

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|--|---|------------------------------------|
| Future Claimants' Representative, |) | |
| Tort Claimants' Committee, and |) | |
| Coalition of Abused Scouts for Justice, |) | |
| |) | |
| Petitioners, |) | Civil Action No. 21-392-RGA |
| |) | |
| v. |) | Bankruptcy Case No. 20-10343 (LSS) |
| |) | |
| Boy Scouts of America and Delaware BSA, LLC, |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |

APPENDIX TO DEBTORS' ANSWERING BRIEF IN OPPOSITION TO THE FUTURE CLAIMANTS' REPRESENTATIVE, THE OFFICIAL COMMITTEE OF TORT CLAIMANTS, AND THE COALITION OF ABUSED SCOUTS FOR JUSTICE'S MOTION FOR ENTRY OF AN ORDER, PURSUANT TO 28 U.S.C. § 157(d) AND BANKRUPTCY RULE 5011(a), WITHDRAWING THE REFERENCE OF PROCEEDINGS INVOLVING THE ESTIMATION OF PERSONAL INJURY CLAIMS

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
BOY SCOUTS OF AMERICA and Case No. 20-10343 (LSS)
DELAWARE BSA, LLC, Courtroom No. 2
824 North Market Street
Wilmington, Delaware 19801
Debtors. February 17, 2021
10:00 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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6 **Ruling: Matters taken under advisement**

7 #13) Third Interim Fee Application Hearing. [Exhibit A]

8 Debtors' Professionals

9 Alvarez & Marsal North America, LLC

10 Bates White, LLC

11 Haynes and Boone, LLP

12 KCIC, LLC

13 Morris, Nichols, Arsht & Tunnell LLC

14 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

15 PricewaterhouseCoopers LLP

16 Quinn Emanuel Urquhart & Sullivan, LLP

17 Sidley Austin LLP

18 White & Case LLP

19 Tort Committee's Counsel

20 Pachulski Stang Ziehl & Jones LLP

21 Pasich LLP

22 Berkeley Research Group, LLC

23 Official Committee of Unsecured Creditors

24 AlixPartners, LLP

25 Kramer Levin Naftalis & Frankel LLP

Future Claimant's Representatives

Ankura Consulting Group, LL

Gilbert, LLP

James L. Patton, Jr. and Young Conaway Stargatt & Taylor

HARTFORD'S WITNESS(s)

DENISE NEUMANN MARTIN

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1 (Proceedings commenced at 10:13 a.m.)

2 THE COURT: Good morning, counsel, this is Judge
3 Silverstein. We're here in the Boy Scouts of America case;
4 case number 20-10343.

5 Brandon, can you please remind everyone of the
6 protocol for the hearing.

7 THE CLERK: Yes, good morning.

8 It is very important that you put your phones on
9 mute when you are not speaking. When speaking, please do not
10 have your phones on speaker as it creates feedback and
11 background noise which makes it very difficult to hear you
12 clearly.

13 Also, it is important that you state your name
14 each time you speak for an accurate record. Your cooperation
15 in this matter is appreciated. Thank you.

16 THE COURT: Thank you.

17 I'm going to turn this over to debtors' counsel
18 and I'm assuming that I'm going to get an update on where we
19 are and I would like to have that, please.

20 MR. ABBOTT: Yes, Your Honor. Thank you. Derek
21 Abbott from Morris Nichols here with my colleagues from White
22 & Case, counsel for the debtors.

23 Your Honor, before we jump into that, may I make
24 one suggestion regarding the agenda, Your Honor?

25 THE COURT: Yes.

1 MR. ABBOTT: The last item on the agenda is
2 interim fee apps. Your Honor, we have a lot on the court's
3 plate today. And I know there may be a number of
4 professionals who were on the phone for that. My hunch, Your
5 Honor, was that you might not get to that today. But if
6 that's accurate, I wonder if we might just announce that and
7 let those folks be excused so we're not, you know, burning
8 their time and our money.

9 THE COURT: Yes, thank you, Mr. Abbott. Your
10 hunch is correct. We are not going to get to that today.

11 So if that's the matter that you are on for, then
12 you are excused.

13 MR. ABBOTT: Thanks very much, Your Honor. I will
14 now turn it over to Ms. Boelter for a quick update on status,
15 and then we'll return to the agenda after that.

16 THE COURT: Thank you.

17 Ms. Boelter.

18 MS. LAURIA: Thank you, Your Honor and I now --
19 Jessica Lauria, formerly Boelter, with White & Case for the
20 debtors. I will be brief, Your Honor, because I am cognizant
21 of the fact that you do have a very full agenda this morning.

22 We have not appeared in front of the court since
23 November, that was shortly after our bar date. And that, I
24 think, is good news in the sense that we've managed to
25 resolve contested issues without the need to appear before

1 the court. And, frankly, it saved the estate quite a bit of
2 money not pulling us altogether.

3 What have we been doing since November? We have
4 been, Your Honor, engaged in very intense mediations. We now
5 have twenty-two mediation parties which are keeping our three
6 mediators extremely busy. The mediation sessions at this
7 point are dailies, sometimes several times a day, involving
8 one-on-one with a singular mediation party and the mediator,
9 sometimes a collection of mediation parties and the mediator.

10 We are making very good progress in the
11 mediations. But we do have a lot of work in front of us
12 still. That said, Your Honor, as I reported in November, it
13 is still the debtor's intention to emerge from Chapter 11 by
14 the end of summer 2021, so by the end of this upcoming
15 summer.

16 In order to do that, we need to have a disclosure
17 statement hearing late spring. We're targeting the April
18 timeframe, and I believe Mr. Abbott and his colleagues have
19 been in touch with chambers in terms of understanding Your
20 Honor's schedule and securing those dates.

21 To make that happen, the debtors will need to file
22 an amended plan and disclosure statement, as well as a
23 solicitation procedures motion in the next few weeks. And we
24 look forward to discussing those documents with you in April.

25 So that's where we're at today, Your Honor. If

1 you have any questions, I'm happy to answer them, but,
2 otherwise, I think we can hand things back over to Mr. Abbott
3 to kick off today's agenda.

4 THE COURT: Okay. Thank you. No, I don't have
5 any questions. That was helpful.

6 Let me remind everyone who is not speaking to mute
7 your phones. I am hearing some paper rustling and some
8 background noise.

9 Mr. Abbott.

10 MR. ABBOTT: Thanks, Your Honor. My apologies to
11 Ms. Lauria for failing to keep up with the times.

12 Your Honor, items 1 and 2 on the agenda --

13 THE COURT: And congratulations.

14 MR. ABBOTT: Indeed, Your Honor.

15 Items 1 and 2 on the agenda, Your Honor, have been
16 submitted under certificate of no objection which brings us
17 to number 3 which is the first matter that I think is going
18 forward, unless the court has questions about 1 or 2?

19 THE COURT: No, I don't think I have questions
20 about 1 or 2. I'll take a look at them after the hearing.

21 MR. ABBOTT: Thank you very much, Your Honor.

22 Number 3 is Century's motion, Your Honor, so I
23 will cede the microphone to Century's counsel.

24 THE COURT: Thank you.

25 MR. SCHIAVONI: Your Honor, I believe we have two

1 2004 motion before the court. They're kind of bookends to
2 each other. One of them seeks discovery which with respect
3 to the claimants and the other one seeks -- and it also seeks
4 very importantly limited relief from the local rule allowing
5 omnibus objections to be heard.

6 The other motion seeks some very targeted
7 discovery of specific plaintiff's lawyers who signed large
8 numbers of proofs of claim. This is sort of two ends of the
9 pipe, sort of what on the one end of the process on how the
10 claims were prepared, and on the other end issues about the
11 kinds of claims that came out on the backend.

12 And I would just suggest, Your Honor, that we
13 address, first, the motion for claimant discovery and the
14 corresponding relief from the omnibus to allow omnibus
15 objections to be addressed. And I would turn that over to
16 Hartford to give the main presentation.

17 I would ask to be heard at the end of that briefly
18 on the omnibus objection issue because it's so important to
19 just address one of the Supreme Court cases that deal with
20 that issue.

21 THE COURT: Okay. Now who is going to be taking
22 the lead on this?

23 MR. RUGGERI: Good morning, Your Honor, James
24 Ruggeri for Hartford. I will grab the one end of the pipe
25 that Mr. Schiavoni has extended to me.

1 Your Honor, I'd like to start with what we believe
2 is some good news.

3 Through our meet and confer effort in regard to
4 our motion, 2004 motion for leave to serve discovery, we met
5 and conferred with claimants and counsel over the past few
6 weeks. We actually have been able to resolve our differences
7 with ninety-four of the claimants, so those ninety-four
8 claimants have been removed from the list of claimants as to
9 which we've asked the court to grant us relief or permission
10 to serve discovery.

11 And last night, we filed at Docket Number 2224 of
12 filings that shows the amended Exhibit C to our motion which
13 shows 1,304 claimants as to which we have current discovery
14 disputes.

15 Your Honor, now I'd like to turn to the
16 declaration --

17 THE COURT: Let me ask, Mr. Ruggeri, let me ask
18 what was the general nature of the resolutions that have been
19 reached?

20 MR. RUGGERI: There was a wide range, Your Honor.
21 Some of the claimants agreed to meet our discovery request.
22 A lot of them did actually and to respond in full to the
23 eleven interrogatories and eight document requests we served.

24 Others, Your Honor, we went through the proof of
25 claim form and they told us they had nothing further to add.

1 And they were in those few open window states, if you will,
2 with regard to the statute of limitation. And so we said, so
3 long as you're affirming that this is the information that
4 this is the information that you have to support your claim,
5 we will accept that representation.

6 And, again, so long as they weren't in a discovery
7 rule statute of limitation state, which is different than the
8 open window states as the court knows, we were satisfied that
9 the proofs of claim forms and the information support
10 supplied met the obligation that we thought we needed them to
11 meet. So we were able to resolve those.

12 So it was as bit of a mix bag, Your Honor. But it
13 did take place over a period of weeks and, as I said, we're
14 pleased that we were able to resolve with regard to ninety-
15 four of the claimants. None of the claimants, whom we
16 resolved, said this discovery is crazy and you shouldn't have
17 the right to propound it or anything like that. We were able
18 to work through the substance, if you will, of the discovery
19 dispute.

20 And, again, they either said yes, we will
21 supplement what we provided or this is all that we have and
22 we don't have anything more to add and we're not in a
23 discovery rule state. So that was the nature of the
24 resolution, Judge.

25 THE COURT: Thank you.

1 MR. RUGGERI: Your Honor, we submitted three
2 declarations in support of our motion. I would like to admit
3 them into evidence or move to have them admitted into
4 evidence at this time.

5 The first one was a declaration of Joshua Weinberg
6 and that's found at the docket at Number 1972-5. Mr.
7 Weinberg offered a declaration that attached to it a number
8 of emails that we received from debtor's counsel. Those
9 exhibits, Your Honor, were filed under seal because they
10 contained claimant specific information. And we would move
11 the court to admit Mr. Weinberg's declaration into evidence.

12 THE COURT: Is there any objection?

13 (No verbal response)

14 MR. MOXLEY: Your Honor, this is Cameron Moxley on
15 behalf of the Coalition of Abused Scouts for Justice from the
16 law firm of Brown Rudnick.

17 Your Honor, it may be appropriate now for us to
18 make this objection, Your Honor, generally.

19 We would ask the court to actually give no weight
20 and to strike the declarations that were filed with the
21 insurer's reply submission.

22 There were no declarations filed, Judge, in
23 connection with the objection, so those declarations were
24 submitted in response to nothing. And some of them were
25 filed less than twenty-four hours before this hearing began.

1 Judge, we believe the approach that's been taken
2 with respect to these declarations, particularly the late
3 filed ones to the reply submission is a tactic that was
4 designed to not allow for meaningful consideration of
5 testimony and of examination of those witnesses.

6 And we would note that debtor's counsel
7 highlighted for the court at the beginning there is
8 tremendous ongoing constructive work in connection with the
9 mediation that the hope of which (indiscernible) plan. And
10 (indiscernible) tactics are a distraction.

11 So, Judge, I want to (indiscernible) outset as Mr.
12 Ruggeri noted going to go through the declaration but that's
13 our objection to the declarations that are submitted late in
14 connection with the reply.

15 Thank you, Your Honor.

16 THE COURT: Okay. Well, I'll deal with those when
17 I get to those declarations. But my question is, is there
18 any objection to the entry into evidence of the declaration
19 of Joshua Weinberg that was executed on January 21st of 2021?

20 (No verbal response)

21 THE COURT: Okay. I hear none. It's admitted
22 without objection.

23 (Declaration of Joshua Weinberg, received into
24 evidence)

25 MR. RUGGERI: Your Honor, the second declaration

1 I'd like to address is the declaration of Todd Mercier. Mr.
2 Mercier is a vice president of investigations at HUB
3 Engineering or HUB Enterprises, Inc. That's an investigation
4 firm that we have retained to help us review the proofs of
5 claims themselves. As I said, he is an assistant vice
6 president there.

7 This declaration also was filed timely and Mr.
8 Mercier, in connection with his deposition, provided the
9 results of his firm's investigation into twenty-one of the
10 claimants, as with the Weinberg exhibits, Your Honor.

11 We filed Mr. Mercier's exhibit under seal because
12 they also disclose and dealt with claimant specific
13 information.

14 We would move the court to admit the Mercier
15 declaration into evidence.

16 THE COURT: Is there any objection to the entry
17 into evidence of Mr. Mercier's declaration that was executed
18 on January 21st, 2021?

19 (No verbal response)

20 THE COURT: I hear none.

21 It's admitted without objection.

22 (Declaration of Todd Mercier, received into evidence)

23 THE COURT: And I didn't ask this question with
24 respect to Mr. Weinberg but I should have, and I'll ask it
25 for both Weinberg and Mercier. Is there going to be any

1 cross-examination of these witnesses?

2 (No verbal response)

3 THE COURT: I do not hear a request. Okay.

4 MR. RUGGERI: Thank you, Your Honor.

5 Your Honor, that brings us to the declaration of
6 Denise Neumann-Martin which also was timely submitted and can
7 be found at docket at Number 2007-1. Dr. Martin has a Ph.D.
8 from Harvard University and is a managing director with NERA
9 Economic Consulting which is a firm specializing in the
10 application of economics and statistics.

11 Your Honor, I think there's no doubt that Dr.
12 Martin is an expert. She is, but that's not why we submitted
13 her declaration in connection with our 2004 motion.

14 We did that to show the court how we identify the
15 1400 claimants on whom we seek to serve discovery. We're not
16 offering expert opinion testimony from Dr. Martin today on
17 any inferences or extrapolation from that group of 1400
18 claimants. She doesn't have the data. We don't have the
19 discovery yet from which she could do that.

20 The Coalition did ask us to make Dr. Martin
21 available for cross-examination. She is on the line but my
22 point today is this really isn't about Dr. Martin today.
23 Today is about our right as creditors and parties in interest
24 to take discovery, Rule 2004 discovery into the debtor's
25 principal liabilities which are the, obviously, the

1 underlying sex abuse claims.

2 I would proceed by, again, offering the
3 declaration of Dr. Martin into evidence and making her
4 available for cross-examination, if there is any.

5 THE COURT: Is there any objection to the entry
6 into evidence of the declaration of Dr. Martin which was
7 executed on January 22nd, 2021?

8 MR. MOXLEY: Your Honor, again, it's Cameron
9 Moxley from Brown Rudnick for the Coalition.

10 We have no objection to the admission into
11 evidence. We do request the opportunity today, Judge, to
12 question Dr. Martin.

13 THE COURT: Very good. You will have that
14 opportunity.

15 Is there anyone else who is going to want to
16 question Dr. Martin?

17 (No verbal response)

18 THE COURT: Okay. I hear no one else.

19 Mr. Ruggeri, in terms of your affirmative case,
20 other than the three declarations, is there any other
21 evidence that you're going to be presenting in support of the
22 motion?

23 MR. RUGGERI: There's not, Your Honor.

24 THE COURT: Okay. Then let's proceed with Dr.
25 Martin's testimony.

1 thirty years now.

2 Q And would you tell the court a little bit about what
3 NERA does and what you do there as a managing director?

4 A Sure. We're a firm of about 500 consulting economists
5 in offices around the world. We apply the tools of
6 statistics and microeconomics to problems that arise in
7 litigation in a bankruptcy.

8 Q Would you tell the court a little bit about your
9 education background, Dr. Martin?

10 A Yes, I have a Bachelors Degree in Economics from
11 Wellesley College and a Master's and a Ph.D. in Economics
12 from Harvard University.

13 Q And how about your education in the area of statistics,
14 specifically. Can you tell the court a little bit about
15 that?

16 A Sure. I followed a number of courses in statistics,
17 both undergraduate and graduate level. They include topics
18 (indiscernible) speaking such as probability theory and
19 hypothesis testing. Probability theory tells us likelihood
20 that events are going to occur by chance alone where, you
21 know, (indiscernible) of the coin flip. If I took a
22 (indiscernible) coin probability theory helps with
23 understanding what's the likelihood I'm going to get exactly
24 five heads.

25 And then hypothesis testing lets us go further than

1 that. It says, you know, how unlikely I'll receive certain
2 events. So if I had a no hypothesis, for example, that a
3 coin is fair so it's going to give sustain probability of
4 guessing ahead as in the tail. It's about the test. I can
5 slip that coin ten times and if I find I get nine heads, the
6 probability theory and hypothesis testing let me conclude
7 that I can reject the (indiscernible). That's not a fair
8 coin. It's disproportionately likely to give (indiscernible)
9 a head rather than a tail.

10 That's just a very basic example but that's the kind of
11 statistics that I have been trained in, in a (indiscernible)
12 deep level.

13 Q And, again, Dr. Martin, sticking with your background
14 have you ever taught any classes, coursework in the area of
15 statistics?

16 A Yes, after I completed my statistic training at
17 Harvard, I was a teaching fellow. There will be a full
18 professor who's teaching the main course and then I taught
19 weekly sections of statistics in one circumstance to Harvard
20 Business School students.

21 Q And the area of sample (indiscernible) is that an area
22 with which you're familiar, Dr. Martin?

23 A Sure that's another area that I received training in at
24 both undergraduate and graduate level. And it's something
25 that I use, techniques that I use routinely in my work at

1 NERA.

2 Q And in connection with your work in this case, we know
3 that you offered a declaration, correct?

4 A That's right.

5 Q And can you tell the court what was your assignment in
6 regard to the declaration?

7 A Sure. I had two assignments. The first was to design
8 and pull a sample of the abused claims that would allow
9 statistical inferences to be made at it's called a
10 subpopulation level. I was asked to look at six
11 subpopulations. And then at the level of the population as a
12 whole, so that was one assignment.

13 And another was to generate using a full database of
14 the abuse claims to generate certain statistics that have
15 been requested by counsel.

16 Q And with regard to the six populations, who provided
17 those subpopulations to you?

18 A They were provided to me by counsel. They were
19 subpopulations of particular interest to them and they asked
20 me to design a sample that would allow inferences to be made
21 about those subpopulations. And then they requested about
22 the population altogether.

23 Q Does the fact that counsel identified those
24 subpopulations, Dr. Martin, effect the integrity of the
25 sample that you drew?

1 A No, not at all. It's what's called a stratified sample
2 and it's used in cases when you want to investigate
3 particular subgroups of interest. Right, you have a
4 particular interest in understanding what the particular
5 characteristic would be in a subpopulation. And so, you
6 stratify your sample. You sample within these buckets for
7 strata to make sure you get enough, make sure you get enough
8 observations of each of the subsamples to be able to say
9 something statistically meaningful about those subsamples.

10 Q Now you drew claims for not only the six subpopulations
11 but for a seventh population too, correct?

12 A That's right.

13 Q And what was the seventh subpopulation or population,
14 depending on how you refer to it?

15 A I would call it all other. You had the sixth
16 population that counsel asked me to sample from. And then my
17 assignment was to be able to say something also about a
18 population as a whole. So I needed to sample from the
19 seventh subpopulation, those that are not any of the sixth,
20 to enable me to do that extrapolation.

21 Q And how many claims did you draw for each of the seven
22 populations?

23 A I drew two hundred claims within each of the
24 subpopulations.

25 Q And who arrived at the number two hundred for those

1 subpopulations?

2 A I did use those accepted statistical formulas. They let
3 us, that we conclude that pulling a sample of two hundred
4 claims from each of the subpopulations would allow me with 95
5 percent confidence to estimate proportion, for example, with
6 a margin of error of plus or minus 7 percent within the -- at
7 that most was my 7 percent was within the subpopulation. And
8 then to extrapolate up to a population as a whole that would
9 yield a margin of error at most plus or minus 4 percent.

10 THE COURT: I'm sorry, doctor, I didn't hear that
11 last part. It would be for the population as a whole, it's
12 what?

13 THE WITNESS: The margin of error would be plus or
14 minus 4 percent. I have more observations in the 1400 than I
15 do in the 200, so I put all of it together, I can estimate
16 margin of error that's smaller, estimated an estimate with a
17 smaller margin of error around it.

18 BY MR. RUGGERI:

19 Q Can you briefly tell the court how you went about
20 drawing the two hundred claims for each of the seven
21 subpopulations and the group that you considered to populate
22 those subpopulations?

23 A Sure. And, again, I don't know if they'll let you go
24 through each of the six subpopulations, but maybe that would
25 help the explanation.

1 The first subpopulation was claimants who alleged
2 abuse, at least, one year of abuse in the period from 1971 to
3 1975. So we identified all those -- again, relying on the
4 omni database which is the database that comes from the proof
5 of claims. And so, we identified all claims that identified,
6 at least, one year of abuse in that four-year, five-year
7 period. We sorted them randomly and then we picked the first
8 two hundred, so that was our first subsample was from that,
9 that subpopulation.

10 Then we moved onto the next subpopulation which had no
11 scouting affiliation. Again, that came right from the new
12 database. There's a scout affiliation field. But we looked
13 for cases with that with zero.

14 And we also, though, before pulling that sample, we
15 made sure those there was no scouting affiliation. We're not
16 also in the first subpopulation.

