

**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: September 28, 2021 at 10:00 a.m. (ET)

**CERTAIN EXCESS INSURERS'
REVISED PROPOSED CONFIRMATION SCHEDULE**

Certain Excess Insurers listed in the signature blocks below (collectively, the “Insurers”) hereby submit a revised proposed confirmation schedule (the “Insurers’ Revised Proposed Schedule”) for the Court’s consideration.

During the September 23 session of the disclosure statement hearing, the Court encouraged the parties to reconsider scheduling issues over the break between last week’s hearings and the resumption of the hearing tomorrow, September 28. The Court commented that the confirmation hearing would not be starting on December 9 as proposed by Debtors, nor would it be starting 217 days after approval of the disclosure statement either.²

The Insurers have done as the Court requested, and hereby propose a revised, shortened schedule for the Court’s consideration. The Insurers shared this revised schedule with Debtors before filing this document; Debtors advised that they do not agree to this revised schedule. The Insurers’ Revised Proposed Schedule is as follows:

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

² Transcript of September 23, 2021 Hearing at 215:9-18.

Event	Insurers' previous proposal	Insurers' revised proposal³
Deadline to serve initial written discovery	10 days after approval of Disclosure Statement	7 days after approval of Disclosure Statement
Deadline to serve responses and objections to initial written discovery	30 days after approval of Disclosure Statement	21 days after approval of Disclosure Statement
Document production in response to initial discovery substantially complete	45 days after approval of Disclosure Statement	42 days after approval of Disclosure Statement
Final voting report deadline	60 days after approval of Disclosure Statement	65 days after approval of Disclosure Statement
Deadline to depose fact witnesses; fact discovery cutoff (absent agreement of the parties or an order by the Court based on good cause shown)	105 days after approval of Disclosure Statement	75 days after approval of Disclosure Statement
Initial expert reports due	120 days after approval of Disclosure Statement	90 days after approval of Disclosure Statement
Rebuttal expert reports due	145 days after approval of Disclosure Statement	115 days after approval of Disclosure Statement
Deadline to depose expert witnesses	165 days after approval of Disclosure Statement	135 days after approval of Disclosure Statement
Deadline to exchange deposition designations	175 days after approval of Disclosure Statement	140 days after approval of Disclosure Statement
Deadline to exchange counter-designations and objections to deposition designations	185 days after approval of Disclosure Statement	145 days after approval of Disclosure Statement
Deadline for motions in limine	195 days after approval of Disclosure Statement	160 days after approval of Disclosure Statement
Plan objection deadline	200 days after approval of Disclosure Statement	165 days after approval of Disclosure Statement
Deadline to submit pretrial order, witness and exhibit lists, oppositions to motions in limine, and objections to deposition counter-designations	205 days after approval of Disclosure Statement	170 days after approval of Disclosure Statement
Confirmation brief/Plan	207 days after approval of	172 days after approval of

³ Some adjustments to these dates may be required to avoid weekends, holidays, etc.

Event	Insurers' previous proposal	Insurers' revised proposal³
reply deadline	Disclosure Statement	Disclosure Statement
Final pretrial conference	210 days after approval of Disclosure Statement	175 days after approval of Disclosure Statement
Confirmation hearing	No sooner than 7 days after the final pretrial conference	No sooner than 7 days after the final pretrial conference

During the September 23 hearing, this Court noted the complexities of this case, stating that “every party has acknowledged that this is one of, if not the, most complex cases that they’ve probably dealt with in their bankruptcy careers, as it brings together many issues, many challenging issues, each one of which on their own would make any case complex.”⁴ Notwithstanding these complexities, Debtors’ proposed schedule (Dkt. No. 6320) is unrealistic and unworkable because it compresses all discovery into too short a period, does not allow sufficient time for expert work and other necessary tasks, and sets a confirmation hearing in just over two months after approval of the Disclosure Statement, before votes on the Plan would even be tabulated.

In the Plan, Debtors seek unnecessary findings from this Court (essentially the equivalent of a litigated judgment) that, among other things, the Settlement Trustee’s future determinations of over 82,000 abuse claims based on the criteria in the Trust Distribution Procedures are fair, reasonable, and in good faith.⁵ Debtors’ apparent goal is to preclude insurers from arguing that any future determination or action by the Settlement Trust or Settlement Trustee is a basis to limit or deny insurance coverage. In essence, Debtors want to

⁴ Transcript of September 23, 2021 Hearing at 216:14-19.

⁵ See Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC (Dkt. No. 6212) at Art. IX(A)(3)(j), (q), (r), (s), and (t) (pp. 102-104 of 495).

use the confirmation hearing as a tool to pre-litigate the coverage implications of future decisions by a Settlement Trustee, who has not yet been appointed, regarding claims that have not yet been developed. Debtors, having elected to pursue such extraordinary findings, which improperly seek to impair the insurers' rights under their policies, cannot seek to deny the Insurers adequate time to fully develop the record to present to the Court at confirmation – particularly since key requested findings are, under the Plan, expressly dependent “on the evidentiary record offered to the Bankruptcy Court.”⁶ The broad scope of the requested findings drives the need for broad discovery.

The Insurers intend to argue in favor of the above schedule at the September 28 hearing. At that time, the Insurers' counsel will explain, in much greater detail, why Debtors' schedule is unreasonable and why Insurers' Revised Proposed Schedule 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 findings noted above, 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.”⁷ For now, the Insurers just wanted to provide the Court and other parties with a copy of this proposed revised schedule in advance.

DATED: September 27, 2021

Respectfully submitted,

/s/ Robert D. Cecil, Jr.

Robert D. Cecil, Jr. (No. 5317)

TYBOUT, REDFEARN & PELL

501 Carr Road, Suite 300

⁶ *Id.* at Art. IX(A)(3)(r). See *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71, 74-85 (Bankr. W.D.N.C. 2014) (allowing for almost two years of discovery in a mesothelioma estimation proceeding).

⁷ Transcript of September 23, 2021 Hearing at 229:16-17.

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CERTIFICATE OF SERVICE

I, Robert D. Cecil, Jr., Esquire, hereby certify that on September 27, 2021, I caused a copy of Certain Excess Insurers' 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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