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) **Re: Doc. I.D. No. 10188**

CERTAIN INSURERS' OBJECTION TO
DEBTORS' MOTION TO SHORTEN NOTICE

The undersigned insurance carriers (collectively, "Certain Insurers") object to the Debtors' application to shorten notice. The Debtors characterize their motion as one to "amend and supplement" the Court's "findings of fact and conclusions of law" in its "Confirmation Opinion." But that is not what they are requesting. The Debtors are actually seeking approval of the Plan, as revised, in its entirety. Late Friday evening, after discussing their proposed revisions with Plan supporters for two weeks, but never with the Certain Insurers (and sending the Certain Insurers a "draft" for the first time on Friday morning), the Debtors filed approximately 450 pages of documents, including a revised plan, revised Confirmation Order, revised TDPs, revised Settlement Trust Agreement, and Plan "Addendum" that may further modify the Plan in ways that may, or may not, be reflected in the Debtors' redlines. The Debtors are not seeking to make simple, non-material changes to their previously proposed Confirmation Order. Instead, they are seeking to amend key elements of the Plan, including the removal of the TCJC Settlement, the removal of

[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.

certain (although not all) of the disputed findings, and several definitional changes. As this Court knows, this case is complex and requires considerable attention to detail. But the Debtors are attempting to submit new Plan documents for approval, on less than two weeks-notice, after providing the Certain Insurers and other objectors with only five business days to review and respond. That request should be denied.

OBJECTION

1. On July 29, 2022, following nearly six weeks of trial, the Court rendered a detailed 269 page opinion (the "Confirmation Opinion") interpreting and ruling on the myriad issues that had been raised in this highly complex case, including holding that the Plan documents proposed by the Debtors were deficient for numerous reasons.

2. The opinion ended with the following statement "At their convenience, counsel to the Debtors may reach out to chambers to schedule a status conference."

3. Despite the clarity of this statement, the Debtors and other Plan Supporters have chosen to ignore this Court's direction to schedule a status conference, and have instead chosen to push forward with confirmation of new Plan documents on a highly compressed timeline.

4. The Debtors provided the Certain Insurers with "drafts" of the new documents for the first time on Friday morning, August 12, 2022, then filed final copies on Friday evening without ever discussing them with the Certain Insurers, leaving the Certain Insurers with only five business days to review the documents and provide any substantive comment to the Court. The Debtors did not even provide a redline of their proposed, revised Confirmation Order, which itself appears to have undergone substantial alterations after this Court's ruling, nor did they provide an explanation for why that redline was not made available for any of the parties or the Court. This

seeming lack of transparency and failure to engage with Certain Insurers is especially troubling, given that Certain Insurers were one of the material objectors to the Debtors' Plan at confirmation.

5. Bankruptcy Rule 2002(b) requires at least 28 days' notice to parties in interest for filing objections to confirmation of a chapter 11 plan. The advisory committee note provides the following rationale: "subdivision (b) is similar to subdivision (a) but lengthens the notice time to [28] days with respect to those events particularly significant in chapter 9, 11, and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation."

6. This case cries out for the "additional time" contemplated by Rule 2002(b). Indeed, Plan supporters themselves needed the last two weeks to discuss implementation of the Court's decision.

7. By contrast, the Debtors afforded objectors only one week to determine whether *all* of the changes they had proposed (without input from the Certain Insurers) are true to the Confirmation Opinion, something that even a cursory review reveals is unfortunately not the case. That falls far short of the 28-day notice that the Federal Rules of Bankruptcy Procedure require.

8. The Debtors provide no adequate rationale for the breakneck speed at which they propose to resolve all outstanding issues. While they have repeated the familiar refrain that they "must seek to exit bankruptcy as soon as possible" for more than a year now, Mot. at 6, they provide no new evidence to justify the proposed drastic shortening of the notice period at this time. And, of course, it was the Debtors that proposed a plan that inappropriately sought to obtain unprecedented advantages over non-settling insurers in future coverage litigations.

9. The Debtors presumably will respond that it should be simple to review the newly filed documents to ensure that the Court's mandates have been implemented. But even if that were true, the entire set of documents must be closely reviewed to see what changes were ***not*** made.

10. The Certain Insurers' concerns are not merely hypothetical. A cursory review of the documents (over the mere weekend afforded to us) has revealed deficiencies. For example, finding "IX.A.3.J" in the Plan continues to state that "the Insurance Assignment is authorized and permissible as provided in the Plan, notwithstanding any terms of any policies or provisions of applicable law that are argued to prohibit the delegation, assignment, or other transfer of such rights." This finding is in direct contravention to the Confirmation Opinion, which stated that "[w]hether an anti-assignment clause in an insurance policy prohibits assignment is, in the first instance, a matter of state law. Having reviewed the cases cited by the Coalition, it is clear that this determination is made by reference to the policy, state law and a conflict of law analysis if necessary. In order to determine, therefore, whether a non-debtor policy or any rights thereunder can be assigned, I would need to examine each policy under applicable state law, an analysis I am not in a position to do." Opinion at 255.

11. Furthermore, the defined term "Insurance Coverage Defense" still excludes any defense that the assignment is prohibited by insurance policies or applicable non-bankruptcy law (Art. I.A.160), even though this Court declined to approve the assignment as to non-debtor rights because the assignment may conflict with the policies and state law (Opinion at 254-256); and held that state law will determine whether rights can be transferred without their correlative obligations, noting that "[i]f the obligations form the basis for claims, they will be treated accordingly. If the obligations are conditions precedent, then the Non-Settling Insurers may be able to assert those conditions as a defense to performance" (Opinion at 248-253).

12. Moreover, supplemental finding "J" states that the Court's determination of the likely aggregate liability of Direct Abuse Claims for purposes of Confirmation "is not intended" to limit the amount of allowed abuse claims or non-settling insurer liability, despite the Court's repeated admonitions that "appropriate caselaw will govern in any subsequent proceedings," and that "[t]he *res judicata* or collateral estoppel effect of any Order I issue confirming the Plan is for a future court to decide in the context of specific litigation." *See, e.g.*, Opinion at 185-187.

There are undoubtedly further misapplications of this Court's Confirmation Opinion.

13. There is simply no reasonable basis to rush forward hastily, when the Chapter 11 Cases are nearly at their conclusion. The Court would benefit from affording parties in interest a full opportunity to ensure that the Court's lengthy, thoughtful decision is fully honored, and a reasonable opportunity to explain whether the proposed documents have done so.

14. The Certain Insurers respectfully request that this Court deny the Debtors' motion for shortened notice and direct that the August 24 hearing remain a "status conference," as the Court expressed in its Confirmation Opinion. Any substantive hearing on the merits of the Plan and Confirmation Order should be heard at a later date, potentially at the next scheduled omnibus hearing on September 29 or at an earlier date if one is available, after the parties in interest have a meaningful opportunity to consider the Debtors' proposed changes and to narrow or eliminate the remaining issues for the Court.

Dated: August 15, 2022

Respectfully Submitted

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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)

CERTIFICATE OF SERVICE

I, Deirdre M. Richards, on this 15th day of August, 2022, filed ***Certain Insurers' Objection To Debtors' Motion To Shorten Notice*** and caused a copy same to be served via e-mail on the parties on the Revised Participating Parties List (Exhibit "A" to Doc. No. 9571).

Dated: August 15, 2022

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