17 One of the things that's important for extrapolation is
18 that the sample be mutually exclusive. So I want to make
19 sure there's no overlap between the different subsamples. So
20 my second subsample was two hundred claims from those who did
21 not indicate any scouting affiliation, that were not also in
22 the first group, and I've seen seventy-one to seventy-five.

23 And then I really just proceeded from there. You know,
24 we also pulled two hundred in some claimants who provided no
25 indication of identifying their abuser from claimants who did

1 not allege any physical abuse and claimants who did allege
2 any impact associated with the alleged abuse. And then,
3 finally, from claimants who had sought counseling.

4 Q Dr. Martin, in your declaration you don't share any
5 inferences or extrapolations that you've made from the sample
6 you designed and drawn. Why not?

7 A We haven't gotten there yet, right? All I've done so
8 far is draw sample, and I've drawn it so that it will enable
9 me to make (indiscernible) inferences at the subpopulation
10 level and the full population level. But to do that, we have
11 to get the additional discovery data, get the assignment of
12 what we're trying to classify, characterize, and then we'll
13 get estimates. And then we can extrapolate those estimates
14 to the populations.

15 Q Thank you, Dr. Martin.

16 MR. RUGGERI: Your Honor, that's all I have for
17 the direct.

18 THE COURT: Thank you.

19 Mr. Moxley, cross.

20 MR. MOXLEY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MOXLEY:

23 Q Good morning, Dr. Martin.

24 A I'm trying to find you. Okay. I got you right here.

25 Q Can you see me now, doctor?

1 A I can. Thank you.

2 Q Terrific. Great.

3 Dr. Martin, my name is Cameron Moxley. I'm from the
4 law firm of Brown Rudnick on behalf of the Coalition of Abuse
5 Scouts for Justice.

6 Dr. Martin, you talked about your curriculum vitae as
7 well that you have a Ph.D. and a master's degree from Harvard
8 in economics and a Bachelors Degree in economics and
9 (indiscernible), correct?

10 A That's right.

11 Q Dr. Martin, are you a medical doctor?

12 A I'm not.

13 Q Are you a psychologist?

14 A I'm not.

15 Q Do you have any degrees in psychology, Dr. Martin?

16 A I do not.

17 Q In a professional capacity, have you ever treated a
18 victim of sexual abuse?

19 A No.

20 Q In a professional capacity, have you ever counseled a
21 victim of sexual abuse?

22 A No.

23 Q Dr. Martin, have you published any articles on sexual
24 abuse?

25 A I have not.

1 Q Has anyone assisting you at NERA on this engagement
2 published any articles on sexual abuse?

3 A No, I don't believe so.

4 Q Dr. Martin, do you know anyone has published articles
5 on sexual abuse?

6 A I'm sorry; excuse me?

7 Q Dr. Martin, the question was do you know anyone who has
8 published articles on sexual abuse?

9 A I don't think so.

10 Q Have you read any qualitative studies regarding
11 childhood sexual abuse?

12 A Yeah, I worked on the case alleging abuse in the
13 Catholic Church and so I may have, at that time, read some
14 studies, although I'm not like following any particular ones
15 sitting here today.

16 Q Is there any study that you could name that you've read
17 about childhood sexual abuse?

18 A No.

19 Q Dr. Martin, can you name any journals that frequently
20 publish articles involving childhood sexual abuse?

21 A No, not offhand I can't.

22 Q Dr. Martin, you're aware of the categories of sexual
23 abuse that are identified on the claim forms in this matter,
24 correct?

25 A Of the physical abuse categories, yes.

1 Q Okay. Are you aware, Dr. Martin how the term sexual
2 abuse is defined in literature discussing sexual abuse
3 issues?

4 A (indiscernible) differently than in the clinical claim
5 forms, no I don't have information about that.

6 Q Are you familiar with an organization called Child USA?

7 A I don't believe so, no.

8 Q Are you familiar, Dr. Martin, with any think tank that
9 studied childhood sexual abuse?

10 A Again, I may have seen articles from that kind of
11 organization in my work with abuse claims in the Catholic
12 Church but I don't remember a particular one sitting here.

13 Q Dr. Martin, are you familiar with studies on delay
14 disclosure in the sexual abuse context?

15 A Not in a professional capacity, no.

16 Q Okay. Do you know what the -- strike that.

17 Do you know what delay disclosure means in the sexual
18 abuse context?

19 A Again, my lay understanding would be that disclosures,
20 you know, sometime after the alleged abuse occurred.

21 Q Do you know if the delayed disclosure is common among
22 sexual abuse survivors?

23 A Again, I may have seen statistics on that but I'm not
24 surely not using them for the purposes of the affidavit that
25 I have prepared for the court and for purposes of drawing the

1 sample which relies on my expertise as a statistician solely.

2 Q Are you familiar, Dr. Martin, any estimates of the
3 percentage of child sexual abuse victims is not
4 (indiscernible) that child sexual abuse that they experienced
5 before adulthood?

6 A I missed a couple of words --

7 MR. RUGGERI: Objection, Your Honor.

8 Your Honor, beyond the scope in relevance.

9 As I said, we're not talking about inferences and
10 extrapolation today. We're actually talking about the
11 assignment that she performed.

12 THE COURT: I'm going to permit the questions. I
13 think, Mr. Moxley, you're making your point so I don't know
14 how many more questions along these lines you have, but I
15 think it's fair to explore her background relative to sexual
16 abuse, given that that's what the proofs of claim involve.

17 MR. MOXLEY: And, Judge, I will keep these
18 questions as brief as possible.

19 THE COURT: Okay.

20 BY MR. MOXLEY:

21 Q Dr. Martin, the question, just to repeat again, was I
22 think you said you didn't hear me, so let me just ask the
23 question again, if I could.

24 Are you familiar with any estimate of the percentage of
25 child sexual abuse victims who purposely (indiscernible)

1 disclose the child sexual abuse they experienced before
2 adulthood?

3 A Again, I may have seen those statistics, but I'm not --
4 I don't know them sitting here today and I'm not using that
5 for purposes of preparing the affidavit. I don't need to use
6 them for purposes of preparing the affidavit.

7 Q Do you know the average age of a victim of child sexual
8 abuse at the time that victim first reports the abuse?

9 A I don't.

10 Q Dr. Martin, do you know the percentage of child sexual
11 abuse that goes unreported altogether based on U.S.
12 Department of Justice data?

13 A I'm not familiar with that statistic, no.

14 Q Do you know, Dr. Martin, if most sexual abuse survivors
15 typically disclose the abuse they suffered all at once or
16 overtime?

17 A Again, I'm not familiar with that.

18 Q Dr. Martin, when child sexual abuse is detected during
19 the victim's childhood, what the study shows the most likely
20 manner of protection?

21 A I don't know the answer to that. Again, it's not
22 necessary for the report that I'm submitting to the court
23 here.

24 Q Dr. Martin, are you aware of whether child sexual abuse
25 experts generally believe that even when reports are delayed

1 or are inconsistent that we should not consider them to be
2 unreliable?

3 A I'm sorry. You're a little muffled.

4 Q Dr. Martin, can you hear me better now?

5 A Uh-huh.

6 Q Okay. Are you aware of whether child sexual abuse
7 experts generally believe that even when reports are delayed
8 or inconsistent, we should not consider them to be
9 unreliable?

10 A Again, I'm not familiar with that one way or the other.

11 Q Do you know, Dr. Martin, if child sexual abuse experts
12 generally expect new disclosures of child sexual abuse from
13 senior citizens in light of attitudinal shifts in society
14 over the last two generations?

15 A I am not familiar with that one way or the other.

16 Q And do you know, Dr. Martin, what empirical evidence
17 demonstrates with respect to the likelihood of people to
18 engage in harmful behavior such as criminal activity the
19 person that's sexually abused as a child?

20 A No, I don't. And, again, this is not -- that's not my
21 area of expertise. It's not the area of expertise that I
22 have used to design and pull the sample of these claimants
23 which is a purely statistical exercise in my statistical
24 expertise.

25 Q Do you consider yourself to be an expert in child

1 sexual abuse claims?

2 A In the sense that I am able to and have draw a sample
3 of claims in each of these populations that will allow me to
4 make statistical inferences about the proportion of those
5 claimants that satisfy some criteria, for example, in
6 (indiscernible) with statistical precision.

7 Q Dr. Martin, you recall that last week I had the
8 opportunity to take your deposition, do you recall that?

9 A Yes.

10 Q You recall, Dr. Martin, I asked you whether or not if
11 you were to replace on the claim form the different
12 categories of sexual abuse with what is the claimant's
13 favorite color. And if you were asked to analyze that data
14 would you bring anything different to bear to your analysis.
15 Do you recall I asked you that question?

16 A I do recall that, yes.

17 Q And what was your response, if you recall?

18 A That it's functionally equivalent. It really doesn't
19 matter what the subject area is. What the expertise I am
20 bringing is how to draw a sample such that whatever the
21 population that they're already studying it's large enough
22 that I can draw statistically significant inferences about
23 population characteristics.

24 Q You're not bringing or purporting to bring any
25 expertise of your own with respect to sexual abuse claimants

1 to the statistical analysis by your undertaking, is that
2 right?

3 A That's right. Again, it's not necessary for me to, you
4 know, pull the sample and then analyze the information from
5 the sample when we get there and extrapolate up to the
6 population. Those are really relying on the kinds of
7 statistical techniques that I was talking about when Mr.
8 Ruggeri was asking me questions.

9 Q Dr. Martin, in your declaration you cited to two
10 specific sources, one of which was the reference manual on
11 scientific evidence. And specifically, in that manual, the
12 chapter that was entitled, "Reference to (indiscernible)
13 Statistics," is that correct?

14 A Yes.

15 Q And we look at that reference guide at your deposition
16 and do you recall that when we looked at that guide at page
17 241 discuss the step of developing statistical model. And
18 the reference guide discussed the need for the model to
19 "suit" the occasion in order to allow for inferences to be
20 drawn. Do you recall that?

21 A I don't recall that specifically, but I'll take your
22 word for it.

23 Q Well, let's take a look at your deposition transcript
24 which I think you have in front of you.

25 MR. MOXLEY: And for the record, Your Honor, the

1 transcript is Exhibit 10 to the supplement to objection.

2 BY MR. MOXLEY:

3 Q Do you have your transcript in front of you from the
4 deposition?

5 A I do, yes.

6 Q Okay. Let's look at page 71 of that transcript. Are
7 you able to flip there with me? We don't have the ability
8 today, Dr. Martin, to bring it on the screen. If you can
9 look at the hard copy in front of you.

10 A I (indiscernible). I have a (indiscernible) from
11 (indiscernible).

12 Q Okay. Great. Great.

13 Dr. Martin, if you look at page 71 of your transcript,
14 line 17, you'll see there's a question that begins couple of
15 steps down, do you see that?

16 A Yes.

17 Q And I asked you a couple of stepdown, there's a bullet
18 for "Developing Statistical Model," and it describes the need
19 for statistical models that "suit the occasion and allow for
20 inferences actually to be drawn from the sample," is that
21 right? And your answer was, "yes," correct?

22 A Right, exactly.

23 Q So you're bringing nothing different to bear here then
24 if you were analyzing the claimant's favorite colors, right?

25 A The statistical model here is both allows me to

1 estimate a proportion, for example, of each subsample and to
2 estimate that such that I know what the margin of error is
3 around that. And also, statistical model lets me know that I
4 can extrapolate that out to the population as a whole. And,
5 again, put a margin of error around that so that the model
6 that I'm proposing to use here or that I referenced is a
7 statistical model, right. And that I aptly have expertise in
8 that area all the time.

9 Q But areas so just to confront has any subject matter
10 expertise, subject matter expertise in child sexual abuse
11 conformed your work in the case so far?

12 A No, again, that's not my area of expertise. My area of
13 expertise is statistics and economics.

14 Q Now in that reference guide, Dr. Martin, that we looked
15 at, at your deposition, we looked at that guide which stated
16 that cases involving statistical evidence frequently are or
17 should be two expert cases of interlocking testimony with one
18 of those two experts being an expert of the subject matter
19 expertise, correct?

20 A I remember looking at that, yes.

21 Q Dr. Martin, are you familiar with using benchmarks in
22 statistical analyses?

23 A Again, I know we also talked about this at my
24 deposition; yes, I'm aware of that, that can occur.

25 Q Do you recall that when I first asked you about that at

1 your deposition, your first response was I'm not sure what
2 you mean by that, right?

3 A I just wanted to make sure we were talking about the
4 same thing, clarifying your question.

5 Q And, Dr. Martin, after pointing you to the discussion
6 of the importance of using appropriate benchmarks in
7 presenting the results of statistical analyses from the
8 reference guide that you cited in your declaration, you
9 testified at the deposition that using benchmarks was a
10 technique that you had seen used when you compare results
11 generated. Do you recall that?

12 A Yes.

13 Q And as of last week at your deposition, Dr. Martin, you
14 had not yet determined one way or the other whether you would
15 use benchmarks in your analyses here, correct?

16 A I don't know what the questions are yet, right. What I
17 was asked to do so far is draw a sample and draw a sample
18 that would allow me to make, again, statistical inferences,
19 draw statistical inference about the subpopulation and the
20 population as a whole with statistical precision. Now I
21 can't possibly think about benchmarks or any other aspects of
22 the assignment until I know more detail about what that
23 assignment is.

24 What I can do is draw a sample and tell you this sample
25 is big enough that I can reach conclusions about

1 subpopulations and the populations as a whole and do it with
2 a -- and tell the court the margin of error around my
3 estimates. But until I know what, you know, counsel wants me
4 to estimate I can't possibly go further than that in my
5 explanation.

6 Q Dr. Martin, counsel, as you testified, selected the
7 first six subcategories that are identified in your
8 declaration, correct?

9 A Counsel selected those -- they asked me to investigate
10 those, yeah.

11 Q And who asked you to draw the seven, the seventh
12 category that you drew?

13 A They didn't ask me to draw that, but the assignment was
14 to be able to say something in a statistical sense about each
15 of those six subpopulations and then also about the
16 population as a whole. And so, without that seventh subgroup
17 which I determined we should sample, we'd be missing a
18 portion of the population. So it would not be possible to
19 extrapolate up to the full population.

20 Q And the only reason, Dr. Martin, that you are analyzing
21 the sixth, the first six subpopulations is because counsel
22 asked you to do that, correct?

23 A I'm not sure what the only reason -- the only means in
24 that sentence. Yes, my assignment was to develop a sample
25 that would allow an investigation of those six subpopulations

1 and the population as a whole.

2 Q Is there any reason other than that counsel asked you
3 to analyze those six subcategories that you picked those
4 subcategories?

5 A No, again, I didn't pick them. Counsel picked them. I
6 was asked just to provide a sample doing that instruction.

7 Q Dr. Martin, is it customary in your work for the
8 attorney to define the categories of statistical analysis?

9 A Sure. It can be, right. With (indiscernible) sampling
10 does is it lets you investigate subpopulations, right. You
11 have to know what the subpopulation of interests are. And,
12 here, they indicated that the subpopulations were the six
13 that we went through before.

14 Q Did Hartford counsel explain to you why those six
15 categories were chosen?

16 A Not in any detail, no.

17 Q What generally did they tell you?

18 MR. RUGGERI: Your Honor, that goes beyond the
19 scope of permissible inquiry into conversations between a
20 witness and counsel.

21 MR. MOXLEY: But, Your Honor -- I'm sorry, Judge.

22 THE COURT: Go ahead.

23 MR. MOXLEY: Thank you, Your Honor.

24 Your Honor, Rule 26 and I could point the court to
25 the subsection 26(b)(4)(c)(2) and (3) provide that

1 communications between the party's attorney and an expert
2 witness are only protected except when the communication
3 identifies facts or data the party's attorney provided and
4 that the expert consider in forming the opinions to be
5 expressed; or identify assumptions that the party's attorney
6 provided and the expert relied on in forming the opinion to
7 be expressed.

8 Dr. Martin has unequivocally testified both today
9 and at deposition that the only reason she is analyzing the
10 six subcategories identified in her declaration is because
11 counsel asked her to do that.

12 So I think, Judge, we're entitled to discover what
13 Dr. Martin was told by counsel in connection with the facts
14 or data to be considered in analyzing those six subcategories
15 or what assumptions they asked her to make.

16 MR. RUGGERI: And, Your Honor, the rule is very
17 careful. It allows counsel to ask about the assumptions that
18 the expert was requested to make. It does not allow you to
19 get asked that issue. That would throw the privilege out the
20 window, Your Honor.

21 Dr. Martin has said what assumptions that she was
22 asked to take into account and the assumptions that she
23 relied on and that's the scope in a permissible inquiry under
24 Rule 26, Your Honor.

25 MR. MOXLEY: Your Honor, if I may, that is the

1 very question I just asked Dr. Martin there was an objection
2 interposed.

3 My question and I'll rephrase it if counsel would
4 like and if the court would like, but my question to Dr.
5 Martin is simply what did counsel tell Dr. Martin as to
6 assumptions she should make or facts or data she should
7 consider in connection with those six subcategories. We want
8 to understand what her understanding is from counsel as to
9 why those six subcategories are the ones she should be
10 analyzing.

11 MR. RUGGERI: Your Honor, I have no objection to
12 the question as rephrased which is different than the one he
13 asked.

14 THE COURT: Yes, let's go with the rephrased
15 question and why don't you repeat it for Dr. Martin.

16 MR. MOXLEY: Of course. Thank you, Your Honor.

17 BY MR. MOXLEY:

18 Q Dr. Martin, the question is -- strike that.

19 The question, Dr. Martin, is you've testified that the
20 six subcategories are categories that were identified by
21 counsel. My question is what assumption were you asked to
22 make about those six subcategories and what facts or data did
23 counsel tell you about why they were asking you to analyze
24 those six subcategories?

25 MR. RUGGERI: The why question, Your Honor, he

1 tagged it onto the end again, that's the problem that he gets
2 invading the privilege, Your Honor.

3 THE COURT: Let's not ask a compound question,
4 first of all. Let's just ask her the pieces of it so that we
5 can make sure it's within the bound.

6 BY MR. MOXLEY:

7 Q Dr. Martin, what assumptions were you asked to make by
8 counsel with respect to the six subcategories that are
9 identified in paragraph five of your declaration?

10 A No assumption at all.

11 Q Okay. What facts were you told by counsel with respect
12 to those six subcategories?

13 A The only fact I can think of is that 1971 to 1975 is
14 the period of the Hartford coverage insurance lock.

15 Q Do you recall any other facts that you were told by
16 counsel?

17 A I don't believe so, no.

18 Q What data, if any, did counsel provide you with respect
19 to those subcategories that are identified in your
20 declaration?

21 A I was provided with -- I guess we downloaded the omni
22 database which is, you know, the proof of claims information.
23 And I think I explained earlier about the -- mostly just took
24 -- mostly subcategories are only in that database. I had a
25 couple of cases. We had to do additional sort of filtering

1 or refining to parsing to populate to know which claimants
2 fell into each of the subcategories.

3 Q Dr. Martin, how did you communicate with Hartford's
4 counsel regarding the identification of the six
5 subcategories?

6 MR. RUGGERI: Objection to form. I don't
7 understand the question, but to the extent it invades
8 privilege, I object on that ground.

9 MR. MOXLEY: I'll clarify the question.

10 BY MR. MOXLEY:

11 Q Dr. Martin, by what method, meaning telephone, email,
12 text messages, other methods, did you utilize in
13 communicating with Hartford's counsel about the six
14 subcategories you were asked to analyze?

15 A It probably was in both emails at time and phone calls
16 at times. I certainly, for example, submitted a draft of our
17 -- sample draft of my affidavit which talks about those six
18 subpopulations. And I would invite (indiscernible) to talk
19 on the phone, yeah.

20 Q And, Dr. Martin, I believe at your deposition we talked
21 a little bit about the fact that (indiscernible) or assisted
22 in making a document production in connection with this
23 matter, correct?

24 A Yes.

25 Q Did you produce any of the emails with counsel about

1 the facts or assumptions that you were provided by counsel
2 with respect to the sixth subcategories that are identified
3 in paragraph five of your declaration?

4 A Again, there are no -- I was asked not make no
5 assumptions about those. There wouldn't be any emails or
6 phone calls about assumptions I was asked to make. The only
7 facts I can think of is the '71 to '75 coverage block. And I
8 don't believe that would have been the subject of an email
9 either.

10 Q Dr. Martin, if the insurers get the discovery they seek
11 in the motion, will you be able to tell the court if 96,000
12 sexual abuse claims are valid or not?

13 MR. RUGGERI: Objection; calls for speculation,
14 Your Honor. We're not there yet.

15 THE COURT: Overruled. Let her answer the
16 question.

17 BY MR. MOXLEY:

18 A Again, my area of expertise is not in sexual abuse, not
19 particularly, and it would be up to the court to decide, you
20 know, at the end whether claims are valid or not.

21 What I will be able to tell the court is whether these
22 subpopulations or that they share certain characteristics,
23 and I can say that, I can measure that with statistical
24 precision. I can measure that with, you know, margin of
25 error between 4 and 7 percent.

1 And then, you know, I leave it to counsel and the court
2 to decide whether that means they're valid or invalid. I
3 don't have any opinion about that. I have statistical
4 opinion.

5 Q Dr. Martin, in your declaration at paragraph five, it's
6 for the court's benefit and for the record is, is at Docket
7 Number 1972-6. Dr. Martin, you state at paragraph five the
8 sample you have drawn, "would be a sufficient size to allow
9 statistically significant inferences to be drawn about
10 population parameters," correct?

11 A Yes.

12 Q What is a statistically significant inference?

13 A The one that's likely to be issued here is I can
14 estimate for each subpopulation what proportion of the
15 population has some characteristic. And I don't know if
16 those characteristics are going to be yet. But I can
17 estimate that using the two hundred claim sample.

18 And then suppose I find it 50 percent what statistics
19 lets me tell you is that that's my best estimate of what it
20 is for the population or the subpopulation that 50 percent
21 share that characteristic. And there's a margin of error
22 around that in the subpopulation of plus or minus 7 percent.
23 So go from 43 percent up to 57 percent.

