 16, 26, and 34(a).

5. “Insurance Policies” means (a) with respect to the BSA, all general liability or other insurance policies, or evidence of such policies, pursuant to which the BSA has coverage, or may have coverage, for any liability arising from claims of sexual abuse, including but not limited to (1) all such policies for each year prior to 1963, and (2) all policies listed on Schedule A annexed hereto, and (a) with respect to each Local Council, all general liability or other policies, or evidence of such policies, that might provide coverage for sexual abuse claims independent from the coverage provided under the BSA policies or a representation that no such policies exist.

6. “Local Council” means each Local Council served with the Rule 2004 Motion.

7. “Restricted Asset” means (a) any real or personal property owned or controlled by You, or owned or controlled for Your benefit, (b) that You contend was obtained or received by You with a restriction as to use or purpose, whether by actual or constructive trust or otherwise, (c) that You contend would not constitute “property of the estate” under section 541(a) of the United States Bankruptcy Code if You were a debtor in a bankruptcy case, and (d) that You reasonably believe has a fair market value equal to or in excess of \$250,000.

8. “Restricted Asset Account” means any bank account, trust, investment or similar account that holds or contains assets that You contend are Restricted Assets.

9. “Rosters” mean the lists maintained by You, including camp and troop rosters, that (a) identify (or may identify) the Local Council, sponsoring organization, troop or unit number, adult supervisors and volunteers, and the scouts/participants, at particular moments in time and that (b) You have previously refused to produce to the TCC.

10. “Rule 2004 Motion” means that certain *Motion of the Official Tort Claimants’ Committee Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 for an Order Authorizing the Issuance of Subpoenas for Discovery from Debtors and Certain Local Councils* to which these Discovery Requests are attached as Exhibit C.

11. “You” or “Your” means, individually, the Boy Scouts of America and each individual Local Council that is required to respond to the Discovery Requests.

For all purposes herein, spelling, grammar, syntax, abbreviations, idioms, and proper nouns shall be construed and interpreted according to their context to give proper meaning and consistency to the Interrogatories and Document Requests.

INSTRUCTIONS FOR INTERROGATORIES

1. You are required to answer each Interrogatory with all information in Your possession, custody or control, including all information in the possession, custody or control of Your attorneys, investigators, agents, employees and representatives.

2. As used herein, to “identify” or “describe” or to state the “identity” means, in the case of a:

a. Document or thing, to state: (a) the type of Document or thing (*e.g.*, email, letter, memorandum, report, drawing, chart, pamphlet, telex); (b) a general description of the Document or thing; (c) the identity of each creator, author, signatory, or draftsman of the Document or thing (including the identity of each Person who has edited, corrected, revised or amended the Document or who has entered any initial comment or notation

thereon); (d) the date of the Document or thing (including each date on which it was edited, corrected, revised or amended); (e) the identity of each addressee or recipient of the Document or thing or a copy thereof; and (f) the identity of each Person having possession, custody or control of the Document or thing; and

b. Communication, to state: (a) the type of Communication (*e.g.*, telephonic, telegraphic, face-to-face, letter, etc.); (b) the general subject matter of any conversation; (c) the identity of each Person making, receiving or witnessing the Communication; (d) the date and location of the Communication.

3. Where You make a statement upon information and belief, rather than upon actual knowledge, so state in Your answer and specifically identify the basis of such information and belief.

4. Where an Interrogatory calls for an answer which involves more than one part, each part of the answer should be clearly set out so that it is understandable.

5. If Your answer to any Interrogatory is “not applicable” or any similar phrase or answer is used, explain in detail why that Interrogatory is not applicable.

6. If Your answer to any Interrogatory is “do not know” or any similar phrase or answer is used, identify by name, address, telephone number, and e-mail address likely to have information relevant to that Interrogatory, and describe in detail where the answer to that Interrogatory might be found and all of your efforts to obtain the answer to that Interrogatory.

7. If You withhold any information on the basis that it is properly entitled to some limitation of discovery, You are instructed to use the following procedure:

c. during the period of production, supply a numerical list of the information for which the limitation of discovery is claimed; and

d. Indicate for each withheld information the following: (i) the name of each author, writer, sender, or initiator of such information, if any; (ii) the name of each recipient, addressee, or party to whom such information was intended, if any; (iii) the general subject matter of such information, so as to sufficiently identify the information; (iv) the basis for your belief that the information is properly entitled to a limitation of discovery; and (v) identify all persons having knowledge of facts relating to the limitation of discovery.