24 And then -- yeah, so I'm 95 percent confident that if I
25 pulled another two hundred claims, different two hundred, my

1 result would fall in that same band. My result would fall
2 between 43 percent and 57 percent. And then when I get to
3 the population as a whole, if I extrapolate up, and I'll
4 develop an estimate for the population as a whole, so that's
5 50 percent. What I can tell the court is that that's my best
6 estimate.

7 And if I redid the whole exercise again, that would
8 range from 46 percent up to 54 percent. So I can tell the
9 court what proportions are and how confident I am that I have
10 measured them accurately and what the margin of error is
11 around those.

12 Q And with respect to what you'll be able to share with
13 the court as you just described it, will that allow the court
14 from reading your explanation of inferences you're able to
15 draw, will that allow the court to determine whether even a
16 single one of these proofs of claim is valid or not?

17 A Again, I don't know what the --

18 MR. RUGGERI: Objection to form. He's asking the
19 witness what the court is going to do with the information
20 and I think that's not appropriate.

21 THE COURT: Sustained. The way the question was
22 phrased.

23 BY MR. MOXLEY:

24 A Dr. Martin, in presenting your statistically
25 significant inferences at the end of your analysis, do you

1 intend to provide opinion as to whether or not any particular
2 proof of claim is valid or not?

3 A No, first of all, it's not going to my opinion.

4 Generally, I'm not a determiner of validity. What I am
5 determiner of is which claimant share -- what proportion of
6 claimants share a piece of that characteristic.

7 (indiscernible) looking at any individual claimant saying
8 that claimant has or doesn't have the characteristic. But
9 it's saying in this population as a whole what proportion of
10 claimants do I expect statistically would share this
11 characteristic and how sure am I that that's the right
12 number.

13 Q Dr. Martin, just to confirm you don't have, as you sit
14 here today, a statistical model yet, correct?

15 A I know we spent a long time on this in the deposition
16 and I haven't generated for the court yet an estimate of
17 population parameters because I haven't been asked to do that
18 yet. We haven't gotten the discovery information yet. We
19 haven't done any additional analysis yet.

20 What I have done is design the sample so that when that
21 work is done (indiscernible) the kind of extrapolation that I
22 was referencing earlier.

23 Q Dr. Martin, to try to be as efficient as possible, let
24 me just go through and list what your six subcategories are,
25 just so that we're all talking about the same thing. These

1 are in paragraph five of your declaration.

2 The six subcategories are: allege abuse in 1971 to
3 1975; no scouting affiliation; no abuser identification; no
4 physical abuse alleged; sought counseling; no impact alleged;
5 is that correct?

6 A Yeah.

7 Q Okay. Is it fair then to say, Dr. Martin, there are
8 potentially six subcategories that you're analyzing where the
9 proof of claim is perceived to be deficient in some way,
10 (indiscernible) identify information of any given category;
11 is that fair?

12 A Again, I'm not making any assumptions about that. I
13 don't have any opinion about that. All I was asked to do is
14 sample from those subcategories.

15 Q Your seventh category was pulled from a pool of proofs
16 of claim that didn't fall into any of the six subcategories,
17 correct?

18 A That's right.

19 Q In your deposition I asked you if you knew what the
20 size of that pool from which that seventh category was drawn.
21 And I can point you to your testimony, but you didn't know
22 specifically what the number was. I asked you if you would
23 estimate it at tens of thousand and you said you thought it
24 was probably around there. Do you recall that?

25 A Yes.

1 Q Is that still your view that it was probably around
2 tens of thousands of proofs of claim that the two hundred in
3 the seventh category were pulled from?

4 A Actually, since you asked that question, I went back
5 and looked and it's about 30,000 claims in that seventh
6 category.

7 Q Dr. Martin, in all of your conversations with counsel,
8 did you have any idea what you are actually going to be
9 analyzing or are you just right now looking at the sample and
10 pulling the sample?

11 A Just right now looking at the sample and pulling the
12 sample.

13 Q Dr. Martin, how does including the two hundred claims
14 from that seventh category that don't fall into the first
15 six, how will that effect the way you may develop your
16 statistical model?

17 A Again, if I were asked to extrapolate up, we could
18 investigate the same population characteristics of
19 (indiscernible), each of the seven subpopulations and then
20 because I have that seventh one, I would be able to compare
21 it, compare with those who share none of this six to ones
22 that do and/or extrapolate up to the population as a whole.
23 But having that seventh bucket lets me say something about
24 those (indiscernible) populations; if I'm asked to do that.

25 Q As you sit here today, do you know if you will be asked

1 to do that?

2 A I don't know.

3 Q Something about the (indiscernible)?

4 A I don't know. My assignment was to allow that to be
5 done, so I think may be asked to do that, but I haven't been
6 given any additional information about my assignment other
7 than to design a statistically valid sample.

8 Q Dr. Martin, there's some overlap among six
9 subcategories meaning that some proofs of claim fall within
10 multiple subcategories, right?

11 A Yes.

12 Q And you acknowledged that in paragraph five and six of
13 your declaration, correct?

14 A Yes.

15 Q How much overlap is there? Are you able to determine
16 that?

17 A Sure. You can filter the database and, you know, have
18 it see how often its one, for example, allege abuse in the
19 1971, '75 period and no scouting affiliations.

20 Q You referenced earlier about how you may be able to use
21 that seventh subcategory to extrapolate up about and draw
22 inferences about the total population in the omni database.
23 How would you do that? Can you explain that?

24 A It's not may. I mean if you wanted to extrapolate up
25 to the full population, you would need to use all of the

1 subpopulation. That's what we're doing. And (indiscernible)
2 talk you through the formula that is used.

3 First, we're going to get the estimate for each of the
4 subpopulations or whatever characteristic we're interested
5 in. From that, we can calculate the variance for each of the
6 subpopulations, you know, how tightly we're measuring that,
7 that estimate in the subsample.

8 And then what extrapolation is, is taking those, you
9 know, different sample estimates and variances and putting
10 them together (indiscernible) the population as a whole.
11 That involves adjusting for the weak (ph) of each
12 subpopulation. So the weak is the number of claims in the
13 subsample, divided by the total population of claims -- I'm
14 sorry; total population. So the number of claims in the
15 population that's been sampled to have that characteristic
16 divided by the total amount of the claim. That's the weak
17 and that's a factor that goes into extrapolation.

18 And then also the likelihood of the selection. So the
19 two hundred, I'm selecting two hundred for each bucket, at
20 each of the strata. And then you divide that by the total
21 number in the subpopulation as a whole. So both of those get
22 -- multiplied by the variance and then that allows us to
23 estimate the -- sample estimate and the margin of error
24 around it for the population as a whole.

25 Q Dr. Martin, do you have any understanding as to why

1 each of the six subcategories that you're analyzing are part
2 of your analysis?

3 A I think we went through this earlier and I was not
4 given any explanation of the particular buckets. And I can
5 (indiscernible) that the '71 to '75 wanted -- I know that's a
6 Hartford period so I could understand that being a
7 subcategory. I don't know the reasons why they elected to --
8 I mean I can speculate, but I wasn't given any information
9 about the reason that they asked for the other five
10 categories.

11 Q In connection with the analysis that you will undertake
12 and that you (indiscernible), Dr. Martin, have you ever
13 considered talking to a claimant in this case about the abuse
14 they suffered as a child?

15 A Again, it's not for purposes of selecting statistically
16 representative sample. I mean that's what I've been asked to
17 do so far. I've been asked to generate sample that were
18 going to allow me to make inferences about population --
19 about quantitative metrics, right, about population
20 parameters. But you don't need to talk to anybody,
21 (indiscernible) talk to a claimant to be able to do that.
22 That's just -- it's just statistics.

23 Q And what about excess of drawing inferences about the
24 population from the sample in connection with that next step,
25 have you ever considered talking to a claimant in this case

1 about the abuse they suffered as a child?

2 A Again, I haven't been asked to do anything else yet, so
3 I really don't know what the assignment would be and I have
4 to know what that is before I can talk about what I might do
5 or never did.

6 Q I appreciate that, Dr. Martin. My question is a little
7 bit different. My question is have you ever considered --
8 you're the expert undertaking this analysis -- have you ever
9 considered talking to a claimant in this case about the abuse
10 they suffered as a child?

11 MR. RUGGERI: Your Honor, I object. Yeah, asked
12 and answered. We're well beyond the scope. She said she
13 hasn't been asked to take on any additional assignments.

14 THE COURT: Sustained.

15 MR. MOXLEY: If I might just be heard briefly.

16 Your Honor, Dr. Martin has -- Dr. Martin's
17 declaration submitted. According to the brief that was
18 submitted by the insurers specifically for the purpose of
19 being able to draw statistical inferences from a sample of
20 claimants if they get the discovery they're seeking.

21 My question is to understand if Dr. Martin
22 actually would find it useful to hear from a claimant. And I
23 think that goes to the heart of whether or not her analysis
24 will provide anything useful to the court.

25 I can rephrase the question if the court would

1 like.

2 THE COURT: I think it's asked and answered. She
3 hasn't gotten to the next step yet.

4 MR. MOXLEY: Thank you, Your Honor.

5 BY MR. MOXLEY:

6 Q Dr. Martin, in thinking about the statistical analysis
7 that you say in your declaration that you will be able to
8 undertake having drawn these samples, would anything that a
9 claimant in this case might have to say affect your analysis?

10 MR. RUGGERI: Same objection, Your Honor. Not
11 there yet.

12 MR. MOXLEY: Judge, respectfully, the purpose of
13 the declaration, you can look at the brief, was saying that
14 this discovery will allow inferences to be drawn. I'm asking
15 the expert will the discovery allow her to draw inferences.

16 THE COURT: Isn't that an argument? Isn't this
17 part of your argument?

18 MR. MOXLEY: I apologize, Your Honor. I was just
19 responding to Mr. Ruggeri's objection stating the basis for
20 the question.

21 THE COURT: Well, no, I understand that. But
22 isn't that part of your argument? I mean I think you're
23 trying to make your argument through your questions but I'm
24 going to sustain the objection. You can argue what you want
25 to argue with respect to that.

1 MR. MOXLEY: Thank you, Your Honor.

2 Dr. Martin, thank you very much for your time
3 today. I have no further questions.

4 THE COURT: Thank you.

5 Any redirect?

6 MR. RUGGERI: Your Honor, very briefly.

7 REDIRECT EXAMINATION

8 BY MR. RUGGERI:

9 Q Dr. Martin, as a statistician was expertise in the area
10 of sexual abuse claims needed for the assignment that you
11 performed for me?

12 A No. It's just purely statistical exercise.

13 Q And can you elaborate what you mean by that and explain
14 to the court a little bit more why this subject matter
15 expertise was not necessary for the assignment that you
16 performed?

17 A All I know from the perspective of statistics about a
18 sample to, you know, pull one effectively, one that will
19 allow me to make statistical inferences is information about
20 the size of -- the identity of the subcategories, the size of
21 the subcategories, the level of precision that I want to have
22 attend to the results, the margin of error that I'm willing
23 to tolerate essentially.

24 And then it's -- they're just statistical formulas,
25 right. You plug the information into the formulas and it

1 spits out an end. In this case, the end was like a 196. We
2 rounded it out to two hundred. It doesn't matter to the
3 formulas whether you're talking about, you know, sexual abuse
4 claims or asbestos claims. I've done a (indiscernible) where
5 I've used a lot of statistical sampling is asbestos personal
6 injury claim, right. And I'm not a subject matter expert in
7 asbestos. You know, I'm not a medical doctor, but I can pull
8 a representative sample of asbestos personal injury claims
9 for additional investigation.

10 And I've done that, you know, throughout the last
11 probably fifteen years in my working there. So it's not about
12 the subject. It's really about having the expertise in
13 statistics to design the sample properly.

14 Q You anticipated my next question.

15 MR. RUGGERI: And that's all I have, Your Honor,
16 for redirect.

17 THE COURT: Thank you.

18 Thank you, Dr. Martin. You're excused.

19 (Witness excused)

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 Mr. Ruggeri.

23 MR. RUGGERI: Yes, Your Honor, that completes the
24 evidentiary portion of our presentation. I think we're at
25 the point of counsel making arguments.

1 THE COURT: Okay.

2 MR. RUGGERI: May I proceed?

3 THE COURT: You may.

4 MR. RUGGERI: Your Honor, and thank you for the
5 time that you gave us this morning to present the evidentiary
6 record that we sought to present.

7 We have a problem in this case, and I think we all
8 know that there's a problem. And I think the problem starts
9 with the numbers.

10 Prior to the date the petition was filed on
11 February 18th, 2020, Boy Scouts which was a long-time tort
12 defendant have been named in a grand total of 275 lawsuits,
13 and they told us it was aware of another 1400 claims. And
14 that was after decades in the tort system. And that was as
15 of February 18th, 2020.

16 Then, Boy Scouts filed a petition. It asked the
17 court to set a bar date which the court did. Now, we have
18 more than 95,000 claims that have been filed. That, Your
19 Honor, is an unprecedented fifty-five (indiscernible)
20 explosion in claims. I've never seen anything like it in the
21 context of mass tort bankruptcies, and my experience goes all
22 the way back to the Celotex bankruptcy in the 1990s.

23 Your Honor, bankruptcy is not supposed to be used
24 to increase the debtor's liabilities. It's supposed to be
25 used to distribute the assets fairly for those liabilities.

1 We don't believe this court can or should ignore the
2 explosion in claims and we don't think this court can or
3 should ignore the circumstances surrounding the explosion of
4 claims.

5 This explosion of claims, Your Honor, and the
6 circumstances surrounding it including the unprecedented
7 attorney advertisements, we believe points squarely in favor
8 of Rule 2004 discovery. We seek discovery regarding the
9 debtor's liabilities. That is, no one can dispute, a
10 legitimate goal of Rule 2004 discovery.

11 But Your Honor's opinion in Millennium Lab, you
12 know, the analysis there, when Your Honor was deciding
13 whether to allow the trustee to pursue discovery from banks.
14 You talked about the legitimate purposes of 2004 discovery.

15 We cited Your Honor to In re Subpoena Duces Tecum.
16 This isn't the first time that a party in interest has sought
17 a 2004 discovery into the validity of proofs of claims that
18 have been filed.

19 If the proof of claim process is tainted, Your
20 Honor, it affects the integrity of this entire proceeding.
21 And we shouldn't have to just accept, at this stage, Your
22 Honor, what the claimants say or don't say in support of the
23 proofs of claim. We should be able, allowed, given time, an
24 opportunity to drill down, drill down deeper for, at least,
25 all we're asking for is about 1.5 percent of the claimants to

1 find out what evidence do they have to support their claim.

2 And I don't know that the court has focused on
3 this issue. But the majority of states in this country still
4 have discovery rules that apply to time bar issues.

5 The proof of claim form, my recollection, is we
6 ask the court to include some questions that would give us
7 answers to those questions. That information isn't even
8 provided by the proof of claim form. We don't have
9 information gleaned or elicited from the proof of claim form
10 that allows us to apply statute of limitations in the
11 majority of discovery rule statute of limitation states.
12 It's not in the proof of claim form.

13 THE COURT: Let me ask you about that particular,
14 and I want to understand what information you think you're
15 going to get and how it's going to be used. How it can be
16 used.

17 But on the statute of limitations, for example,
18 isn't that a very facts and circumstances determination based
19 on a particular state law and particular facts?

20 MR. RUGGERI: You know, Your Honor, it is based on
21 particular facts but we could ask the facts to let us make
22 decisions, frankly, for example, on whether to object to the
23 claim. If I know facts surrounding the claimant recovery of
24 a repressed memory. If I have an opportunity to elicit that
25 information, either through document discovery or through the

1 depositions that we seek to take, or if I'm entitled to ask
2 the claimant, okay. When did you connect your injuries to
3 the alleged sexual abuse? Those are point question that
4 we're seeking to ask through this discovery and that we would
5 seek to ask through the depositions that seek to take that
6 will enable us to apply and make determinations on whether to
7 assert objections based on statute of limitations for those
8 claimants. We're in the blind right now really where we're
9 having to make assumptions.

10 THE COURT: I understand that but since you raised
11 that as the particular issue you want to explore, and you
12 raised it first in your argument, I guess I don't understand
13 that one consistent with how I read the motion which is you
14 want to be able to bring omnibus objections.

15 MR. RUGGERI: We do.

16 THE COURT: Explain to me how you would bring an
17 omnibus objection on a statute of limitation issues and how
18 any information you could get through whatever second step
19 Dr. Martin might take relates to that?

20 MR. RUGGERI: I think we have a little bit of the
21 cart before the horse in terms of whatever step Dr. Martin
22 might take, right. I have not asked her to analyze the time
23 bar issue. That would be a legal determination that we could
24 make.

25 I haven't asked her to extrapolate for that issue.

1 The sixth categories you'll recall none of the subpopulations
2 is the time bar question. Okay.

3 THE COURT: Okay.

4 MR. RUGGERI: So we aren't -- with regard to
5 making omnibus objection, it could very well be that we could
6 do it. We offer, I think her declaration does offer the
7 court the number of states in Florida, in New Mexico, for
8 example, that claims that arise out of those. That may be an
9 instance where it would have to be claimant by claimant or it
10 may be subject to an omnibus objection.

11 If there's no evidence in support of any discovery
12 rule exception to the applicability of the statute of
13 limitations, I just don't know what facts or information that
14 the claim can rely on. If the court recalls that the proof
15 of claim forms invites people to make claims even if their
16 time barred.

17 We're trying to get some information for us to
18 distinguish the potentially time barred from the time barred
19 claim. It may lead to objections that we may file. I don't
20 know if we would do those objections one by one or through an
21 omnibus. I don't have the information yet. I haven't
22 categorized those claimants, Your Honor, to see if they are
23 susceptible to an omnibus objection. I just don't know at
24 this point because we're still at the frontend of seeking the
25 discovery.

1 THE COURT: Well isn't that important? And I ask
2 it because I'd like to make sure I understand what you would
3 intend to use the Rule 2004 discovery for because -- and
4 maybe I've linked it incorrectly to the omnibus objections
5 but I think actually it's linked in the motion to the omnibus
6 objections.

7 And if one of the grounds -- if you can't use
8 information generated from a to be analyzed discovery
9 scenario for an omnibus objection then doesn't that undercut
10 the discovery you're seeking? Because you're not sitting
11 here saying I'm going to take a deposition of every single
12 96,000 claimants. So there has to be a way to use this and
13 I'm trying to figure out exactly what you want to use it for.

14 MR. RUGGERI: Your Honor, I think to the extent
15 that we're seeking to reserve the right to ask Dr. Martin to
16 extrapolate to allow us to draw inferences, it does go to the
17 sub-populations that we have asked her to draw the claims
18 for. So I think that is the answer.

19 The fact is that with regard to a lot of the
20 claimants we believe there is no evidentiary support that
21 they have provided to take advantage of a discovery rule in
22 those states that still apply the statute of limitations. So
23 we will be looking at that information. Whether that
24 information is susceptible to extrapolation I don't know
25 sitting here today. We don't have that information. It may

1 or may not be.

2 To the extent that we could object on the grounds
3 that these claims fall within discovery rule states and none
4 of them supports any evidence in support of a recovery of a
5 repressed memory, or the cause of connection, or, you know,
6 that sort of stuff. I just don't know. That is why we're
7 asking these folks to provide support, but the proof of claim
8 form did invite people to file claims even if they were time
9 barred. So we are trying to wrestle with that issue.

10 Your Honor, I don't know. The information,
11 depending on how we get it, it may or may not allow us to
12 extrapolate. It may or may not, you know, invite us to ask
13 the court to allow us to take some additional discovery. It
14 may or may not allow us to ask the court to make sure that it
15 imposes safeguards along the lines of what Judge Carey,
16 former Judge Carey, did in the Maremont case to protect the
17 recoveries of legitimate claims against the taking away by
18 illegitimate claims.

19 We're not at the point, right now, where we know
20 what we are going to do because we don't have the
21 information. And it would be premature for me to sit here
22 today and tell you what I am going to be able to do, you
23 know, if we get the information.

24 We're not asking for a lot here. I mean we are
25 trying to get to the bottom of the liabilities against the

1 debtors on the time table that has been imposed on us
2 pursuant to Rule 2004 which, again, is a legitimate 2004
3 interest that we have. And I will say that the other point I
4 would make in regard to our discovery request is this isn't,
5 you know, a question of discovery that we're making without
6 any evidentiary support. We know and the court now knows
7 from the record there are invalid and factually unsupported
8 claims.

9 The record is undisputed. We attached emails from
10 mothers and brothers who have said the claimants were lying.
11 We attached the HUB Report that identified, you know,
12 claimants who are fraudsters, convicted of fraud crimes, and
13 --

14 THE COURT: I'm not sure what to do with that, but
15 okay.

16 MR. RUGGERI: We also had claimants who told us
17 they want to withdraw their claims now that we have
18 identified them as part of the (indiscernible). Just
19 yesterday, Your Honor, we got an email from Boy Scouts
20 counsel about another claimant who said -- another person who
21 said claimant X is lying, he is trying to ruin the life of
22 the person he has identified as an abuser, and he is trying
23 to steal money from the real victims.

24 So that is the circumstance, the context in which
25 we are before the court asking for leave to take discovery on

1 1.5 percent of the claimants who have made --

2 THE COURT: I understand that. So explain to me -
3 - I want to make sure I understand why you think these fixed
4 categories of claims of subgroups that were identified, the
5 sub-populations, what do they tell me?

6 MR. RUGGERI: At the end, you know -- Your Honor,
7 what I am trying to find out at the end of the day is are we
8 dealing with a lot of invalid claims. So I am saying, in the
9 first instance, within the Hartford policy periods are we
10 dealing with a lot of invalid claims within that population.
11 Are we seeing something that causes concern?

12 The other categories, Your Honor, are categories
13 that we believe are indicia of needing more information. We
14 have -- there are 81,000 claimants -- 85,000 claimants who
15 don't identify any affiliation with scouting, okay. That is
16 the second category. Well that looks to me like that is a
17 potential problem because, obviously, they need to state a
18 cognizable claim against the Boy Scouts or Local Councils,
19 right, but the Boy Scouts here, this is the debtors, the Boy
20 Scouts.

21 So I can't tell you. From those, my presumption
22 is they are invalid because they haven't shown any connection
23 between their claim and Boy Scouts. So that is an example
24 where let us dig a little deeper, let us look at the 200
25 claims, let us see if that is indicative of invalid filings.

1 That is what we are trying to find out. No abuser
2 identification, okay.

3 There are 6,400 claimants who provide no
4 information about alleged abusers. Another, that to me is
5 indicia of a presumptively invalid claim and, again, let me
6 take discovery. Again, 1,400 -- the Coalition says you're
7 wrong, Jim, you're wrong Hartford, that your assumption is
8 incorrect that it is a very small, if any, percentage claims.
9 We don't know, but I think we're entitled to find out. I
10 mean that is what we're trying to do is we're just trying to
11 get the information to find out.

12 I think, based on my looking at the numbers, a
13 significant percent of the claims are invalid; invalid either
14 because they can't show a connection to Boy Scouts, invalid
15 either because they have no support of their claims, invalid
16 because, as we've seen from the emails we received, people
17 are making it up and they're doing it because they sought as
18 a way to make quick money.

19 Yesterday, Your Honor, I think the court saw we
20 had a claimant submit a letter to the court complaining that
21 a plaintiff's lawyer hadn't shown up at his jail to do a town
22 hall with the inmates on the claimant. He was complaining
23 because the plaintiff lawyer didn't show up to give him the
24 education on that. I mean those cause alarms to go off in my
25 head and say, you know what, this is exactly what this 2004

1 discovery is when we're trying to get to the bottom of the
2 liabilities of the debtor.

3 This is the biggest liability that it has. These
4 are the abuse liabilities and you can't just turn a blind
5 eye, I don't believe we should, when we have, you know,
6 evidence that the proof of claim process in this case may be
7 tainted. I think we should be allowed to go a little deeper.

8 The other point, you know, the claimants, Your
9 Honor, right, these are folks who have interjected themselves
10 into this proceeding. They didn't have to make claims, but
11 they chose to put in proofs of claim here. I mean I think
12 legitimately the court said, you know, if you want perfection
13 why not seek discovery for all 95,000. Well that is not
14 practical, right. It's not practical to do that.

15 I think what we're trying to do here is ease the
16 burden on the claimants as a whole, on the court, on the
17 parties by saying let us look at 1,400. Let us see what we
18 see. Let's start there and figure out where it goes. I will
19 be able to tell from that population --

20 THE COURT: Okay. What -- tell me this, this is -
21 - what I am trying to figure out is if what you want is going
22 to get anywhere. So when I look at the interrogatories what
23 in the interrogatories wasn't in the proof of claim form?

24 MR. RUGGERI: Your Honor, one, whether -- even if
25 there is a statement in support of a proof of claim, if I ask

1 for additional information, if I can sit down and talk with
2 someone -- and I have had experience doing this in a
3 different arena in the (indiscernible) bankruptcy, this was
4 years ago, where the court let me sit down and talk with some
5 claimants and depose the claimants in connection with the
6 bankruptcy proceeding there. It was something else. I mean
7 it was in the context of abuse where I sat down and talked
8 with a claimant who said that she would support it with a
9 diagnosis of a doctor and the first thing I heard from her
10 mouth is I've never seen a doctor, and I was like really.

11 So, I've been through this exercise before. I
12 think the manner in which these claims were put together
13 these interrogatories are intended to illicit information
14 from people who didn't provide it in the first instance and
15 to give them an opportunity to substantiate the claims from
16 those who did. Then for a hundred I would have the
17 opportunity to sit down with them, under oath, and ask
18 pointed questions about the information we have about their
19 claims to allow us to make a determination on whether we
20 believe it, you know, valid or invalid. We submit that we
21 think we are going to see that a lot of these are patently
22 invalid.

23 So the categories are really broken down into
24 three that I am asking for.

25 The first category is the details of the alleged

1 abuse. You know, tell me information about the acts of
2 abuse, tell me the details of the alleged abuser, tell me the
3 details about the alleged abuser's relationship to scouting.

4 I will tell you, Judge, that when we initially
5 drafted the discovery those questions had to the extent not
6 already provided by your proof of claim form give me all the
7 details about this. The Coalition, in the course of our meet
8 and confer process, said that would be confusing to the
9 claimants and asked us to strike that preamble; so we did, so
10 we did. We weren't trying to make make-work, but that was
11 being responsive to the process and the Coalition.

12 The second group of questions, Your Honor, relates
13 to the application of the discovery rule, the
14 interrogatories. And those go into, you know, the repressed
15 memory beginning at interrogatories five, six, seven, eight
16 and nine; those go to when did you recover your memory, when
17 did you, you know, put your injuries together and realize
18 that those injuries were caused by the abuse.

19 The last two, Your Honor, go to prior claims that
20 the claimants have made against Boy Scouts or Local Councils
21 in prior recoveries which, obviously, goes to the validity of
22 claims that they could be making now. It's not a small
23 number there, Your Honor. Its thousands of claims that fall
24 into that bucket too based on our initial paths.

25 The one I missed, Your Honor, is three and four

1 goes to the relationship of the abuser to Scouting and the
2 relationship of the claimant to Scouting. We talked about
3 that earlier. Those would be interrogatories three and four.

4 So those are the categories of information. It's
5 pretty pointed. It's pretty focused, Your Honor, of the
6 information that we are seeking. We talked about 100
7 depositions. That is less than point one percent of all the
8 claimants who have made these claims. We're just asking the
9 court's permission let us to the 1,400. Let us identify, you
10 know, 100 of those, up to 100.

11 Mr. Anker, his firm, my firm, Mr. Schiavoni; we're
12 committed to working as fast and as efficiently as we can. I
13 think with a little bit of cooperation we could complete
14 those depositions by the end of May or possibly early June.
15 It is consistent with a time table that the debtor is seeking
16 to impose on us, Your Honor.

17 Then, you know, I don't know, it probably bears
18 pointing that the court has seen a raft of objections filed
19 in response to the motion. It didn't see objections from the
20 tort claimants' committee and it didn't see objections from
21 the Boy Scouts. They said nothing in regard to these
22 motions, but neither one of them stood up and objected.

23 There was an argument about our absence of meet
24 and conferring. We did meet and confer, Your Honor. I had a
25 team of people spend weeks meeting and conferring with

1 lawyers and claimants. The TCC told us it couldn't speak for
2 the individual council and invited us to meet and confer with
3 individual council. We did that. We met and confer with the
4 pro se claimants with regard to the Coalition. And I
5 appreciate it.

6 Mr. Goodman sort of cut us off at the path by
7 telling us that, you know, unless discovery were reciprocal
8 on some basis then we were sort of at our end. So that did,
9 although we offered to meet and confer with anyone who wanted
10 to, that did, sort of, stunt the meet and confer process
11 there.

12 Your Honor, we talked a little bit about Local
13 Rule 3007-1. I invite Mr. Anker if he has additional words
14 or Mr. Schiavoni to talk about that. Again, given the nature
15 of the beast that we are wrestling with here I do think it
16 may be that omnibus objections are appropriate. And we saw
17 in the local rule 150 two times a month, that really doesn't
18 get us to where I think the court wants to get us or where
19 debtor wants to get us on the schedule that it seems to
20 impose.

21 Judge, just wrapping up this case is unprecedented
22 sadly for Your Honor perhaps or maybe you find it fun, but we
23 need this discovery. I think the court needs this discovery.
24 The legitimate claimants should welcome this discovery. We
25 want to make sure dollars are paid to those who deserve it.

1 We know there are invalid claims. It is a purpose that falls
2 right in the sweet spot of Rule 2004 when we're talking about
3 the examination of the debtors' liabilities. And, you know,
4 for all the reasons we talked about today I would ask the
5 court to grant the motion and allow us to serve the
6 discovery.

7 I would say that with regard to the document
8 requests, Your Honor -- actually, the interrogatories, if you
9 look closely we did have typos in interrogatories nine and
10 eleven. They cross-reference the wrong numbers. Nine should
11 cross-reference interrogatory eight. And eleven should
12 cross-reference interrogatory ten, but we would clean those
13 up before they were served, Your Honor.

14 THE COURT: And so how am I supposed to use
15 information, and I recognize Dr. Martin hasn't done the
16 second step, but its -- and I guess can't yet. What I am
17 still having a hard time understanding and what I don't think
18 I got any testimony from Dr. Martin about, and I'm not
19 criticizing that because she hasn't been asked to do anything
20 further, is what -- is she going to be able to make
21 statistically significant inferences about something that's
22 relevant to whether or not a claim is valid --

23 MR. RUGGERI: Your Honor, I think --

24 THE COURT: -- and then if she -- okay. Go ahead.

25 MR. RUGGERI: I was going to say the answer is

1 yes, but their probably, I think, assuming that the expert
2 statistician is going to be making that qualitative
3 determination and she won't.

4 THE COURT: That's right. So I don't have anybody
5 who tells me that what she is going to be able to give me is
6 relevant to whether a particular claimant or group of
7 claimants has been abused.

8 MR. RUGGERI: I think, Your Honor, what she will
9 be able to tell you is based on the sample, if I accept as
10 true, that 100 of the 200 claimants who fall into that sub-
11 population do not have invalid claims as told to me, my
12 counsel, as the statistician I can extrapolate from there to
13 the entire group of that sub-population; for example, those
14 who don't identify any affiliation with Scouting.

15 That is where the statistics comes into play, but
16 she would not be the one making that qualitative judgment on
17 the validity of that claim. That may, indeed, be an
18 assumption that she would share with the court that she was
19 asked to assume and explain the specifics around that
20 assumption. That is the nature of how this exercise would
21 work from a lay person (indiscernible) perspective, but what
22 she was saying is hers is formulaic; statistics is formulaic.

23 So I think there are two reasons:

24 One, I think we would have the right to depose 1.5

25

1 percent of the claimants in a circumstance where we have real
2 questions about the proof of claim process and the, you know,
3 gaining of these claims in support and given the evidentiary
4 record we put in there. Frankly, I think that warrants
5 investigation by itself independent of any reliant and
6 extrapolation. I think we got to see where we are.

7 All we are asking for is 1.5 percent of the
8 claims. Then let's figure out what the next steps are. I
9 think that we're seeking to anticipate where this goes. I
10 don't know where this goes at this point. All I am asking is
11 please give me the discovery that I believe I am entitled to
12 under the precedent in this jurisdiction. And on this
13 court's analysis for 1,400, which is a small sub-population,
14 1.5 percent of claimant who elected to participate in this
15 proceeding.

16 We think it is entirely appropriate for this court
17 to make sure that this proceeding is not overrun by abuse of
18 the proof of claim process. It is my duty to assist the
19 court, if you will, in trying to flesh out the facts. So I
20 don't think it is right to bootstrap and anticipate where we
21 necessarily have to go to a statistician's testimony. We are
22 not there yet. It is just 1.5 percent and point one percent
23 of claimants for deposition; that's it.

24 THE COURT: Well to make that argument I'm not
25 even sure you needed a statistician.

1 So I am trying to figure out -- I am trying to
2 figure out where we end up because if, in fact, we end up
3 measuring factors that have no correlation, and I'm using
4 that word not in a scientific way, if we end up analyzing
5 factors that don't correlate to presumptively invalid claims
6 then what have we accomplished.

7 MR. RUGGERI: Your Honor, I think that what you
8 probably looked at, at a minimum, is based on the sample of -
9 - based on the 1,400. The reason why I presented the
10 declaration of Denise Martin was just to tell Your Honor --
11 explain to Your Honor where this list of 1,400 claimants came
12 from; that was it. I was -- I said (indiscernible) the sub-
13 populations and she told me what would be adequate numbers to
14 put in those sub-populations to extrapolate if we wanted to.
15 That is how she came up with 200 for each of the stratified
16 sub-populations. That was the extent of why she was put on
17 the stand today.

18 I have offered to the court, there are thousands
19 and thousands of claims that fall into these different sub-
20 populations. I think it probably doesn't surprise the court
21 to know that I am suspicious where someone says there's not
22 Scouting affiliation. My working presumption is that that is
23 a presumptively invalid claim and now we're in a situation
24 where, you know, 502 says unless objected to the proof of
25 claim is presumptively valid. We have gone round and round

1 on that.

2 So I am trying to avoid a situation where I have
3 to object to every one of these claims. Some of them may be
4 valid.

5 THE COURT: But wouldn't you actually have to --
6 and maybe I don't need to decide that for today. The
7 procedure -- the concept that you are using of extrapolating
8 to a group, isn't that more relevant to some kind of group
9 estimation, some sort of global estimation of claims because
10 that is how you would use these to extrapolate, right. I
11 don't know where we are going in this case. I have nothing in
12 front of me in terms of a plan, or how we're going to vote,
13 or what we're going to do. So, I don't know where we're
14 going.

15 Just because one person who wasn't or half of the
16 group who says they have no affiliation with Scouting does
17 that mean I get to disallow somebody's claim who also says
18 that where they said, I'm making it up, my brother was a
19 scout and I went to camp so and so with him. I mean I can't
20 do that. I don't think I can do that.

21 So that is what I am trying to figure out, what
22 can we accomplish here.

23 MR. RUGGERI: Your Honor, I think your, sort of,
24 thoughts and statement about you don't know where we're going
25 I don't either. I don't think an estimation would be proper

1 here. I don't know if that is in the cards for us here, but
2 certainly if one were to ask the court to estimate the
3 liabilities for some purpose then this information will be
4 highly relevant to that, I would imagine.

5 Then the question is with regard to voting. I
6 mean in many cases we see mass tort claims where each
7 claimant gets a dollar vote. I don't think it's appropriate
8 if our discovery in these 1,400 claims shows that the proofs
9 of claims are ripe with invalid filings. I think that would
10 be inappropriate.

11 I don't think, and you're aware, we provided the
12 court with the public tweeting out there about who said what
13 to whom about how they are going to control this. That is a
14 real concern in this case. I mean the integrity of this case
15 is at issue. We have got to get to the bottom of it. I don't
16 think the court can have a working assumption that every one
17 of these claimants presents a claim eligible to vote in light
18 of the circumstances of this case which are well-known not
19 only in this courtroom, but not outside the courtroom.

20 So I think that this case cries out for this
21 discovery and I know the court would like all the questions
22 answered about where it leads us. I don't think we have all
23 the questions that -- the information or the ability to
24 answer those questions because you and I, you more than I,
25 don't control where this case is going. All I know is it's a

1 possibility that I'm going to ask the court to estimate.
2 Well there is going to be some sort of vote and do we allow
3 this proceeding to be overtaken, and voted on, and controlled
4 by claimants who I think, if we're entitled to some
5 discovery, may show, you know what, they don't have valid
6 claims.

7 So from the perspective of being able to
8 extrapolate, you heard Dr. Martin, you can extrapolate based
9 on the subgroups. For what purpose you want to extrapolate,
10 what is the assignment at the end of the day, for what
11 purpose is she being asked that is information that I would
12 have to provide her and an assumption to make, right, to
13 allow that to happen, but I don't think we're there yet, Your
14 Honor. I don't think we need to be there yet.

15 I think that the request here is, frankly, a
16 pretty small one as to complete it in a matter of a few
17 months. I mean our meet and confers were successful, you
18 know, when people -- this is not information that is
19 impossible to provide particularly claimants who are
20 participating in this proceeding made the decision to
21 participate in this proceeding.

22 1.5 percent doesn't seem to be a lot to ask from,
23 Your Honor. I mean that is -- like I said, we probably could
24 have said all 95,000. You probably would have said, okay,
25 this is a short hearing, Mr. Ruggeri. We are trying to do it

1 more efficiently.

2 THE COURT: Thank you.

3 Okay. Let me hear a response.

4 MR. RUGGERI: Your Honor, I don't know if Mr.
5 Schiavoni -- he asked to be heard on this motion too.

6 THE COURT: Mr. Schiavoni?

7 MR. SCHIAVONI: Your Honor, there is a second
8 component to this motion; it's the omnibus objection that I
9 think Mr. Ruggeri was going to have Mr. Anker address that
10 for him. I wanted to just address the Supreme Court decision
11 on that. So if Mr. Anker wants to be heard I would ask to
12 pass to him and then just let me address the Supreme Court
13 decision.

14 THE COURT: Okay. We will pass the ball.

15 Mr. Anker, do you have anything to add?

16 MR. ABBOTT: Your Honor, Derek Abbott. May I just
17 interrupt for a moment?

18 Your Honor, I apologize. I have received several
19 requests from folks in the audience about a potential break
20 for just a few minutes if that is possible.

21 THE COURT: Yes. If we have a request that's
22 fine. Let's take ten minutes.

23 MR. ABBOTT: Thank you, Your Honor.

24 THE COURT: Thank you. 12:10.

25 (Recess taken at 12:00 p.m.)

1 (Proceedings resumed at 12:10 p.m.)

2 MR. ANKER: I was about to say good morning, Your
3 Honor, but I think its good afternoon. For the record Philip
4 Anker, Wilmer Cutler Pickering Hale & Dorr. We are co-
5 counsel with Mr. Ruggeri's firm for Hartford.

6 I am going to do my darn best to be brief. I
7 often say that and don't fulfill my promise, but I will do my
8 very, very best. I want to make two points.

9 One is just to try to answer the question you were
10 asking. And I appreciate that question. How can one take
11 discovery of a sample of claimants and draw then inferences
12 about others. And I think the question, Your Honor, may come
13 down to, with respect to claim objections, what one means by
14 an influx.

15 Let me just give a concrete example. Imagine that
16 we were to take this discovery and conclude that all of those
17 claimants within the sample who did not show any affiliation
18 on their proof of claim form with Scouting they, in fact,
19 didn't have any affiliation with Scouting. I certainly think
20 that would give us a good faith basis to file an omnibus
21 objection.

22 I am not suggesting, Your Honor, it would give you
23 a basis on an *ex parte* to deny those claims. The claimants
24 would get notice, the other claimants would object to, and
25 they would have an opportunity to say, well, that might have

1 been true about everyone else in the sample, but it wasn't
2 true about me.

3 As Your Honor knows from business bankruptcy cases
4 omnibus objections are routinely filed without any discovery
5 at all. A debtor says all the following claimants and
6 asserted claims in our books and records show nothing. The
7 claimant can come in and say, well, actually you do owe me
8 money. We could have done that here. Frankly, we thought
9 the responsible thing to do was to do some discovery first.
10 We thought it was better to ask questions and shoot later,
11 not shoot first and ask questions thereafter.

12 The only other point I would make on that is I
13 don't think the only end game here is mass claim objections
14 all done before confirmation. As Mr. Ruggeri noted in other
15 cases, including in this district, Judge Carey in Maremont
16 where there have been, on a sample, some showing of invalid
17 claims that has informed the court's judgement when it came
18 to trust distribution procedures, confirmation, what they
19 need to provide.

20 I am about to give an alternative to
21 (indiscernible), Your Honor, but maybe the answer at the end
22 of the day -- imagine we take the sample and it turns out the
23 overwhelming majority of the claims are invalid, maybe there
24 will then be an argument that, you know, Your Honor needs to
25 take a look at these claims even if as is often the case in

1 bankruptcy the claim objection process in court occurs post-
2 confirmation not pre-confirmation. That is, after all -- I
3 see your smiling, I know it's not something that may thrill
4 you, but it may be what happens here.

5 THE COURT: Actually, it won't thrill the District
6 Court, I think, is who it won't thrill.

7 MR. ANKER: I hear you on that as well. And it
8 may be that it ends up there.

9 Your Honor, I will just end with this and then
10 move to the 3007 issue, it can't be that anyone in this room
11 including people representing valid claimants who don't want
12 to have their clients be diluted for us to put our head in
13 the sands and simply ignore a potential problem. That isn't
14 the responsible thing for me to do as officer to the court
15 and I know it's not what Your Honor is going to do.

16 On the Rule 3007 point I would just make the basic
17 point we have to be practical here. We have to deal with the
18 real world. I hear Ms. Lauria when she says we, BSA, need to
19 get out of bankruptcy by the summer. That may be right or it
20 may not be right, but I take that point at face value for the
21 moment. If we are going to be practical here we have to
22 bring on, have relief from those rules and the rules
23 absolutely allow Your Honor to grant that relief in a
24 practical way.

25 Again, I am not asking that we be able to file

1 omnibus objections, Your Honor, without giving any notice to
2 the claimant simply disallows their claim. They will be able
3 to come into court and put -- you're going to give a due
4 process, but if we going to be practical here we need relief.
5 And as Your Honor knows, in addition to the practical point
6 that that relief is often granted where you have exigent
7 circumstances, the whole Rules Enabling Act starts with the
8 proposition, I think it's really the first section in the
9 statute, that says,

10 "While courts can make rules, and make federal
11 rules, or local rules, those rules cannot abridge the
12 substantive right."

13 Here there is a substantive right to object to
14 claims by parties in interest. If you don't give relief, for
15 all intents and purposes, we're not going to be able to
16 object certainly, certainly before confirmation of a plan.
17 Then the scenario where you said it may not thrill the
18 District Court may become a *fait accompli*.

19 So I would urge the court and I would urge all the
20 parties let's be practical and work for a solution that
21 allows for due process but also allows us to accomplish
22 something that is beneficial.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Mr. Schiavoni?

1 MR. SCHIAVONI: Your Honor, just briefly. I will
2 tell you, Your Honor, I think this may be among the most
3 important decisions that you may in the entire case. You
4 heard us in the contested hearing about whether or not the
5 bar date order should be entered. Your Honor, pointedly made
6 the point to me that this is how Congress drafted the statute
7 and that did we want to go back and amend the statute. We
8 took what came from that, Your Honor's ruling about how the
9 proofs of claim were to be signed.

10 This is, I think, no matter how one looks at it,
11 having mass torts addressed, you know very complicated
12 individual personal industry claims addressed through 502 is
13 putting a square peg in a round hole. The statute wasn't
14 really meant for this, but I am not making my appeal to
15 Congress now.