8. In the event the space provided after each Interrogatory is not sufficient for your answer to any of the following interrogatories, attach a separate sheet of paper setting forth the question, followed by the additional answering information

9. These Interrogatories shall be deemed continuing pursuant to Fed. R. Civ. P. 26(e) and Fed. R. Bankr. P. 7026 so as to require supplemental answers if You or Your attorneys obtain further information between the time answers are served and the time of trial.

10. The use of either the singular or plural shall not be deemed a limitation. The use of the singular should be considered to include the plural, and vice versa.

11. The words “and” and “or” are interchangeable and shall be construed either disjunctively or conjunctively or both, as broadly as necessary to bring within the scope of each request or question those responses that might otherwise be construed to be outside the scope.

INTERROGATORIES

1. Identify each asset owned or controlled by You, or owned or controlled for Your benefit, that You contend is a Restricted Asset.

2. For each asset identified in response to Interrogatory No. 1, identify (a) each fact that You rely upon to support Your contention that the asset is a Restricted Asset, and (b) each

document (by bates number or by file in the Debtors' electronic data room) Concerning such asset.

3. For each Restricted Asset Account, describe the flow of the Restricted Assets, including whether the Restricted Assets were deposited directly into the Restricted Asset Account or whether the Restricted Assets were first placed into another account (or accounts) and subsequently transferred to the Restricted Asset Account. The description should include, but not be limited to, the following information:

- a. identify the initial account where the Restricted Assets were deposited, all intermediary bank and brokerage accounts where the Restricted Assets were transferred through, and the Restricted Asset Account where the Restricted Assets were ultimately deposited,
- b. identify if the Restricted Assets were ever commingled with non-Restricted Assets,
- c. identify the balances of the accounts over time,
- d. identify the PeopleSoft general ledger account(s) Concerning any Restricted Asset held or contained in a Restricted Asset Account, and
- e. describe all changes in policy or practice related to the flow of proceeds for the aforementioned Restricted Assets.

INSTRUCTIONS FOR DOCUMENT REQUESTS

Rules 26 through 37 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 7026 through 7037 of the Federal Rules of Bankruptcy Procedure, are hereby incorporated by reference and apply to each of the following instructions:

1. The Document Requests seek only documents that have *not* been previously produced by You. For the avoidance of doubt, You are not required to produce for a second time any documents responsive to the Document Requests that are already available to the TCC in the Debtors' electronic data room.

2. All Documents shall be identified by the Request(s) to which they are primarily responsive or be produced as they are maintained in the usual course of business.

3. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including in the possession, custody, or control of a current or former employee or agent, that were created during or that relate or refer to the Applicable Period, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

4. You must produce all Documents in Your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf. You must produce all such Documents even if they were deleted or are in draft form. Without limitation, hardware where such data may be stored (and from which such data must be retrieved) includes: servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, instant messages, text messages (whether by SMS, applications such as "WhatsApp," or otherwise), intranet and internet system data, telephone and

cellular telephone calling records, data compilations, spreadsheets, word processing files, images, databases, digital photocopier memory, and any other information stored in memory storage devices.

5. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

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

7. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

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

9. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege, then in answer to such Request or part thereof, for each such Document, You must:

- a. Identify the type, title and subject matter of the Document;
- b. State the place, date, and manner of preparation of the Document;

- c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim with sufficient particularity to enable an assessment of the claim.

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

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

MANNER OF PRODUCTION

1. All Documents produced shall be provided in either native file (“native”) or single-page 300 dpi-resolution group IV TIF format (“tiff”) format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file (“searchable text”) as rendered by an industry-standard text extraction

program in the case of electronic originals, or by an industry-standard Optical Character Recognition (“ocr”) program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the “.dat file” as described below.