16 What I am saying is that Your Honor has told us,
17 in essence, this is not Congress and we should take the rule
18 as drafted. The rule as drafted allows these are the
19 protections -- like the bad end of it for us, in some
20 respects was, respectfully, the bar date order what came from
21 that, these are the protections that flow from it. These are
22 the protections that were built into this statutory scheme
23 that we would get an opportunity to object to the claims and
24 that we would be able to use 2004 to collect basic evidence
25 in order to advance those objections.

1 It cannot be that Congress intended 502 to simply
2 turn all of American jurisprudence on its head and deal --
3 and make all claims submitted in a complicated negligence
4 action into strict liability, make them all deemed presumed
5 allowed, make them everything confidential about them and not
6 allow any challenge or inquiry into them. If that really was
7 what Congress intended if a license just to print money --
8 and I think when we get to the next motion you will see that
9 there are people that think this and that for profit
10 businesses have jumped into to try to take advantage of this
11 and its created a huge problem.

12 On the specifics of this Mr. Anker has it right.
13 He -- your question earlier about would we use this discovery
14 to extrapolate to disallow the claim and, respectfully, as he
15 said that is not really the issue. What we were looking for
16 with Hartford and -- look, I have to tell you, on the side,
17 it's not so easy always to get along with Phil, and Jim, and
18 everything, but we worked very hard to reach consensus here
19 because what we were looking for was a responsible
20 conservative careful approach to go forward with how to deal
21 with these claims.

22 What you heard Mr. Ruggeri present, his motion, it
23 presents the best thinking of our two companies about just
24 that. I think we were entitled to, basically, go ahead with
25 objections as is, but we recognize the type of case this is

1 and we wanted to present the court with something that
2 allowed us to, in good faith, look at the claims harder. We
3 told you during the bar date argument that the questions,
4 respectfully, weren't adequate in our view to set out all the
5 elements of the claims in fifty states. You know, we had our
6 say.

7 We are now where we are and this is the vehicle
8 for us. And we think the process that we have set out that
9 we take this narrow discovery of, you know, one percent of
10 the claimant population and that based on the results of that
11 we, Hartford, Century, and others try to make informed
12 decisions about what we have to make a good faith decision
13 about what objections to advance.

14 In some respects that is what we did in the tort
15 system when the claims were defended. We -- like we weeded
16 out the good claims from the bad claims. That was what the
17 whole thing was about. And, you know, having some basic
18 information about the claimants was absolutely essential to
19 that.

20 Our people -- when you go back to our claims
21 people, when I go back to them and tell them that something
22 like 80 percent of the claimants don't show an affiliation
23 with Scouting then I check with the Boy Scouts and I don't
24 get a different kind of number from them, and then in the
25 nature of this type of terrible misconduct to have such large

1 numbers of claimants unable to identify the perpetrators.

2 To be clear, there will be claimants who have very
3 sound reasons not to be able to identify their perpetrator,
4 but what everybody is telling us, including our experience
5 from dealing with the claims, is that by its nature these
6 are, sort of, misconduct of a grooming nature where the
7 perpetrators often times got to know the abused. To have
8 such large numbers of claimants who are unable to identify
9 them it's an issue. Its developed huge problems on our end
10 on how to deal with this.

11 The notion that what we have come to you with
12 this, sort of, narrow vehicle to try to take discovery on
13 these to get a handle on what is going on because, Your
14 Honor, you have to understand the situation here. We are not
15 even -- the proofs of claim in the confidentiality order that
16 is put in place we're not able to go out and speak to the
17 claimants informally. We are not able to speak to their
18 witnesses informally. We are not able to speak to anybody,
19 really, about them informally. So there is no way to get to
20 the bottom of this without, in some ways, going forward with
21 some basic discovery.

22 When we were before the court on September 9th on
23 the -- and I think then was when this problem was really,
24 sort of, or the problem we perceive about the proofs of claim
25 was manifesting itself with this explosion of claims. I think

1 when we were before you then on the advertising motion and
2 what was being brought out the debtors' counsel told the
3 court that he,

4 "Shared Century's and the insurers concerns" on
5 how the claims are generated, of course, issues related to
6 the State Court ethics."

7 Then he went onto say that he,

8 "Believed that these issues could be resolved
9 potentially through 2004 discovery."

10 Debtors' counsel, I think that was Mr. Andolina,
11 what he was eluding to then was exactly, exactly what we are
12 here for now; a, sort of, targeted discovery that allows us
13 to try to make, together with Hartford, some informed
14 decisions about the nature of the objections we bring and how
15 extensive they bring.

16 The parallel issue, I would just ask you to -- you
17 know, this is part of the second point, but it goes along the
18 same lines as far as dealing with our request, our motion to
19 modify the local rule which, I have to say, is absolutely --
20 like no matter what you do on the discovery this is
21 absolutely essential to us. It's vital to the case for us is
22 we would respectfully ask you to look at the Supreme Court
23 case Tennessee Student Assistance Corp., v. Hood, 541 US 440,
24 it's a 2004 case and it addresses Section 2075 of the Code.

25 In that case what the Supreme Court held was that

1 allowing the bankruptcy rules "to preclude a party from
2 exercising their statutory rights" under the provision of the
3 bankruptcy code "would give the rules an impermissible
4 effect." In other words, that was a case where the Supreme
5 Court looked at the application of the rules and was dealing
6 with when a court, in essence, had to override the rules in
7 favor of the statute of the code. And that, we believe, is
8 exactly the situation you have before you.

9 Normally, to the issue of how to grant relief
10 under the local rules is an issue of, sort of, discretion. I
11 would suggest to you, Your Honor, in this case it's not
12 discretionary because under the Rules Enabling Act, you heard
13 Mr. Anker refer to, Congress only granted authority to
14 promulgate bankruptcy rules. It did grant that authority, but
15 in doing so, under 28 U.S.C. 278, what Congress did was it
16 mandated that such rules shall not abridge, enlarge, or
17 modify any substantive right.

18 Here, that is exactly what is at issue because
19 here 502 grants the parties a statutory right to object. As
20 a practical matter here there was no way the parties can
21 meaningfully exercise that right without relief from what
22 Local Rule 3007(1)(f). There's just too many claims. If
23 (indiscernible) to be followed is too little time. We have
24 no -- we lose the substantive right to object at all if we
25 don't have relief from the local rule.

1 Under those circumstances, under what I believe to
2 be Supreme Court authority, it would be, in essence, an abuse
3 of discretion not to grant us authority to modify the rules
4 to allow us to object. In effect, be robbed of any ability
5 to object to claims here at all. That would have the
6 catastrophic effect on our clients, but also on the case in
7 general. It would really just turn the case into a, sort of,
8 machine to manufacture claims and manufacture pay-outs.

9 There would be -- every (indiscernible) our hands
10 are tied three times from Tuesday to even investigate the
11 claims. The questions are very limited. They do not address
12 all the elements in the fifty states. The manner in which
13 they go out you have seen in some of the declarations that
14 are submitted, not even the questions that were presented are
15 filled out. We received many proofs of claim that are,
16 basically, mostly blank or contain huge gaps of information
17 in them.

18 So the proofs of claim, like if they're just
19 deemed allowed and they don't give us any information, and
20 then everything is deemed confidential it leads to just an
21 absolute sending this case off the rails.

22 So, Your Honor --

23 THE COURT: I see those blank proofs of claim, but
24 I have also seen, and a couple of objectors submitted the
25 proofs of claim that are fulsomely filled out. I think under

1 almost any standard would have *prima facie* validity. Now
2 that doesn't mean that the claim is ultimately allowed. That
3 means, though, that it has *prima facie* validity and there
4 could be an objection, then the claimant will have the burden
5 of persuasion to show that the claim is valid.

6 So I have seen both of them in the submissions,
7 quite frankly. That is one of the things I am struggling
8 with in connection with this motion because for some of the
9 objectors who did submit a claim I look at that claim and
10 think, okay.

11 I will tell you this, and I will read the case, I
12 am not familiar with it; although, I don't see how a rule
13 could abridge the code, but the -- or change the code, have
14 the effect of changing the code, but omnibus objections, as a
15 practitioner, I found them difficult and as a judge I find
16 them more difficult, quite frankly. So it depends on what
17 the omnibus objection is.

18 Quite frankly, we look at every proof of claim in
19 my Chambers, every one. We're looking for whether or not the
20 claim, I can tell what it is. It looks *prima* and it gets
21 *prima facie* validity. Now I don't know. Everybody tells me
22 these claims are different, right. That is what I keep
23 hearing, these claims are different. My proof of claim form
24 that says basis for claim has, you know, a three inch line to
25 put your basis of claim, breach of contract, you know,

1 employee claim, wages. And I look at that and I say, okay,
2 it's an employee who is owed wages; *prima facie* valid, they
3 signed it, it's under oath.

4 It may or may not ultimately be allowed, but that
5 is what I am trying to get a handle on; what are these
6 objections going to do if they are omnibus, are they truly
7 omnibus in the sense that how I would think of it is that --
8 well, some you are saying matter of law. Matter of law is
9 actually maybe that can be omnibus in some fashion, but
10 particular facts are always an issue with omnibus claims.

11 So I struggle with omnibus claims because we still
12 have to look at each one of them. We still have to make a
13 determination on each one of them even if people don't
14 respond. So I am not sure how that works in this case. I
15 will read your case. I don't know. I hear the argument. I
16 don't know what to do, quite frankly. And I will ask others
17 how I am supposed to address this and get their thoughts to
18 consider.

19 I hear what you are saying. I don't know what to
20 do with it.

21 MR. SCHIAVONI: Your Honor, all I can say is,
22 first of all, I appreciate you considering it and in my mind
23 it's always a good thing when a judge is open-minded and
24 thinking about the issues. So I thank you for that.

25 I would ask you to consider on the issue of how a

1 rule could possible abridge a substantive right. Here 502
2 gives us a substantive right to object, but if there is
3 95,000 claims and we have more than 150 objections, and the
4 local rule prevents us from filing more than that number of
5 objections, we have lost the substantive right to
6 substantively address the volume of claims we're dealing with
7 here. I think it's that, sort of, straight-forward under the
8 practical effect in this particular case.

9 You know, there are many claims here that, like,
10 idiosyncratically there's an obvious problem with including
11 just the ones that are, in fact, completely blank, okay, that
12 we'd go through 150 all by itself. So that is one thing I'd
13 ask you to consider.

14 The other is as far as how the evidence carries
15 forward it's that, you know, it's like we're kind of jumping
16 the gun. Yes, you can evaluate the omnibus objections when
17 you get them and deem them one way or the other, but like us
18 to lose that right without having any ability to inquire
19 about any of the claims at all.

20 I mean I'm not sure if the issue here is the court
21 doesn't think our interrogatories are specific enough. We
22 thought by making them as general as they were that it was
23 actually better to draw out whether there was additional
24 information. The pool of deponents we picked was, you know,
25 intended to allow us to, in some way, explore why these

1 issues are the way they are, why it is that so many of them,
2 you know, are deficient in one way or the other.

3 In the real world, in the tort system world these
4 claims they're not dealt with by someone serving a complaint
5 with little information and then paid on that basis. Almost
6 all of the people in the real world are subject to some sort
7 of, in this particular kind of tort, sit down either
8 deposition or, in many cases, a kind of under oath private
9 kind of, you know, questioning with counsel present because
10 we're dealing here with claims that are difficult to
11 corroborate, you know. That type of inquiry -- like
12 virtually all the cases that were settled were settled in
13 that manner.

14 Then just the last point I'd make I hear you that
15 you have looked at some of the proofs of claim and you have
16 made some assessments that it looks like a fair claim or what
17 not, but, Your Honor, it's like each of the fifty states have
18 their own body of case law about -- it's like it's easy to
19 look at these claims and immediately collapse them into what
20 would be liability for the perpetrator so that if there is
21 abuse alleged and the perpetrator was -- you know, against
22 the perpetrator was liability.

23 In many, many states there isn't *respondeat*
24 *superior*, you're not automatically liable for any illegal act
25 done by your employee so that the laws vary in the different

1 states about what needs to be brought out in the particular
2 cases both for liability, but also on the statute of
3 limitations. It's a wide variance.

4 You could easily look at a (indiscernible) proof
5 of claim and say, well, there it is. Someone says they are a
6 Boy Scout and they're abused by a perpetrator; end of story.
7 It's like you actually have to have like a handle on what the
8 law is in the fifty states on both liability and the statute
9 of limitations.

10 THE COURT: Well that is fair enough. And that is
11 why I said I don't know if the claimant is ultimately
12 allowed. I am looking at it for have they stated a proof of
13 claim for *prima facie* validity which is nothing to do with
14 whether it's ultimately allowed, but I hear you.

15 MR. SCHIAVONI: Your Honor, cases where -- in
16 these sexual abuse cases the objections have been pursued in
17 some of the diocesan cases. They're very different because
18 they're just much smaller, but insurers have filed proofs of
19 -- objections to proofs of claim and there's been back and
20 forth.

21 Frankly, that has been extraordinarily helpful in
22 bringing about resolution of the cases. You know, I can't
23 reveal, obviously, sort of where the mediation is, but, you
24 know, it's not -- you know, we are at a point where this case
25 is not very different from Imerys as between how much

1 progress has been made between, you know, parties that are
2 being asked to fund and otherwise.

3 Now some basic discovery here it's like we face an
4 enormous problem in trying to resolve this case; just
5 enormous. The gap is just unbelievable because it's a
6 difference between one group of parties thinking that the
7 entire set of claims are all going to be allowed by them, you
8 know, and that there needs to be some actual adjudication of
9 the claims.

10 Cases where they're not abuse cases, but cases
11 where there has been discovery of the claims themselves, you
12 know, W.R. Grace, famously the Garlock case, USG, and G-I
13 Holdings, In Re Silica Products; we put those cases in our
14 briefs. All of them involve, you know, discovery that was
15 used to, sort of, narrow the parties on the claims
16 themselves. I would be the first to say that in those cases
17 there weren't proofs of claim. They're generally not used in
18 a lot of the mass torts, but here they have been used.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Okay. Let me hear from the objectors. I'll start
22 with the Coalition.

23 MR. GOODMAN: Good afternoon, Your Honor. Eric
24 Goodman, Brown Rudnick, counsel for the Coalition of Abused
25 Scouts for Justice.

1 Can you hear me okay?

2 THE COURT: I can.

3 MR. GOODMAN: Good. Your Honor, there is a time
4 and a place for everything in a bankruptcy case. This is not
5 the time and this is not the place for 96,000 personal injury
6 claims to be liquidated. It may be that a proceeding is
7 commenced shortly seeking estimation under Section 502(c) of
8 the Bankruptcy Code, and given that these are personal injury
9 claims it may be that the District Court will need to be
10 involved. We are not there yet at this point in time, but
11 that is a possibility.

12 There are five key points that I want to make in
13 response to Century and Hartford's Rule 2004 motion seeking
14 discovery on 1,400 abuse survivors.

15 The first point, that I don't think anyone has
16 even mentioned today, is that the insurers already have
17 robust data. Hartford and Century have been the debtors'
18 insurers of choice for decades. Hartford and Century already
19 know about every reported claim for sexual abuse against the
20 debtors. They already know about every known abuser in the
21 history of Scouting. And they also have the same information
22 for other institutions with liabilities for sexual abuse.

23 They are insurance companies. I will say that
24 again, they are here almost acting as if they are the
25 debtors, they are the insurance companies. Their job is to

1 assess risk. If you start with a logical assumption that the
2 debtors have complied with their reporting obligations to
3 their insurers it is evident that Century and Hartford
4 already have substantial information. They won't share any
5 of it. It is a closely guarded secret.

6 The question I ask, which is a starting point, is
7 why do parties that may have the most data and the most
8 information get to go out and depose over 100 survivors and
9 take discovery on 1,400 individuals. How is that
10 proportionate to the needs of these cases.

11 The insurers try to brush this aside, but this is
12 really discovery 101. The proportionality requirements under
13 Civil Rule 26 are every bit as applicable under Bankruptcy
14 Rule 2004. Good cause cannot exist if the discovery is
15 unduly burdensome or disproportionate to the needs of the
16 case. And --

17 THE COURT: Well let me ask you this, Mr. Goodman,
18 why is that the Coalition's argument? The Coalition isn't
19 providing the discovery. So why is the proportionality
20 argument the Coalition's argument?

21 MR. GOODMAN: Your Honor, I think it really has to
22 do with understanding what process, if employed here, would
23 provide the most benefit at the least cost to the estate.
24 And in the interest of wanting to move these cases forward we
25 are interested in, what I would describe as, meaningful

1 discovery; discovery that would get us some place, that would
2 advance the case forward.

3 THE COURT: So are you offering something?

4 MR. GOODMAN: Your Honor, during the meet and
5 confer process we attempted to make multiple offers to the
6 other side. They were all similarly rejected. In fact, we
7 were in the midst of discussions when they went and filed
8 their motion. It caught us a bit off guard, in fact, but we
9 were amenable to certain limited depositions being taken as
10 long as they were done on a voluntary basis. And there were
11 discussions about providing additional information regarding
12 the claim forms. The insurers did not take us up on that
13 offer and they elected to come to court instead.

14 THE COURT: Okay. I am just -- I am a little
15 confused and it may be more in connection with the next
16 motion than this one about the Coalition's role. And since
17 it is not the subject of discovery what it should be
18 advancing here.

19 MR. GOODMAN: Fair question, Your Honor. I mean
20 we do represent the collective interests of over 10,000
21 individual abuse victims before the court based on our 2019
22 disclosures. So it is in that capacity that I am
23 representing the court today.

24 THE COURT: How many of those 10,000 are in the
25 1,400 that the insurers want to depose, or the 100, I guess,

1 insurers want to depose, or the 1,400 they want to seek
2 discovery from? Do you know?

3 MR. GOODMAN: I don't have that number off hand,
4 Your Honor. So I can't answer that question.

5 THE COURT: Okay.

6 MR. GOODMAN: The point I would make is that if
7 you were to envision a discovery process in normal litigation
8 or even in bankruptcy litigation I think that you would want
9 to first identify which parties have the most meaningful
10 information, which parties have the data, and what is the
11 cost of obtaining that. And if one side is sitting on a
12 mountain of information that is relevant and could be used to
13 answer a lot of questions in this case you start there. You
14 don't run out and start deposing 100 individual abuse
15 survivors.

16 Again, you will hear this, I think, again in the
17 future, but there is a lot of information that we want. I
18 will come back and echo Mr. Ruggeri's statement. When they
19 did approach us we said we were interested in exchanging
20 information, but we wanted it to be reciprocal. The
21 insurance companies are not interested in a reciprocal
22 process. And I think that is not how discovery is supposed
23 to work.

24 Second point, Your Honor, of my five points I
25 would like to make I believe that this is premature. Putting

1 aside the fact that the parties are supposed to be in
2 mediation the insurers' pleadings, I think, make it fairly
3 clear that this is aimed at plan litigation. The debtors are
4 revising their plan. We don't know what it's going to look
5 like yet.

6 You heard Ms. Lauria state at the beginning of our
7 proceeding today that the debtors are looking to get a plan
8 and a disclosure statement on file soon and potentially have
9 that before the court in April. Right now, sitting here
10 today, we don't know if the debtors are willing to propose a
11 plan that will impact the insurers' rights in any way. We
12 don't know if the insurers will fund anything. We don't know
13 if Hartford or Century will even need to fund anything.
14 Every indication is that they will not fund a plan no matter
15 what.

16 I take the world as I find it, Your Honor. We
17 have here two insurance companies that are intent on throwing
18 up a lot of roadblocks in this case. When this issue was
19 first presented to us we asked a very simple question; what
20 will this accomplish? How is this helpful? How will this
21 advance the cases? I have been asking that same question for
22 two months and I haven't gotten an answer that makes any
23 sense to me at all.

24 If we ever do get to a specific plan that has a
25 chance of being approved by the majority of survivors, let

1 alone the super majority of survivors necessary for third-
2 party releases, what discovery is appropriate in that context
3 will happen, but we are not there yet. The debtors are not
4 asking for discovery on victims of sexual abuse. The
5 official committee of tort claimants has not filed a Rule
6 2004 motion seeking discovery from survivors, neither has the
7 FCR or the UCC. The debtors are not before the court saying
8 that they need this discovery to formulate a plan of
9 reorganization.

10 How can there be good cause to conduct what is
11 classic plan discovery before there is even a plan. There is
12 no plan yet. This is entirely premature.

13 Third point, Your Honor, I believe that the
14 prejudice outweighs --

15 THE COURT: Well I don't hear -- let me ask you,
16 Mr. Goodman, what is the response to the argument that this
17 isn't necessarily for plan purposes, but for objections to
18 claims?

19 MR. GOODMAN: Well I think as a threshold matter,
20 Your Honor, the insurance companies, I know that this has
21 been discussed and we will continue to discuss it, are not
22 parties in interest within the bankruptcy code definition.
23 They are not creditors in this case. They filed about the
24 most bare bone claims imaginable. I don't know that it would
25 be considered *prima facie* valid. We asked them if they would

1 admit that they had coverage obligations. They refused to
2 admit that.

3 So what we have here are insurance companies that
4 do not fit within the definition of party in interest under
5 1102(b) and they have not acknowledged, in these proceedings,
6 that they actually do have coverage obligations at this
7 point. Obviously, we think that they do, but as insurers I
8 don't believe that they would have standing to file a claim
9 objection in this case.

10 In fact, the Third Circuit has dealt with this
11 issue on multiple occasions in the context of standing to
12 object to the confirmation of a plan. And if the plan is
13 insurance neutral and does not impact the insurers' rights in
14 any way I believe under Third Circuit precedent they would
15 not have standing to object to plan confirmation. If they
16 don't have standing to object to plan confirmation how are
17 they in this case filing substantive claim objections. This
18 isn't something that they could --

19 THE COURT: Do you want me to make a decision --
20 you want me to make a decision now? How do I make a decision
21 now that the insurance companies don't have standing?

22 MR. GOODMAN: I don't know that the court even
23 needs to get to that question today, Your Honor, because the
24 issue before the court is have they presented good cause
25 under Rule 2004 to go forward with this discovery. I believe

1 that that is actually a very narrow issue, but I was trying
2 to be responsive to the court's question.

3 You know, my answer is do insurers have the
4 ability to go out and launch hundreds of claim objections
5 against tort victims in cases. I guess my response to that
6 is show me one case where that has happened before. In fact,
7 they can't even do this in State Court, Your Honor. This is
8 not something that an insurer could do in a State Court
9 proceeding is come in and conduct themselves in this way.

10 THE COURT: I suppose the insurers would say that
11 there would be one claim at a time, not 95,000.

12 MR. GOODMAN: We'll get there when we get there.
13 I guess my point is we're not there yet.

14 THE COURT: Okay. So you want me to -- to you
15 this is premature. You want me to wait until a plan is
16 filed, we will see what it says, and then if the insurers are
17 entitled to discovery it will start in May. And you think we
18 will confirm a plan by August?

19 MR. GOODMAN: I think if discovery is taking place
20 in the context of litigation over a plan you would have a
21 contested matter under 9014. If discovery is taking place in
22 the context of an estimation proceeding under 502(c) you'd
23 have a contested matter. Then we would have a fair fight.
24 We would go after all of the information that they have. We
25 would serve them with discovery requests. They would take

1 the discovery that they are seeking. It would have meaning.
2 It would have consequence, Your Honor.

3 Right now we are just not there yet. We don't
4 even know what the litigation in this case is or is not going
5 to involve. I come back to my point that I believe that that
6 is why this is all very premature.

7 THE COURT: What about the issue -- maybe you will
8 get to it, but go ahead and make your three more points.

9 MR. GOODMAN: Thank you, Your Honor. Keeping
10 track. Two down, three to go.

11 Third point, Your Honor, I believe the prejudice
12 outweighs the value. Again, we're not talking here about
13 discovery from the debtors. We are talking about information
14 that -- we're not talking about information that the debtors
15 have already assembled and have produced to the FCR or
16 someone else in the case. We are talking about 1,400 abuse
17 victims, 100 depositions, and that is probably just the tip
18 of the iceberg.

19 If the insurers had said they want to then launch
20 substantive claim objections completely free of any
21 restrictions set forth in the local rules the magnitude of
22 this would take months and months which I believe is the
23 point.

24 Based on the testimony that we heard from Mr.
25 Martin, both the deposition and today, it's not clear that

1 the information the insurers are seeking will even be
2 meaningful. If the insurers were serious about conducting a
3 meaningful study here they would have someone with subject
4 matter expertise involved. That is what the text books that
5 Dr. Martin cites to say, that if you want to do this the
6 right way you have a subject matter expert and a
7 statistician. We don't have that here, Your Honor.

8 We have Mr. Ruggeri identifying subcategories.
9 This is completely lawyer driven. They don't have a
10 statistical model yet and the samples that they have proposed
11 appear, on their face, to be gerrymandered in favor of claims
12 that the insurers have already flagged in their system as
13 somehow deficient.

14 They're starting with the claims that they think
15 are bad and they want to take discovery on those claims.
16 This is not a situation where if they just had the data all
17 of our questions would be magically answered. And, in fact,
18 I don't even know what a party in this case would say if
19 someone showed up on their doorstep and said I'm objecting to
20 your claim based on a statistical sample. I don't think that
21 gets us anywhere.

22 Again, I don't believe that this is about
23 interposing discovery or extensive litigation that really
24 advances these cases. Rather, I think there is a clear
25 danger to permitting Rule 2004 to be used in this way. If

1 the insurers are successful here this court's decision will
2 be cited for the proposition that discovery in a mass tort
3 bankruptcy can begin with insurance companies going after
4 tort victims before a plan is even proposed. I cannot locate
5 a single case or anything close to this that has ever been
6 proposed or has ever been permitted.

7 THE COURT: Well let me ask you -- let me ask you
8 the context here so far you haven't addressed. Are you going
9 to address the context in which we have claims that start at
10 less than 2,000 prepetition and end up at 95,000 because that
11 is a context in which we are. You may have different
12 explanations or want to suggest a different explanation, but
13 that is where we are.

14 MR. GOODMAN: Well, I guess, a couple points that
15 I go back to on that point, Your Honor.

16 The first is if you look at the number of known
17 abusers set forth in news articles in the Boy Scout system
18 the number of known abusers, if you consider the number of
19 victims an abuser will typically have 95,000 is actually not
20 outside the realm of what you would likely expect here. We
21 are talking about a national organization with, I believe,
22 close to 8 or 9,000 known abusers. Again, that is just known
23 abusers, Your Honor.

24 If you consider the decades, the decades of abuse
25 in which this, you know, occurred and you also factor in the

1 number of states where the statute of limitations has opened
2 up. I can also, you know, layer into this, I think, changes
3 in societal views on people disclosing sexual abuse. If you
4 put all of this together I don't really believe that 95,000
5 is outside the realm of possibility. In fact, I think the
6 number may actually be significantly higher than that, Your
7 Honor.

8 In terms of the, you know, growth in claims filed
9 its not just Boy Scouts. Look at Purdue, look at PG&E, look
10 at the claims that had been filed in most mass tort cases;
11 they almost all come into bankruptcy with a couple thousand
12 claims and by the time you're done with a bar date noticing
13 program and a bar date has been set it forces people to make
14 decisions and come forward.

15 So, you know, again the insurers are trying as
16 hard as they can to paint this picture as if something wrong
17 has happened. You know, yes, something wrong happened.
18 There was sexual abuse on a substantial scale and that is why
19 we are here today.

20 Fourth point, Your Honor, I think this court has
21 actually heard these arguments before. In Imerys Johnson &
22 Johnson moved for discovery under Rule 2004. Johnson &
23 Johnson was arguably, I'm sure they would dispute this,
24 obligated to indemnify the debtors. Given this Johnson &
25 Johnson argued that the TCC and the FCR would eventually seek

1 to recover from them on the talc claims. Johnson & Johnson
2 claimed that it could be asked to fund a trust for talc
3 claims and that this gave them a key interest at
4 understanding the size of the claim pool and that such issues
5 could arise in the context of a plan. So they demanded
6 discovery under Rule 2004 so they would have adequate time,
7 you know, to process the information.

8 Hartford and Century are making almost the same
9 arguments today. Hartford and Century say that they have
10 coverage obligations for abuse claims. Again, we actually
11 asked them to admit this and they refused. So, technically,
12 Hartford and Century are standing before the court seeking
13 discovery without even admitting that they have coverage
14 obligations.

15 Putting that aside they argue that the TCC, the
16 FCR and the Coalition could ask them to write a check to fund
17 a plan. That is what they say in their motion. They are not
18 saying that they would have to write a check, just that they
19 may be asked to. And they argue that this gives them a keen
20 interest in reducing the size of the claim pool, and this
21 will eventually spill into plan confirmation so they should
22 get discovery under Rule 2004 now.

23 This court denied Johnson & Johnson's Rule 2004
24 motion. So the question I ask is have Century and Hartford
25 made a stronger showing of good cause as Johnson & Johnson

1 did? Johnson & Johnson wanted discovery from the debtors.
2 Hartford and Century want discovery from 1,400 abuse victims.
3 Johnson & Johnson had co-liability with the debtors as an
4 indemnitor. Hartford and Century have co-liability with the
5 debtors as insurers.

6 Johnson & Johnson claimed that they may be asked
7 to fund a plan. Hartford and Century claimed that they may
8 be asked to fund a plan. Johnson & Johnson said that they
9 need to understand the size of the claim pool of talc claims.
10 Hartford and Century claimed that they need to understand the
11 size of the pool of abuse claims. Imerys was still
12 formulating a plan. The Boy Scouts are still formulating a
13 plan. Johnson & Johnson already had substantial information
14 as a co-defendant in litigation with the debtors. Hartford
15 and Century already have substantial information as the
16 insurers for decades and decades.

17 Johnson & Johnson was trying to confirm that the
18 debtors had not shared protected communications. Hartford
19 and Century are trying to invade the attorney/client
20 privilege of abuse victims. Johnson & Johnson was seeking
21 information that had already been collected and could have
22 been easily turned over. Hartford and Century want to go out
23 collect data from 1,400 survivors, have an economist with no
24 subject matter expertise at all analyze it which may or may
25 not amount to anything other than several months of delay in

1 this case.

2 I will add, Your Honor, that your ruling in Imerys
3 was obviously correct.

4 THE COURT: Obviously.

5 MR. GOODMAN: Obviously.

6 Fifth and last point, Your Honor, we need to focus
7 on what is at stake here. As I was preparing for this
8 hearing I kept going back to Claimant No. 2432. He has a name
9 and based on the email that the insurers filed he was abused
10 over sixty years ago. He may be seventy years old today.

11 Like so many victims, Claimant No. 2432 never
12 sought professional counseling or treatment. In fact,
13 studies of sexual abuse in America support the proposition
14 that sexual abuse is a grossly underreported crime. There
15 are many reasons for this failure to disclose, but the
16 predominant one is shame.

17 We don't know if Claimant No. 2432 felt safe
18 enough to tell his parents. We do know that he mustered the
19 courage to file a proof of claim without the aid of an
20 attorney. Then came a call from one of Hartford's attorneys
21 requesting a meet and confer over the detailed
22 interrogatories. He apparently read them and concluded that
23 since he did not seek professional help that he should
24 withdraw his claim.

25 From the way the insurers use this email and talk

1 about the numbers in this case it's almost as if they view
2 this as some kind of victory. "Rejoice", one less claim we
3 may have to pay. Your Honor, that is not a victory. That is
4 sad. That is just sad. And it shows, in my view, what the
5 insurers are trying to do in these cases is not appropriate.

6 At a minimum, the rules need to be followed here.
7 After spending years of my life in cases like Takata, PG&E,
8 and now Boy Scouts I don't understand why some parties seem
9 to think that when it comes to tort victims the rules can
10 just be cast aside.

11 There is no good cause here just like there was no
12 good cause in Imerys. We don't have to check our humanity at
13 the door. Look at the claims. Look at the descriptions of
14 the sexual abuse. Read objections like the one filed by John
15 Doe No. 59969. The key to moving these cases forward is to
16 not lose sight of what happened. Look at what happened and
17 what is at stake. These motions should never have been filed,
18 never in this court. They should have tried to work with us
19 and they chose not to.

20 I have nothing further, Your Honor, unless you
21 have questions for me.

22 THE COURT: No. I don't have any questions.

23 Mr. Stang, your hand has been up, I think, for a
24 long time. I'm not sure that I saw a filing by the tort
25 claimants committee, but I will give you an opportunity to

1 address me if you want to before I go to the individual
2 objectors.

3 MR. STANG: Thank you, Your Honor. James Stang
4 for the official tort claimants committee.

5 My hand was up just to let you know that we
6 thought it was the right time that I'd like to say something.

7 THE COURT: That's fine.

8 MR. STANG: The tort claimants committee did not
9 file an objection. The tort claimants committee, of course,
10 does not represent these individual survivors, but we have
11 (indiscernible) overall purposes of this discovery and that
12 it's appropriate.

13 As several of the targets of the discovery, as
14 disclosed by Mr. Ruggeri, responded, had meet and confers.
15 They may not have been timely, but they had their meet and
16 confers, and objections were withdrawn. People handled their
17 claim discovery as if it was just (indiscernible) discovery.

18 I don't want our silence to be taken as some kind
19 of siding with the carriers. One should not make that
20 presumption. What we are -- we're getting back to this
21 actual motion and going back a little bit from the overviews
22 today the discovery request does not ask you to determine
23 that these subgroups are valid subgroups for statistical
24 purposes. They don't ask you to find that Dr. Martin's 200
25 per category is, in fact, the correct sampling.

1 And if they filed objections, either omnibus or
2 otherwise, and they present some kind of statistical analysis
3 that they think supports their objection every survivor
4 should be able to respond to that without some kind of
5 (indiscernible) being made today if you did approve the Rule
6 2004 exam. And the TCC, at that point, seeing what the
7 insurers are actually trying to do with this information
8 undoubtedly will be heard or (indiscernible) on whether or
9 not it's appropriate to use the devices to support their
10 objection.

11 So I wanted to try to bring some clarity, at
12 least, to whether Dr. Martin's work is somehow being approved
13 by the court if they were granted the 2004 exam as being
14 something that cannot be questioned down the road. And I
15 don't think you are saying that. I don't even think Mr.
16 Ruggeri is saying that.

17 There has been a lot of discussion in cross
18 examination about her qualifications. I am not sure at this
19 point that is necessary to get into. If you, in fact, say,
20 hey, I am going to grant this discovery, but I'm not making
21 any finding as to how it is used and the relevance of it at
22 all to an individual claim objection. If it comes up in an
23 estimation hearing we will take it up then. Allowing the
24 discovery should not be some kind of blessing that what she's
25 done cannot be revisited or even visited for the first time.

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Okay. We had a response from the Church of Jesus
4 Christ of Latter-day Saints. Does their counsel have
5 anything to say?

6 MR. GOLDBERG: Good afternoon, Your Honor. Adam
7 Goldberg of Latham & Watkins on behalf of the Church of Jesus
8 Christ of Latter-day Saints. Thank you for the opportunity
9 to be heard this morning.

10 Your Honor, as stated in our statement on the
11 record we do not have a position on whether or not relief
12 should be granted on the motion. We would simply rise to
13 emphasize that if discovery is granted it would be relevant
14 to, particularly, all of the mediation parties in this case
15 and we would request that the church, in particular, be
16 granted access to those discovery materials.

17 THE COURT: Thank you.

18 MR. GOLDBERG: Thank you, Your Honor.

19 THE COURT: Bailey Cowan Heckaman? Mr. Bifferato,
20 do you have anything to add?

21 MR. BIFFERATO: Your Honor, I apologize. This is
22 Connor Bifferato.

23 Nothing to add in addition to counsel from Brown
24 Rudnick's comments.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 James Harris Law, PLLC Law Firm.

3 MR. HARRIS: This is Jim Harris, Your Honor.

4 Nothing to add from the Coalition's objection.

5 THE COURT: Thank you.

6 There was a joinder by Eisenberg, Rothweiler,

7 Winkler, et cetera, anything to add? Mr. Hogan?

8 MR. HOGAN: Good afternoon, Your Honor. Daniel

9 Hogan of Hogan McDaniel on behalf of Eisenberg, Rothweiler,

10 Winkler, Eisenberg & Jeck, P.C.

11 Your Honor, I have nothing more to add. And we

12 will rest on the submissions together with the arguments made

13 by co-counsel, Mr. Goodman.

14 Thank you.

15 THE COURT: Thank you, Mr. Hogan.

16 The Webster Law Firm filed an objection on behalf

17 of Claimant No. 40573. Did Mr. Webster have anything to add?

18 (No verbal response)

19 THE COURT: Okay. I hear nothing.

20 There was an objection filed by Mr. Swenson of

21 Swenson & Shelley. Does Mr. Swenson have anything to add on

22 behalf of his clients?

23 (No verbal response)

24 THE COURT: I hear nothing.

25 There was a joinder filed by Conway Legal, LLC.

1 Mr. Conway and Mr. Kraus [phonetic], do either of you have
2 anything to add?

3 (No verbal response)

4 THE COURT: I hear nothing.

5 Mr. Conway and Ms. Muhlstock filed an objection on
6 behalf of Claimant No. 55101. Do either of you have anything
7 to add?

8 MS. MUHLSTOCK: No, Your Honor. This is Ms.
9 Muhlstock. We join in Mr. Goodman's arguments and have
10 nothing further.

11 THE COURT: Thank you.

12 MS. MUHLSTOCK: Thank you.

13 THE COURT: Junell & Associates also filed a
14 joinder. Mr. Cousins or Mr. Thomas?

15 MR. COUSINS: Good afternoon, Your Honor. Scott
16 Cousins on behalf of Junell & Associates.

17 We covered our points in our joinder. And we
18 thank the court for considering our evidence.

19 THE COURT: Thank you.

20 There was an objection filed by the law firm of
21 Schneider Wallace Cottrell Konecky on behalf of various
22 claimants.

23 MR. HICKS: Your Honor, Ryan Hicks here from
24 Schneider Wallace.

25 Can you hear me okay?

1 THE COURT: Yes.

2 MR. HICKS: If I may, and I apologize for not
3 being on the Zoom. I am Houston and have been without power a
4 couple of days. I just have a brief couple of things to add.

5 THE COURT: Yes. Please go forward.

6 MR. HICKS: Your Honor, we have three of these
7 1,400 claimants. We are not part of the Coalition. We are
8 not a firm that is the subject of the second motion. We
9 raised this objection separately as these three proofs of
10 claim were, I believe, as the court characterized some of
11 them earlier, fulsomely filled out, they were signed by the
12 claimants.

13 Earlier counsel stated something along the lines
14 that this discovery is designed to illicit information from
15 people who didn't provide it and differentiate them from
16 those who did. We provided information regarding the abuser,
17 the relation to Scouting, information about whether anyone
18 was told of the abuse, discussion of prior claims.

19 So, simply, we are objecting on the basis that
20 this is duplicative and that these claims are
21 (indiscernible), and provide the requested information
22 already.

23 THE COURT: Thank you.

24 I'll get a response to this after I have gone
25 through all of the objections and we see what else there is.

1 The PCVA Claimants filed an objection. Mr.
2 Clauder or Mr. Bo [phonetic]?

3 MR. STANG: Your Honor, this is Mr. Stang. I
4 believe Mr. Amala [phonetic] of that law firm is on.

5 THE COURT: Mr. Amala. Thank you. Anything
6 further to add?

7 MR. RUGGERI: Your Honor, that objection was
8 withdrawn. James Ruggeri for Hartford.

9 THE COURT: Okay. I've got another objection by
10 Schneider Wallace Cottrell & Konecky. I am not sure if it's
11 different claims or not, but I will ask again is there anyone
12 from that firm that wishes to address the court?

13 MR. HICKS: Your Honor, Ryan Hicks from Schneider
14 Wallace. Nothing to add on that particular joinder.

15 THE COURT: Thank you.

16 Napoli Shkolnik filed an opposition.

17 MR. BUSTAMANTE: Your Honor, this is Brett
18 Bustamante from Napoli Shkolnik.

19 The only thing I think with respect to this motion
20 is we'd just like to point out that the insurers used a
21 series of misrepresentations and *ad hominem* attacks
22 specifically on our firm and other firms.

23 In our opposition we took issue with the fact that
24 the insurers accused Mr. Napoli's father of improperly
25 signing claim forms. In response the insurers, in their

1 reply, state that Mr. Napoli also (indiscernible) insurers
2 for accusing his father of impropriety, but the insurers do
3 not mention Joseph Napoli anywhere in their brief. So the
4 accusation is hard to understand.

5 In our opposition we not only cite to the very
6 place where they do that, we also provided them with the
7 exact quote. We just believe this goes beyond mere
8 negligence because in our citation the fact that we gave them
9 a citation -- they are suggesting that they reviewed the
10 documents and nothing turned up. So they are directly
11 misrepresenting to the court what they wrote in their own
12 papers. So we believe that it is just really incumbent on
13 the insurers to explain why it's okay to make such
14 misrepresentations to the court.

15 Additionally, they also accuse Paul Napoli of
16 misconduct. We pointed out in our opposition that the case
17 that they cited to actually exonerated Paul Napoli. They did
18 not follow-up in their reply. So I assume that issue is
19 moot.

20 THE COURT: Thank you.

21 There's an objection filed by Crew Janci.

22 MR. RUGGERI: Your Honor, James Ruggeri for
23 Hartford. That objection has been withdrawn.

24 THE COURT: Thank you.

25 Mr. Kosnoff?

1 MR. WILKS: Good afternoon, Your Honor. David
2 Wilks for Tim Kosnoff.

3 We are content, Your Honor, to rest on the
4 arguments that have been made.

5 Thank you.

6 THE COURT: Thank you, Mr. Wilks.

7 Babin Law filed an objection.

8 MR. PICKENS: Good afternoon, Your Honor. Joe
9 Pickens on behalf of Babin Law.

10 We do not have anything additional and support Mr.
11 Goodman's arguments.

12 Thank you.

13 THE COURT: Thank you.

14 There was an objection filed by Ms. Liakas from
15 Liakas Law on behalf of multiple claimants.

16 (No verbal response)

17 THE COURT: I do not hear Ms. Liakas.

18 A joinder filed by Marc J. Bern & Partners.

19 MR. SULLIVAN: Good afternoon, Your Honor. Bill
20 Sullivan on behalf of Marc J. Bern & Partners.

21 We filed a joinder to the written objection filed
22 by the Coalition and we also join in the arguments presented
23 to Your Honor today by the Coalition, but we don't have
24 anything further to add.

25 THE COURT: Thank you, Mr. Sullivan.

1 Merson Law Claimant's joinder, they joined the
2 PCVA Claimant's objections. Does the Ciardi Firm or Mr.
3 Merson have anything to add?

4 MR. GOULDSBURY: Your Honor, this is Walter
5 Gouldsbury for Ciardi Ciardi & Astin.

6 We have nothing further to add to the arguments
7 that were made today.

8 THE COURT: Thank you.

9 MR. STANG: Your Honor, this is Mr. Stang.

10 I would just like to interject that as to the
11 objections that were withdrawn they were withdrawn pursuant
12 to a meet and confer process that included modifications not
13 withdrawn at the discovery requests. So I didn't want these
14 two law firms that did withdrawn their objections have
15 clients on the TCC. So I have been in regular contact with
16 them, not to say I am not in contact with others.

17 I didn't want you to come away with the impression
18 that there was simply withdraw of the objection as opposed to
19 a result in the meet and confer process that modified both
20 sides' rights.

21 THE COURT: I took that from Mr. Ruggeri's intro.

22 MR. STANG: Thank you, Your Honor.

23 THE COURT: Thank you.

24 There's a joinder in the Coalition's objection by
25 Porter & Malouf, P.A. Ms. Harris or Mr. Porter?

1 (No verbal response)

2 THE COURT: I hear no one.

3 I think I got an objection last night that went to
4 this motion. I don't see it off hand.

5 If there is anyone else -- I've gone through all
6 the objections I have. If there is anyone else who is on
7 either the Zoom cast or the phone who would like to be heard?

8 MR. DURSO: Your Honor, Carmen Durso.

9 THE COURT: Mr. Durso, I think yours was the
10 objection I saw, yes.

11 MR. DURSO: Yes, Your Honor. Its John Doe No.
12 5969. Mr. Goodman has already referenced that objection, but
13 I do want to make a few additional points if I may.