2. Database load files shall consist of: (i) a comma-delimited values (.dat) file containing: production Document identifier information, data designed to preserve “parent and child” relationships within Document “families,” reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon (.opt) file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named “Data,” images shall be provided within a root level “Images” folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level “Text” folder. If any of the Documents produced in response to these Requests are designated as confidential pursuant to a Protective Order or Confidentiality Agreement, in addition to marking the Documents with the brand “CONFIDENTIAL” or branding the media with the word “CONFIDENTIAL,” also include a confidential field within the load file, with a “yes” or “no” indicating whether the Document has been designated as confidential, as well as native file loading/linking information (where applicable).

3. Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow, through a reasonable and modest effort, the fair, accurate, and complete access, search, display, comprehension, and assessment of the Documents’ true and original content.

4. All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to Microsoft Exchange™, Lotus Notes™, or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehensible.

5. With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the reasonable management and importation of those Documents into a useable, coherent database. Documents must be accompanied by reasonably detailed documentation explaining the Documents' content and format including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

- a. XML format file(s);
- b. Microsoft SQL database(s);
- c. Access database(s); and/or
- d. fixed or variable length ASCII delimited files.

6. All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject

to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

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

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

DOCUMENT REQUESTS

1. All Documents and Communications that You rely upon to support Your contention that an asset owned or controlled by You, or owned or controlled for Your benefit, is a Restricted Asset.

2. All Documents and Communications Concerning whether any asset owned or controlled by You, or owned or controlled for Your benefit, is a Restricted Asset.

3. All Documents and Communications that you rely upon to identify and trace any asset owned or controlled by You, or owned or controlled for Your benefit, that you contend is a Restricted Asset.

4. Documents sufficient to identify each bank or investment accounts utilized (whether open or closed) by You or for Your benefit since January 1, 2010, including the identity

of the institution, name on account, account number, account type (*e.g.*, checking, savings, investment), account function (*e.g.*, operating, payroll, sweep), date opened, and date closed (if applicable).

5. All Insurance Policies pursuant to which You have coverage, or may have coverage, for any liability arising from claims of sexual abuse.

6. All Rosters.

Date: September 29, 2020

THE OFFICIAL COMMITTEE OF TORT CLAIMANTS

/s/ James E. O'Neill

James I. Stang (CA Bar No. 94435)

John A. Morris (NY Bar No. 2405397)

James E. O'Neill (DE Bar No. 4042)

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joneill@pszjlaw.com

jlucas@pszjlaw.com

Counsel for the Tort Claimants' Committee

SCHEDULE A

- 1. 1975-1976**
 - a. National Union (BE1140592)
- 2. 1976-1977**
 - a. Hartford (10CA43349E)
- 3. 1984-1986**
 - a. INA (ISLGO2931722)—missing declarations page
- 4. 1996-1997**
 - a. American Zurich (AUO 3657270-00)
 - b. AEIA (HR000105096)
- 5. 1997-1998**
 - a. Liberty Mutual (TB1-191-409751-127)
 - b. XL Bermuda (XLUMB-02391)
- 6. 2001-2020**
 - a. Federal (79078617)
 - b. Interstate (XUO-1102139)
- 7. 2003**
 - a. Interstate (XSO 1014504)- does not contain any insuring agreement or limits of liability
- 8. 2008**
 - a. Endurance (ELD10000334502)
 - b. Everest National (71 G000050-08)
 - c. Allied World (C009030/003)
 - d. Lexington (1172859)
 - e. Endurance (ELD1 00003346 02)
 - f. Lexington (1172861)
- 9. 2009**
 - a. Endurance (ELD1 00003345 03)
 - b. Everest National (71G000059091)
 - c. Allied World (C009030/004)
 - d. Endurance (ELD10001240600)
 - e. Axis (EAU737684/01/2009)
 - f. Interstate (HFX00082075581)
 - g. Arch Re (UXP0025030-01)
 - h. Ohio Casualty (ECO9(10)53709*960)
- 10. 2010**
 - a. Endurance (ELD10000334504)
 - b. Everest National (71G6000050101)
 - c. Axis (EAU720252/01/2010)
 - d. Allied World (0305-3351)
 - e. Endurance (ELD1000019337)
 - f. Arch Re (UXP0025020-02)

- g. Ohio Casualty (ECO2253709960)
- h. Westchester (G2500467200)