14 THE COURT: Yes.

15 MR. DURSO: The process that the insurers have
16 used here, it seems to me, is a result of the 90,000 number.
17 I just want to say to the court that that should not be a
18 significant consideration even though it's an enormously
19 large number in terms of this kind of case.

20 Counsel referred to the statistics that one sees
21 when you read studies about perpetrators indicating that they
22 have, on average, institutional perpetrators have upwards of
23 100 victims. It was already mentioned to you the 8 or 9,000
24 of perpetrators that have been identified with regard to the
25 Boy Scouts. You start multiplying those numbers out you come

1 out with victims far in excess of anything that we're talking
2 about in this particular matter.

3 When I started doing this kind of work over thirty
4 years ago the average victim I was seeing was a male in his
5 mid-40's. That has consistently come down through the years
6 and part of the reason it's come down is because it's become
7 somehow more acceptable for people to talk about these kinds
8 of things. So my victims are getting younger and younger all
9 the time.

10 The other thing is that when there is well
11 publicized matter like this particular case it gives
12 permission to males who ordinarily would rather die than tell
13 anybody else that another male has touched them sexually. It
14 gives them permission to say, yeah, it happened to me too and
15 I need to do something about it. So it's not remarkable that
16 you've got 90,000 people coming forward in this case.

17 The Boy Scouts are the only institution, really,
18 of any size that you see with treating young men throughout
19 the -- treating young boys throughout the country. The
20 catholic church have all been segmented because the
21 institutional diocese are independent corporations and no one
22 has ever been successful in making the argument that they
23 should be all dealt with as one national organization or that
24 the Vatican should be involved. So that is the reason why
25 you don't see larger numbers in other cases that have come

1 forward.

2 The idea that the people who come forward are so
3 much less detailed than you would see in other type of tort
4 cases also is not remarkable. You're talking about boys,
5 young clueless boys who are having what is, arguably, their
6 first sexual experience at the hands of a trusted individual,
7 a very confusing thing that they don't know how to deal with.
8 The male on male part of it makes it clearly something they
9 can't talk about, can't deal with and getting through to the
10 point in their life where they can do that, as I have
11 indicated, is simply just can take them forever. Some people
12 go to their graves without ever talking about it.

13 So I think the court should not allow itself to be
14 taken in by the idea that because there is a large number of
15 people and because there is vagueness in letters of a lot of
16 these people therefore, automatically it must be something
17 that is fraudulent or, in fact, it's a commonplace to find
18 people who have difficulty coming up with the kind of detail
19 that you would have with any other kind of tort claim.

20 In this particular claim, as has been pointed out,
21 there is no indicia of any kind that this is a fraudulent
22 claim. I haven't seen the other claims. I have seven claims
23 and I have just one claim of the 1,400. I can't imagine a
24 claim that would have more detail about the incident and
25 documentation than this particular claim. There are eighteen

1 pages of documentation from the time period when the claim
2 occurred. There are official records from the Boy Scouts
3 about the perpetrator. There is correspondence with the Boy
4 Scouts organization. There is an indication that parents
5 contacted the Boy Scouts and gave them details about what had
6 happened. There is a letter from the perpetrator indicating
7 to some degree his admission of his conduct.

8 Why a claim like this would end up picked out by
9 that full proof statistical process of being something that
10 indicates there is widespread fraud I can't imagine. I'm
11 thinking nobody ever read it, Your Honor, frankly.

12 I did talk to counsel for the insurers and I said,
13 you know, if you have read this you have got to know that
14 the big thing that is driving you right now for this motion,
15 the fraud simply doesn't apply here. They said, well, you
16 know, statute of limitations. I have a great deal of
17 difficulty understanding whatever they might be able to say
18 about that statistical process for rooting out fraud, how
19 that could apply to a statute of limitations situation.

20 There are, actually there's more than fifty
21 states, there is additional jurisdictions where there are
22 statute of limitations. In most of the jurisdictions there
23 are separate statutes of limitations for perpetrators and for
24 non-perpetrators. Case law has developed with regard to both
25 of those things.

1 There is a case in the First Circuit that just
2 came down after I filed my objection and if the court gives
3 me permission I will send a copy to you. Judge Lipez, in the
4 First Circuit, wrote a very interesting decision in which he
5 differentiated between a discovery rule as applied to claim
6 against a perpetrator and a discovery rule as applied as to a
7 non-perpetrator. He says you don't determine in the same way
8 and statutes of limitations can run differently between one
9 or the other.

10 I say this to you because the point I want to make
11 is that I can't imagine what a statistical study can do to
12 show how statute of limitations issues with regard to any one
13 case can be a predictor of what will happen in any other case
14 particularly with regard to the discovery rule. The
15 discovery rules determinations are fact based. You cannot
16 say because I picked out a particular case and I showed that
17 the factual basis there indicates to me that this case might
18 be one we can win it tells you nothing about what would
19 happen in another fact based case.

20 Indeed, I reference in my papers that one of the
21 things that our courts have said, which you look at to
22 determine whether or not there a survivor has made an
23 appropriate determination about an appropriate discovery of
24 the harm which he suffered is that the discovery was
25 triggered by what it calls a watershed event. Now that is

1 what our courts have said in Massachusetts. In other states
2 they say very different things. The state of Washington they
3 look at the mental state of the survivor only.

4 So there is such a variety of ways in which
5 statutes of limitations can be determined, how they can be
6 applied, that looking at a particular case and saying this
7 gives us some information by which we can figure out what we
8 can do with regard to defeating the claims because of the
9 statute of limitations just doesn't work.

10 The last thing that they could possibly do has
11 been determined by a statistical determination. I listened
12 to the testimony of the young woman who was explaining her
13 process. I thought about asking her questions, but really I
14 know what the answers are going to be. She clearly has no
15 legal background. She does not know how many states have
16 discovery rules. She does not know how the discovery rules
17 work and how they differ from each other, and how one set of
18 facts can be determined.

19 Now I suppose one of the things that might be
20 asked is well, look, all we really want you to do is to
21 answer a few questions. The short answer is that that is not
22 really accurate. What they want to do is to get you to
23 answer a series of questions so that they can then take a
24 deposition and then they can move to dismiss it. In that
25 process you are going to have to spend a lot of time, money

1 and effort into feeding that.

2 I want to say, respectfully, that I am always
3 willing to engage in that kind of process where opposing
4 counsel has some purpose that will be worthwhile. The only
5 purpose that would be worthwhile will be to attack my
6 client's particular case and it does not help the court with
7 regard to what happens or should happen in any other case
8 that have statute of limitations issues.

9 THE COURT: Thank you.

10 Is there anyone else to be heard on this motion?

11 MS. GUMMOW: Your Honor, this is Susan Gummow.

12 THE COURT: Ms. Gummow?

13 MS. GUMMOW: Thank you. I represent the AIG
14 Company. We filed a joinder with regard to Century and
15 Hartford's motion.

16 If there is information with regard to invalid or
17 fraudulent claims I think it's important for the debtors to
18 know that, for the court to know that, and for purposes of
19 objecting to claims.

20 With regard to the insurers the policies only pay
21 valid covered claims. So if there is information regarding
22 invalid or fraudulent claims then that goes to the exposure
23 analysis that is being done by the insurance carriers. And
24 given that we are currently in the process of mediating these
25 issues I think it's important to have any information with

1 regard to invalid or fraudulent claims sooner rather than
2 later to assist the parties in having beneficial ongoing
3 mediation discussions.

4 That's all I have, Your Honor.

5 THE COURT: Thank you.

6 I will permit anyone else who has filed a joinder
7 to the insurance companies' position to add any comments they
8 have.

9 (No verbal response)

10 THE COURT: Okay. I hear no one.

11 Mr. Ruggeri?

12 MR. RUGGERI: Yes, Your Honor. Thank you.

13 Well I think we can start off on something that
14 Mr. Goodman and I agree on and that's the standard. The
15 court agrees on it too because you have written on it. Have
16 the insurers provided good cause to go forward with
17 discovery. We have demonstrated that we believe that we
18 have. We don't dispute the standard.

19 Mr. Goodman accused us of gerrymandering the sub-
20 populations, if you will, because those are the ones that are
21 most likely to draw questionable invalid claims, if you will.
22 Okay. There are tens of thousands of those. That is what we
23 are trying to test, Your Honor, is if we draw from those
24 groups are we seeing high percentage of invalid claims
25 filings. That then would be what one could extrapolate if we

1 did that which would, in turn, enable us to make objections
2 if we feel that appropriate. And, again, shifting the burden
3 over to the person who is filing the claim.

4 So I think that there is no surprise there and
5 there shouldn't be any surprise there. That is what we are
6 trying to determine. One of the things were trying to
7 determine --

8 THE COURT: Isn't that the question whether the
9 sub-populations that counsel has chosen will give us relevant
10 information with respect to fraud.

11 MR. RUGGERI: Your Honor, I think -- I wrote it
12 down. The samples appear gerrymandered for the claims that
13 are defective. Those words were used by Mr. Goodman. So I
14 took that as, you know, an indication that he knows why we
15 have identified these sub-populations and articulated those,
16 but I don't deny, Judge, that included in these sub-
17 populations are claims that we believe presumptively are
18 invalid. That is, sort of, what we are trying to find out
19 through the discovery that we are seeking.

20 So I thought we had joinder on that issue and it
21 would be helpful to the court. My thought is that's right.
22 That's exactly right. Your Honor --

23 THE COURT: How do I know? How do I know that
24 these six sub-populations correlate to claims that are likely
25 to be fraudulently filed?

1 MR. RUGGERI: I don't think you know anything more
2 than those are the sub-populations that we designed or
3 requested. That was the reaction from the Coalition's
4 counsel in response to those sub-populations. So an
5 indication that those are the sub-populations where one would
6 expect to find problematic claims. Again, I thought that was
7 helpful that we, sort of, joined that issue.

8 Time and place, trying to go through what Mr.
9 Goodman mentioned, this is the right time and place. I think
10 the court heard Ms. Lauria this morning lay out her schedule,
11 amended plan filed at the end of this month, disclosure
12 statement hearing in April, need to emerge by the end of
13 summer. This is the time and place for us to take the
14 discovery so, frankly, we get it by May or early June. We
15 need this information to evaluate the claims for voting
16 purposes and to exercise our right to object to claims as we
17 deem appropriate.

18 Your Honor, Mr. Goodman says we have this
19 information. We don't have this information. We don't have
20 anything more about these claims than the proofs of claims
21 that were filed. We don't have this information. That is
22 why we are seeking it. With regard to the historical, the
23 alleged abusers, all we have is information that is publicly
24 available. We don't have anymore information than he has on
25 those issues, Your Honor. So it's just wrong to say that.

1 When he says we have turned our back to Hartford
2 and Century turned our backs on these claims that is also
3 wrong. We have handled these claims in the tort system for
4 decades. That is what we did before Boy Scouts filed for
5 bankruptcy. So it is just wrong for him to say that we
6 turned our backs and we're the bad insurance companies who
7 said we're not going to pay claims that are covered by our
8 policy period. That is not what either one of us has said
9 ever.

10 Standing, Your Honor, I think that the court made
11 it clear that you don't really need to get into the standing
12 issue today. In fact, Hartford is more than a party in
13 interest. Were a legitimate creditor. We actually filed a
14 claim as a creditor based on our indemnity right against Boy
15 Scouts which is partially liquidated.

16 And then in terms of standing, insurers standing,
17 we believe that the lead case is GIT which made it pretty
18 darn clear that when you have a situation where the
19 liabilities that the insurers are going to be asked to cover
20 is increased then there is standing for the insurers to
21 participate in the bankruptcy process.

22 Prejudice, Your Honor, we're asking for 1.5
23 percent of the claimants to give us information that they
24 would have to provide if they were making a claim in the tort
25 system, actually less than that. But that is what we are

1 asking from them. They have elected to participate in this
2 proceeding and I don't believe just because the bankruptcy
3 proceeding it immunizes a claimant who has come forward to
4 participate in this proceeding from participating as we need
5 that claimant to participate.

6 Imerys, I don't know that I should tell you about
7 Imerys, Your Honor, but you, obviously better than I,
8 understand the differences between this case and Imerys. And
9 J&J was demanding debtors to produce all of the materials
10 that they provided to the TCC and the FCR in the course of
11 negotiating the plan. Your Honor ruled that is not something
12 they were entitled to for a number of reasons including that
13 wasn't legitimate Rule 2004 discovery. That was plan
14 discovery, not 2004 discovery.

15 We talked about this morning I think that
16 discovery we're seeking today falls right within the
17 wheelhouse of 2004 discovery. There is no adversary
18 proceeding. There is no plan. There is no contested
19 proceeding. We're in a situation where we're trying to
20 examine the liabilities of the debtor. The most significant
21 liability of the debtor in this case is sex abuse claims and
22 that falls within the wheelhouse, we believe, of 2004, Your
23 Honor.

24 Thank you for your time, Your Honor.

25 THE COURT: Thank you.

1 MR. SCHIAVONI: Your Honor, if I could just add
2 one point to that. Mr. Ruggeri (indiscernible).

3 The one point I would just like to add is you
4 asked how could you tell that these requests could lead to
5 something. I do suggest to you the nature of the topics, the
6 subcategories, you know, it's like one is people who on the
7 proofs of claim have no affiliation with Scouting.

8 Another is that they can't identify the abuser.
9 It's like these are not -- it doesn't require a huge amount
10 of inquiry to see that, you know, these are definitely
11 relevant issues that go right to the heart of what anyone
12 would check in evaluating claims here. The large numbers
13 drive this.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 I did have, earlier in this case, a subject matter
17 expert testify about the bar date. I recall that. And it
18 just strikes me that a subject matter expert who would tell
19 me that, in fact, these categories correlate or don't to
20 fraudulently filed claims or likely to would be helpful.

21 I don't know if I need it. I am going to think
22 about it, but I'm prompted by any objections that question
23 popped into my mind from the beginning. That is what I have
24 been listening too and, therefore, of course, asking
25 questions about. I want to give consideration to the

1 responses that I have received as well as the arguments of
2 the objectors, particularly those who say I filled out your
3 form, it's complete, you have my information.

4 I guess maybe in that instance that claimant it
5 would be good to include in the population because it would
6 tend to show if that category means anything that, in fact,
7 it wasn't a fraudulent claim.

8 So we're going to take a break for lunch. And I
9 also have a three o'clock which I am going to push back to
10 four, first days in another matter. So let's -- its 1:49,
11 let's recess till 2:30 and we will take up the next motion.

12 Thank you. We're in recess.

13 (Recess taken at 1:49 p.m.)

14 (Proceedings resumed at 2:32 p.m.)

15 THE COURT: Thank you. We're back on the record.

16 MR. ABBOTT: Thank you, Your Honor. Derek Abbott,
17 again, Morris Nichols Arsht & Tunnell, here for the debtors.

18 Your Honor, I think we heard a lot of discussion
19 certainly about number four, a little bit about number three
20 which is also the insurers' motion. It wasn't clear to me
21 that they have said their piece on item three on the docket,
22 Your Honor, which is the relief from the omnibus claims
23 objection, but if so then we're onto number five which is
24 just the insurers motion to seal certain aspects of the 2004
25 motion we did discuss.

1 THE COURT: I think we're on, and the insurers can
2 correct me if I'm wrong, but I think we're on four. We heard
3 three. And four addresses the relief sought against the law
4 firms. Am I wrong?

5 MR. ABBOTT: Let me just let the insurers describe
6 that, Your Honor. I had thought that is what we had just
7 discussed.

8 MR. RUGGERI: Your Honor, James Ruggeri for
9 Hartford.

10 You are correct. Mr. Schiavoni is now going to
11 take the other end and talk about that.

12 THE COURT: Okay. Agenda Item 4.

13 Mr. Schiavoni?

14 (Recording goes off record)

15 MR. SCHIAVONI: Yes, Your Honor.

16 THE COURT: Okay. So we're on the motion seeking
17 to depose various counsel.

18 MR. SCHIAVONI: Should I go forward, Your Honor?

19 THE COURT: Yes. My understanding is you are
20 taking the lead on this one.

21 MR. SCHIAVONI: Yes. I am, Your Honor. Thank
22 you.

23 If it pleases the court, Your Honor, I'd like to
24 offer into evidence several declarations.

25 The January 22nd, 2021 declaration of Andrew

1 Kirschenbaum. Its Docket No. 1975 and the exhibits
2 associates with that.

3 THE COURT: Okay. Is there any objection to the
4 entry into evidence of the declaration of Mr. Kirschenbaum?

5 (No verbal response)

6 THE COURT: I don't hear any. It's admitted
7 without objection.

8 (Declaration of Andrew Kirschenbaum, received into
9 evidence)

10 MR. SCHIAVONI: Your Honor, I now offer into
11 evidence the declaration of -- he's my colleague, but I will
12 mispronounce his name, I'm certain, Sergei Zaslavsky dated
13 February 3rd, 2021 at Docket 2030 and the exhibits thereto.

14 THE COURT: I don't remember that one. Give that
15 to me again.

16 MR. SCHIAVONI: That's the declaration, Your
17 Honor, with the tweets, the Kosnoff tweets attached to it.

18 THE COURT: Okay. Well I did read that.

19 Let me ask if there is any objection to the entry
20 into evidence of -- give me the name again?

21 MR. SCHIAVONI: Sergei Zaslavsky.

22 THE COURT: Mr. Zaslavsky's declaration.

23 (No verbal response)

24 THE COURT: I hear no one. That is admitted
25 without objection.

1 (Declaration of Sergei Zaslavsky, received into
2 evidence)

3 MR. SCHIAVONI: Your Honor, I now turn to the
4 declaration of Chuck Fox. To be clear this was the
5 declaration that was submitted in reply. It was -- it's
6 specifically responsive to the filing by Mr. Napoli in his
7 opposition, Docket 2090, Paragraph 35 where he says that he
8 is -- he had certain blank proofs of claim he submitted. He
9 contends he submitted some of those blank claims as filled in
10 and that there was no further work to be done. Mr. Fox
11 presents the results of a criminal search on the claimants he
12 reviewed.

13 So we offer that -- Mr. Fox's declaration for that
14 purpose.

15 THE COURT: I was familiar with everything, but I
16 don't have his declaration in front of me.

17 Is there any objection to Mr. Fox's declaration
18 coming into evidence?

19 MR. BUSTAMANTE: Your Honor, this is Brett
20 Bustamante on behalf of Napoli.

21 I have not received that declaration. I am
22 unfamiliar. So I guess I would object to it. If the court
23 is willing to put that aside or maybe take it for a later
24 hearing, I would certainly be able to take a look at it.

25 Thank you.

1 THE COURT: Okay. Well I am not -- when was it
2 filed?

3 MR. SCHIAVONI: It was filed with our reply brief.

4 MR. Elias, do you happen to have the docket number
5 for it or one of my colleagues.

6 MR. ELIAS: This is Brad Elias from O'Melveny.

7 I believe its Docket No. 2174.

8 THE COURT: Well I am not going to admit it over
9 objections that it hasn't been received. I haven't seen it.

10 MR. MOXLEY: Your Honor, Cameron Moxley, Brown
11 Rudnick, on behalf of the Coalition again.

12 This is one of those declarations that I have
13 mentioned at the outset of the hearing today, Judge, that we
14 object to the admission of expert reports into evidence that
15 were filed to the reply for the reasons I stated previously.
16 I'd be happy to state those reasons for the record again,
17 Judge, if you would like. I just want to note the objection
18 to this declaration on the same grounds.

19 MR. SCHIAVONI: Your Honor, to be clear, Mr. Fox
20 isn't an expert as such. All he did was run criminal -- he
21 ran a criminal search on Mr. Napoli's opposition brief. He
22 states that he, sort of, cured the issue of him not having
23 filed blank proofs of claim by filing subsequent proofs of
24 claim. Mr. Fox simply ran through the ones that he refiled
25 and ran a criminal search on them. He found a significant

1 number of people who had been convicted of crimes of honesty,
2 you know, identify theft, forgery, that sort of thing.

3 THE COURT: Okay. I do have this two volumes that
4 was filed February 11th I think.

5 What am I supposed to do with these? People who
6 have been convicted of a crime can't have also been abused as
7 a child?

8 MR. SCHIAVONI: Judge, these aren't ordinary
9 crimes. These are crimes of honesty. You know, as I said,
10 forgery, identity theft, credit card fraud. These are fraud
11 crimes.

12 The suggestion that this -- you know, again, we're
13 in a situation here, Your Honor, where we're not able to
14 speak to the claimant, we're not able to speak to any
15 witnesses. You know, this is what we have, so to speak, to
16 indicate that there are issues about these. This is not an
17 insignificant number among the ones that were subsequently
18 submitted.

19 So you can give it whatever weight in the contexts
20 of this motion you want, but that is the proffer.

21 THE COURT: Is Mr. Fox available for cross?

22 MR. SCHIAVONI: Yes, he is.

23 THE COURT: Okay. Let me hear the objection
24 again, Mr. Moxley?

25 MR. MOXLEY: Yes, Your Honor. And the

1 availability for cross really doesn't really solve the
2 problem. The problem with filing these declarations at the
3 eleventh hour with a reply is a tactical one that the
4 insurers engaged in more to limit our ability to study the
5 testimony that is provided in the declaration, to be able to
6 actually prepare meaningfully (indiscernible).

7 These people -- I am surprised to hear that he is
8 (indiscernible) for not, you know, his declaration. It's not
9 appropriate, Judge, for these declarations to be filed on teh
10 fly when they're not actually in response to any declarations
11 that were filed by objectors. The insurers (indiscernible)
12 and if they had evidence and testimony to support the motion
13 they should have submitted that evidence with the motion.
14 And it's not appropriate to do so (indiscernible).

15 MR. SCHIAVONI: Your Honor, there is nothing
16 tactical here. This is filed in response to an assertion,
17 unsworn assertion by Mr. Napoli in his opposition that he
18 had "cured" some of the proofs of claim by refileing them.