11. 2011

- a. Endurance (ELD10000334505)
- b. Everest National (71G6000050101)
- c. Allied World (0305-3351)
- d. Axis (EAU758049012011)
- e. Endurance (ELD10003026000)
- f. Arch Re (UXP0042842)
- g. Westchester (G24114673002)
- h. Ohio Casualty (ECO1153709960)
- i. Liberty (EXCDA1205871)

12. 2012

- a. Old Republic (MWZY59555)
- b. Endurance (ELD10000334506)
- c. Catlin (XSC-94255-0313)
- d. Axis (EAU720252/01/2012)
- e. Allied World (0305-3351)
- f. Axis (EAU758049/01/2012)
- g. Alterra ES (MAX3EC30000062)
- h. Endurance (ELD10003553700)
- i. Arch Re (UXP0042842-01)
- j. Ohio Casualty (ECO 13 54672120)
- k. Westchester (G24114673003)
- l. Navigators (CH13EXC747034IC)

13. 2013

- a. Allied World (0305-3351)
- b. Alterra ES (MAX3EC30000092)

14. 2014

- a. Alterra ES (MAX3EC30000296) the PDF we were provided contained blank pages

15. 2015

- a. Gemini (CEX09600052-02)

16. 2017

- a. Colony (AR3461897)

17. 2018

- a. Aspen (CX0043418)
- b. Allied World (0305-3351)
- c. Colony (AR4460619)
- d. Unknown—this is what is stated in the policy chart
- e. Evanston (MKLV4EUE10038)
- f. XL Catlin (PNCW021015)
- g. Gemini (CEX09600166-05)
- h. Endurance (EXC1004584704)

- i. Ohio Casualty (ECO (19) 55942839)

18. 2019

- a. Arch Re (UXP102797700)
- b. Westchester (G71497094001)
- c. Ategrity (01BXL000012300)
- d. Colony (AR4460619)
- e. Allied World (3053351)
- f. Endurance (EXC10004584705)
- g. Gemini (CEX09600166-06)
- h. Liberty Mutual (100032394701)

EXHIBIT D

COMPLIANCE CERTIFICATE

**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

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1 IN
CONNECTION WITH MOTION OF THE OFFICIAL TORT CLAIMANTS'
COMMITTEE PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL RULE
2004-1 FOR AN ORDER AUTHORIZING THE ISSUANCE OF SUBPOENAS
FOR THE PRODUCTION OF DOCUMENTS AND DISCOVERY FROM
DEBTORS, MEMBERS OF THE AD HOC COMMITTEE OF LOCAL
COUNCILS, AND CERTAIN LOCAL COUNCILS**

I, James E. O'Neill, hereby certify as follows:

1. I submit this certification as counsel to the Tort Claimants' Committee in conformity with Rule 2004-1 of the Local Rules and in support of the Motion.²
2. Prior to the filing of the Motion, members of my firm made the numerous attempts to confer with counsel to the Examinees, the most significant of which are described below.³
3. On March 25, 2020, shortly after its formation, the TCC sent its initial set of informal document requests to the BSA which included, among other things, the following:

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 not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³ I am informed that counsel for the TCC participated in dozens of telephone conferences and e-mail communications with the BSA, counsel for the Ad Hoc Committee of Local Councils, and each of the Local Council Committee members concerning the TCC's informal discovery requests; many of those communications concerned Restricted Assets, Rosters, and insurance policies.

(a) “[a]sset listings / schedules detailing unrestricted (including designated), temporarily restricted and permanently restricted assets owned or controlled by the BSA or any of the BSA Related Entities,” (b) “[a]ll supporting documentation for assets referred to in the prior request, including but not limited to wills, bequests, letters, and correspondence,” and (c) “[t]roop Rosters for the BSA and each of the BSA Related Parties.” The Local Councils fell within the definition of “BSA Related Entities.”

4. On March 30, 2020, at the BSA’s request, the TCC sent a follow-up set of “priority” requests that included, among other things, the following: (a) “[d]etailed asset listings / schedules detailing each and every unrestricted (including board designated and donor advisory funds), temporarily restricted and permanently restricted assets owned or controlled by the BSA or any of the BSA Related Entities,” and (b) “[t]o the extent not already in the data room, all documents that the Debtors contend support their position that the “Identified Property” “is subject to enforceable use restrictions,” as alleged in the *Debtors’ Motion for Entry of an Order (I) Scheduling Certain Deadlines in Connection with Potential Disputes Regarding the Debtors’ Identified Property and (II) Granting Related Relief*, filed at Docket No. 19.

5. On May 10, 2020, the TCC wrote to counsel for the Local Council Committee Members concerning its request for Rosters and stated as follows: “The TCC needs the Troop Rosters from each Local Council going back as far as they are available. This was part of the TCC’s original requests and, as we presume [Debtor’s counsel] has conveyed to you, an issue we have frequently pressed. The Troop Rosters provide information concerning, among other things, potentially responsible parties (*e.g.*, sponsoring organizations) that is frequently unknown to survivors but that is critical with statutes of limitation expiring in various jurisdictions at various times. We don’t believe this is a burdensome request, but note that Troop

Rosters were not among the categories of information included in the information spreadsheet provided to Local Councils.”

6. On or about July 16, 2020, counsel for the TCC sent letters to each of the Local Council Committee Members requesting the informal production of documents, including, among other things, the Restricted Asset Information, the Rosters, and the Insurance Policies.⁴ Counsel for the TCC and each Local Council Committee Member have had at least two “meet and confer” telephone conferences and have exchanged numerous written communications regarding the TCC’s requests. While each Local Council Committee Member has provided (and in some cases, continues to provide) documents responsive to at least some of the requests, most have not provided the underlying support for asset restrictions (including, for examples, copies of the key source documents such as wills, bequests, and agreements). In addition, none of the Local Council Committee Members have demonstrated an ability to specifically identify and trace restricted funds from origination to current date (including, for example, the identification of the account where the asset was originally deposited, transferred to, or now resides and whether the asset has been commingled with non-Restricted Assets), nor have any of the Local Council Committee Members produced any information concerning the Insurance Policies or any Rosters.

7. On July 28, 2020, after learning from certain Local Council Committee Members that the BSA possessed certain of the documents requested, counsel for the TCC emailed the BSA’s counsel regarding the production of documents related to the Local Council

⁴ The TCC specifically requested, among other things, (a) copies of all “insurance policies in effect at any time from 1950 through the present issued to, sold to, acquired by, purchased by, or naming or including any Local Council as an insured, named insured or additional,” (b) “[a]sset listings / schedules detailing unrestricted (including designated), temporarily restricted and permanently restricted assets owned or controlled by each Local Council,” and “[a]ll supporting documentation” for such assets, and (c) “Troop / unit rosters (including names, troop / unit numbers, time periods covered, etc.).”

Committee Members, including the Rosters. Counsel met and conferred on August 13, 2020. The Debtors have produced certain documents, but have refused to produce the Rosters.

8. On September 4, 2020, the TCC wrote to each of the Additional Local Councils and included informal document requests that specifically sought, among other things, the Restricted Asset Information, the Rosters, and the Insurance Policies. None of the Additional Local Councils responded.

9. These various efforts did not produce an agreement for the production of the requested documents and information, let alone a mutually agreeable date, time, place and scope for such production. Given the number of Examinees, and the lack of substantive response from any of the Additional Local Councils to two separate letters, I believe it would be impractical and a waste of time and resources to continue to seek the voluntary production of the vital documents and information requested. Accordingly, the TCC has filed the foregoing Motion.

Dated: September 29, 2020

By: /s/ James E. O'Neill
James E. O'Neill

**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

CERTIFICATE OF SERVICE

I, James E. O'Neill, hereby certify that on the 29th day of September, 2020, I caused a copy of the following document(s) to be served on the individual(s) on the attached service list(s) in the manner indicated:

Notice of Motion of the Official Tort Claimants' Committee Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 for an Order Authorizing the Issuance of Subpoenas for Discovery from Debtors and Certain Local Councils

Motion of the Official Tort Claimants' Committee Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 for an Order Authorizing the Issuance of Subpoenas for Discovery from Debtors and Certain Local Councils

/s/ James E. O'Neill

James E. O'Neill (DE Bar No. 4042)

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.

Boy Scouts of America and
Delaware BSA, LLC
2002 Service List EXPEDITED
Case No. 20-10343 (LSS)
Document No. 227583.2
007 – First Class Mail
195 – Emails

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