19 So, you know, if we're going to --

20 THE COURT: How does this relate to the refiled
21 claims? How does it relate to that specifically?

22 MR. SCHIAVONI: Mr. Fox, ran criminal searches on
23 the collection of, whatever it was, forty, or fifty, or a
24 hundred of these that were refiled to see whether they were
25 like just obvious facial issues with them and he presents

1 these results.

2 MR. BUSTAMANTE: Your Honor, if I may. I also, I
3 think, would add relevance to the objection. Counsel seems
4 to be making the argument that the proofs of claims were --
5 the proofs of claims were cured by amendment. Whether the
6 particular claimant has a criminal background is irrelevant
7 to how they were amended. So it's completely irrelevant to
8 that topic.

9 THE COURT: Thank you.

10 That is what I am trying to figure out, how does
11 it relate to whether or not the firm subsequently filed an
12 amended proof of claim. You may not like who filed it or may
13 have an issue with the claim as filed or refiled, but how
14 does that respond to the assertion that the claim has been
15 amended?

16 MR. SCHIAVONI: Your Honor, this isn't an ordinary
17 situation. The proofs of claim that were filed were blank.
18 They didn't bear signatures. They bore an s/Mr. Napoli.
19 Okay. Then later there is -- not all of the blank ones like
20 this for which there is no explanation of how this came about
21 were amended, some subset were and of those, apparently a
22 significant number of them, come up with, you know, not
23 regular crimes so to speak, but like forgery, identity theft,
24 credit card fraud.

25 You know, you can give it what weight you want,

1 but these are the kinds of things in the overall context that
2 raise concerns.

3 THE COURT: Okay. I understand in the overall
4 context they may raise concerns for you. I don't understand
5 how it is responsive to whether a proof of claim was amended
6 or not. I am not going to admit it. The parties haven't had
7 a real chance to take a look at it and make any response they
8 may have to it. I am not going to accept it for purposes of
9 this hearing. It's excluded.

10 MR. SCHIAVONI: Your Honor, I'd next like to offer
11 --

12 THE COURT: Excuse me, Mr. Schiavoni, can everyone
13 please make sure that they are muted. I'm hearing background
14 noise. Thank you.

15 Mr. Schiavoni?

16 MR. SCHIAVONI: Your Honor, I'd next like to offer
17 the January 22nd, 2021 declaration of Paul Hinton.

18 THE COURT: Is there any objection to the
19 declaration of Mr. Hinton, signed January 22nd, 2021?

20 (No verbal response)

21 THE COURT: I hear none.

22 It's admitted.

23 (Hinton Declaration received in evidence)

24 MR. SCHIAVONI: Okay. Your Honor, lastly, I'd
25 like to offer the declaration of Erich Speckin, dated

1 January 22, 2021.

2 THE COURT: Is there any objection to
3 Mr. Speckin's declaration, signed January 22, 2021, coming
4 into evidence?

5 MR. WILKS: Yes, Your Honor. This is David Wilks
6 for Timothy Kosnoff and Kosnoff Law.

7 THE COURT: Mr. Wilks?

8 MR. WILKS: Thank you. We filed a motion to
9 strike the insurer's reply brief, which Mr. Speckin's
10 declaration and 20-some exhibits were accompanied. The move
11 to strike, I think, lays out, Your Honor, the basis for the
12 objection to Mr. Speckin's declaration.

13 It also, Your Honor, is improper opinion
14 testimony.

15 MR. SCHIAVONI: Your Honor, he's got the wrong
16 declaration, if I could just help him out. We're not
17 offering the reply declaration. Now we're offering the
18 moving declaration.

19 MR. WILKS: Then I think we'll stop talking, Your
20 Honor. Thank you.

21 THE COURT: Okay. Thank you.

22 Any other objection to the Speckin declaration,
23 signed January 22?

24 (No verbal response)

25 THE COURT: I hear no one.

1 It's admitted, without objection.

2 (Speckin Declaration received in evidence)

3 MR. SCHIAVONI: Your Honor, will any of these be
4 subject to cross-examination, so that we can make a
5 determination as to whether we should put them on?

6 THE COURT: Yes. Does anyone wish to cross-
7 examine Mr. Kirschenbaum?

8 (No verbal response)

9 THE COURT: I hear no one.

10 Does anyone wish to cross-examine Mr. Zaslavsky?

11 (No verbal response)

12 THE COURT: I hear no one.

13 Does anyone wish to cross-examine Mr. Hinton?

14 (No verbal response)

15 THE COURT: I hear no one.

16 Does anyone wish to cross-examine Mr. Speckin?

17 MR. BUSTAMANTE: Based on Mr. Schiavoni's
18 representation just now, Your Honor, my answer is no.

19 THE COURT: Okay. Then I hear no one.

20 MR. SCHIAVONI: Your Honor, we would just like to
21 make a very brief presentation with Mr. Hinton of his direct,
22 and if there's cross that follows, it's just to acquaint the
23 Court with his declaration.

24 THE COURT: Okay. Mr. Hinton?

25 MR. SCHIAVONI: And my colleague, Mr. Elias, will,

1 at the pleasure of the Court, put him on. He's got a pro hac
2 pending, Your Honor. He's appeared in other Delaware courts.
3 He's my colleague. I vouch for him.

4 THE COURT: That would be fine.

5 Mr. Hinton, I need to swear you in. Can you raise
6 your right hand, please.

7 PAUL HINTON, WITNESS FOR THE INSURER, AFFIRMED.

8 THE WITNESS: I do.

9 THE COURT: And will you please state your full
10 name and spell your last name for the record.

11 THE WITNESS: My name is Paul Hinton, H-i-n-t-o-n.

12 THE COURT: Thank you.

13 Mr. Elias?

14 MR. ELIAS: Thank you, Your Honor. Bradley Elias
15 from O'Melveny & Myers. I intend to show Mr. Hinton a few
16 tables from his declaration.

17 Would it be easier for the Court to share my
18 screen with those or is it better to just have everyone look
19 at their copy of the tables?

20 THE COURT: I have my copy.

21 MR. ELIAS: Okay.

22 THE COURT: If you can share your screen, that's
23 fine. I don't know how any of that works.

24 MR. ELIAS: Okay. Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. ELIAS:

2 Q Mr. Hinton, who is your current employer?

3 A The Brattle Group.

4 Q And what is your current position at Brattle?

5 A I'm a principal.

6 Q And what type of work do you do as a principal at The
7 Brattle Group?

8 A I conduct economic analysis and provide testimony in
9 mass-tort cases, in securities litigation, and in finance
10 cases.

11 Q And how long have you been doing this type of work?

12 A I've been doing this work for over 20 years and in the
13 mass-tort area, almost exclusively for a period of 10 years.

14 Q And can you describe for the Court your educational
15 background.

16 A Yes, I have an undergraduate degree from Oxford
17 University in the United Kingdom in engineering science and a
18 master's degree from Harvard University's Kennedy School of
19 Government and that degree gave me the opportunity to study
20 statistics, economics, and finance.

21 Q And how many mass-tort cases have you worked on during
22 your career?

23 A I've worked on over 40 cases, I would estimate.

24 Q And what about mass-tort cases, how many of those have
25 you worked on?

1 A I've conducted claims estimation work that's been
2 relied on in at least five significant mass-tort
3 bankruptcies, including Dow Corning, Armstrong, W.R. Grace,
4 Combustion Engineering, and I can't remember the other ones,
5 but ...

6 Q And have you provided expert testimony before?

7 A In the area of mass torts, I provided expert testimony
8 in the Dow Corning trust matter for ING's insurance
9 subsidiary in a fee arrangement, which is a U.K.-based
10 restructuring insurance and runoff. In a matter called the
11 Harmon v Atlantic Richfield, in a private trust litigation
12 for medical monitoring, and in a chemical company indemnity
13 case, involving Kemira, the chemical company. Those are the
14 most prominent ones.

15 Q And do you have any professional experience with or
16 without mass torts, outside of the litigation context?

17 A Yes, I have had the opportunity to do public policy
18 related research and, in particular, published studies that
19 do empirical analysis of the cost of mass torts and torts and
20 cost in the United States, and was invited on the basis of
21 that research, to provide testimony to Congress to the House
22 Judiciary Committee on two occasions about the impact of U.S.
23 tort litigation on U.S. competitiveness and jobs.

24 Q Now, turning this case, what has been your role?

25 A I've been retained by Century Indemnity Company as a

1 claims estimation expert.

2 Q And have you submitted any, prepared or submitted any
3 declarations in this case?

4 A Yes, I've submitted two declarations; one on
5 January 22nd and the second on February 11th.

6 Q I'm going to ask you today only about your first
7 declaration on January 22nd. Can you please briefly describe
8 the work that's reflected in the declaration.

9 MR. ELIAS: I don't know if others are hearing the
10 music?

11 THE COURT: Yes. Can everyone please check your
12 lines.

13 Operator, can you tell where that's coming from?

14 THE OPERATOR: Your Honor, I have muted John
15 Thomas' line. It appears the music was coming from there.

16 THE COURT: Thank you. Mr. Elias?

17 BY MR. ELIAS:

18 Q Mr. Hinton, I'll repeat the question. I was asking if
19 you could briefly summarize the work that you performed
20 that's reflected in your January 22nd, 2021, declaration.

21 A Yes, I have been analyzing the claims data for the BSA
22 case that was assembled by Omni and developed certain
23 indicators of claims characteristics, such as their
24 completeness and various other measures that we'll talk
25 about.

1 Q And just for the record, what is Omni?

2 A My understanding is that Omni is the claims agent for
3 Boy Scouts of America and so claim forms were submitted to
4 Omni and they processed them to extract the information from
5 them and publish them in a database and made that database
6 available to the parties and to the experts for the parties
7 to (indiscernible) the claims review and analysis.

8 Q And can you briefly describe how you performed your
9 analysis in this case using the Omni data.

10 A Yes. Well, I work with a team at The Brattle Group who
11 work at my direction. We started with the process of
12 downloading data from the Omni website. We did that on two
13 occasions, just before each of the declarations I prepared,
14 to make sure we had up-to-date data. We did some work that's
15 standardized. Some of the information text yields, there are
16 a lot of text yields that can have typos or misspellings or
17 can just use different syntax, for example, law firms' names.
18 So that had to be standardized.

19 And then we also extracted certain text information
20 from text yields such as key descriptor of the abuse, such as
21 the abuser name and the year of abuse and state of abuse.

22 And, finally, we conducted a random sampling exercise
23 so that we could then manually review a random sample to
24 evaluate the statistical competence level that I could report
25 for the test statistics that I computed in my report to show

1 that they were reliable.

2 Q Okay. I'd like to ask you about a few of the specific
3 analyses you did in your report. I'm going to show you
4 Table 1 in your initial declaration.

5 Can you see that on your screen in front of you, Mr. Hinton?

6 A I can, thank you.

7 Q And can you describe the analysis that you've done in
8 Table 1.

9 A Yes, this table, you'll see lawyers' names in the first
10 column and there are several columns of numbers where I'm
11 reporting the frequency of claims that were signed by
12 particular lawyers.

13 Q And what was your conclusion after analyzing this data
14 regarding the number of claims signed by attorneys in two
15 weeks prior to the bar date?

16 A Well, first of all, I identified the lawyers who signed
17 the most claims for the purposes of this table, and I
18 identified lawyers who either filed more than 500 proofs of
19 claim or signed more than 200 on a single day. And what I
20 discovered is a large number of those claims and attorneys
21 were associated with, the law firms they were associated with
22 and some of them were so admitted with the Abused in Scouting
23 firms, so those are the first firms listed.

24 I see that over 13,000 claims altogether are signed by
25 the top 15 lawyers that are on this table and the lawyers who

1 signed the most claims on a single day signed almost 900
2 claims on a single day and that was Adam Krauss (phonetic).

3 Q Let's move now to Table 2 in your declaration. I'll
4 try to make that a little bigger for you.

5 Can you tell us what you did in the analysis depicted
6 on Table 2.

7 A Yeah, in Table 2, I expanded the list of law firms
8 beyond the list of law firms for the lawyers who signed the
9 (indiscernible) claims to include the other two law firms
10 from the Coalition. So, this table can now report, I can
11 report on this table, statistics for both, the high-volume
12 signing firms and separately for the Coalition firms, which
13 potentially overlap.

14 And I'm focusing here on indicators that I've developed
15 of claims that have missing key pieces of information of two
16 types; one, information that identifies the claimants and,
17 secondly, information that identifies and describes the
18 nature of the abuse.

19 Q And just so we're clear, how did you select the firms
20 that were included in this chart in this table?

21 A Okay. So, I started with the firms that I identified
22 in my first table, which were identified by starting with the
23 lawyers who signed the largest numbers of claims and then I
24 noted that a large proportion of those claims were attributed
25 to law firms that were in the Coalition. All but two of the

1 firms in the Coalition were included in that analysis. So, I
2 added the other two firms which were (indiscernible) at the
3 bottom of Table 2 so that we can now, on this table, report
4 statistics of the Coalition.

5 Q And can you describe for us the types of information
6 that was missing from the claims that you examined in this
7 table.

8 A Right. So, there are two categories. So, in terms of
9 claimant identification information, I focused on five pieces
10 of information: the surname, the zip code, the Social
11 Security number, you know, five digits, and the date of
12 birth, month and year. And if any one of those pieces of
13 information was not provided, then I would flag that as
14 missing key claimant information.

15 Q And in what respect --

16 A It's --

17 Q Keep going, Mr. Hinton. I'm sorry?

18 A Yeah, sorry. I was just going to mention the second
19 category of missing information on this table is, I described
20 as the information about the abuse and, specifically, I
21 identified indicators of the abuse in terms of the when,
22 where, what, and who associated with the abuse. And if this
23 information was not available for each of those categories, I
24 indicated it in the corresponding column.

25 Q And what percentage of the claims that you examined in

1 this table were missing key information?

2 A Well, if you count claims that were missing any
3 information for any one of these indicators, I found that 65
4 percent of claims from the high-volume signing firms, and 65
5 percent is also the number with missing information from the
6 Coalition firms, and that's shown in the last column at the
7 bottom of the table.

8 Q So, just to break that out, you mentioned high-volume
9 signers and then the Coalition firms.

10 How many claims overall were these firms responsible
11 for?

12 A So, the high-volume signing firms were the firms where
13 the attorneys signed the most claims, work at law firms that
14 are responsible for 66,000 claims.

15 Q Okay. Let's move to your third table.

16 Can you describe for the Court the analysis depicted in
17 Table 3.

18 A Yes, in Table 3, I now look at the counts of claims for
19 these same law firms that were filed late, after the bar
20 date, where they represented a multiple, meaning there was
21 more than one claim filed for the same claimant or exhibited
22 certain inconsistent information about the age of the
23 claimant or the location of the alleged abuse.

24 Q You mentioned the inconsistencies with the age. How
25 did you make that determination?

1 A Yes, what we noted is that for some claimants, the
2 dates of the alleged abuse occurred when the claimant was not
3 of scouting age, based on the information provided about that
4 scouting activity.

5 Q And you also have a column here for never lived in the
6 state of alleged abuse.

7 How did you make that determination?

8 A Well, we did our best to identify the claimant in a
9 commercially available background check database called
10 National Public Data, where we were able to find information
11 about the claimant about their historical locations of
12 residence. We checked to see if they had ever lived in the
13 state where the alleged abuse occurred. And when we found
14 that they had never lived in that state, we listed that here.

15 Q Dismissed the address data that you mentioned a moment
16 ago, did that have information for all of the claims that you
17 looked at?

18 A No, we were only able to identify inconsistencies for
19 the claims where we were able to obtain historical residence
20 information. So, we weren't able to do this for every
21 claimant, so there are a lot of claimants for which we don't
22 know the answer to this question. So, this is potentially an
23 underestimate.

24 Q So, what percentage of the claims were either missing
25 key information or were late, a multiple claim, or had

1 inconsistencies with regard to age or location?

2 A Right. So, combining the results from the previous
3 Table 2 and these results, I report in the last column here
4 that 78 percent of the claims filed by the high-volume
5 signing firms had some sort of deficiency of the types that
6 are listed here.

7 And for the Coalition firms, it's almost the same,
8 77.7, so it rounds to 78 percent, also.

9 Q Have you been asked for counsel to make any
10 determination as to whether any individual or specific claims
11 were valid?

12 A No, I haven't been reviewing individual claims. The
13 whole point of this analysis is to look at proofs of claim,
14 to look at certain indicators or claim characteristics to see
15 whether any are unusual and raise questions about the claims
16 process.

17 Q And did you look at any other issues associated with
18 the claims?

19 A I did. One of the issues I looked at was this question
20 of the frequency with which certain law firms had filed
21 claims that were almost completely blank.

22 Q So what do you mean by -- how do you define a blank
23 claim?

24 A Well, a blank claim, I define as essentially lacking
25 all information about alleged abuse. And there are four

1 sections of the claim form that are focused on capturing that
2 information: Sections 3, 4, 5, and 6. And in those
3 sections, there are 120 different fields of information that
4 claimants are asked to provide information on by answering
5 those questions.

6 And I classify a claim as almost completely blank if it
7 only contained two or fewer responses to those 120 questions.

8 Q And using that methodology, how many blank claims did
9 you find?

10 A I'm just going to look at the relevant page of my
11 report (indiscernible) memorized it, but I think it's about
12 2500.

13 Q Okay. And did those forms come from any specific firms
14 of group of firms?

15 A Well, it was noteworthy that almost the majority of
16 them came from only three firms, which were the Mark Berman &
17 Partners firm (ph), the Napoli Law Firm, and the Abused in
18 Scouting group.

19 Q Mr. Hinton, thank you for your time today.

20 MR. ELIAS: Your Honor, I have no further
21 questions.

22 THE COURT: Thank you.

23 Does anyone have any cross?

24 MR. ROBBINS: Yes, Your Honor. This is Larry
25 Robbins from the firm of Robbins Russell. I represent the

1 firms of Andrews & Thornton and ASK, LLP, and I wonder if I
2 could just do a brief cross-examination of the witness,
3 please?

4 THE COURT: Certainly, Mr. Robbins.

5 MR. ROBBINS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ROBBINS:

8 Q Good afternoon, Mr. Hinton.

9 May I ask you, sir, to turn back to Table 1. Just so
10 you know what I'm about to do, I'm going to take you through
11 Tables 1, 2, and 3, and I have a couple of questions about
12 each one.

13 So, may I ask you to please put in front of you,
14 Table 1, and tell me when you're there.

15 A I'm there.

16 Q All right. And you have a column in which you gather,
17 in which you report the number of proofs of claim that were
18 signed within two weeks of the bar date; is that correct?

19 A Yes.

20 Q And just so we're clear, that column tells us only when
21 the proof of claim was signed, but not anything about when
22 the information contained in the proof of claim was vetted by
23 the signer; is that correct?

24 A Yeah, that information is just based on the date of
25 signature that's reported in Omni. It doesn't tell me

1 anything else.

2 Q So, for example, you would agree with me, Mr. Hinton,
3 that if I were a lawyer submitting one of these claims and I
4 had several rounds of vetting and several rounds of
5 interviews with the claimant and I followed up with the
6 claimants to make sure I was getting as much information as I
7 potentially could so that nobody would impeach the
8 credibility of that claim, and I therefore vetted that claim
9 almost until the bar date was upon us, that would show up,
10 would it not, in your column, indicating when the proofs of
11 claim were signed within the last two weeks, would it not?

12 A Well, the fact that you had engaged in a lot of vetting
13 prior to that date presumably would show up in some of the
14 indicators that I report, right, in terms of how complete the
15 claims were and whether they were free from inconsistencies
16 as of that date --

17 Q Yeah, I agree -- I'm sorry, please finish your answer.
18 Are you done?

19 A I'm finished.

20 Q All right. So, let's return to my question.

21 I'm looking at just this column on Table 1 where you
22 list the date of signature and these are the claims that were
23 signed within the two weeks before the bar date, and all I'm
24 asking you is whether the numbers in that column shed any
25 light whatsoever on the extensiveness or timing of the

1 vetting of a given claim by a given law firm, yes or no?

2 A Well, I think it tells you something about the timing
3 of the vetting, because it wasn't completed until two weeks
4 before the bar date. But that column is just telling you how
5 many claims were filed at the last minute. That's all it
6 tells you.

7 Q Okay. All right.

8 Let's talk about Table 2. Table 2, you've gathered
9 what you call "missing information" --

10 THE COURT: I'm still on this hearing. I'm just
11 on mute.

12 BY MR. ROBBINS:

13 Q You gathered missing information for a collection of
14 law firms that you call "high-volume signatories and
15 Coalition law firm members." I want to ask you about two of
16 those columns. One of them is missing key claimant ID.

17 Do you see that?

18 A Yes.

19 Q And I believe you told us on the direct exam by your
20 counsel that -- well, actually, let me ask you, you tell us,
21 do you not, in paragraph 9 of your declaration on page 4, the
22 things that constitute incomplete information; am I correct?

23 A Yes.

24 Q And you also testified, did you not, sir, that if any
25 one of those different categories of information is missing,

1 it goes into the column that you call "missing key claimant
2 ID."

3 Correct or incorrect?

4 A Yes, the five elements of claimant identification are
5 tested in that column.

6 Q Yes. But the point, sir, is if a given proof of claim
7 is missing any of these five, it goes into that column, does
8 it not?

9 A Yes, it does.

10 Q So, if a proof of claim is missing, for example, the
11 zip code of the claimant, that shows up in that column of
12 Table 2, does it not?

13 A Yes.

14 Q All right. You also have a column called "missing
15 abuser last name."

16 Correct?

17 A Yes.

18 Q And you tell us, do you not, in Footnote 4 on page 4,
19 that you count a given proof of claim as including key
20 information if the last name is identified in the text field
21 of the last name of the abuser, the purported abuser,
22 correct?

23 A Yes.

24 Q Which means that if a given claimant, let's say three
25 years after his abuse, if a given survivor can recall only

1 the first name of the scout leader who abused him, that shows
2 up, does it not, in the column called "missing abuser last
3 name."

4 Correct?

5 A Yes, that's correct.

6 Q And you don't hold yourself out as any kind of expert
7 in the question whether it is common among survivors of
8 sexual abuse, particularly males, to have forgotten the last
9 name of a scout troop leader. You don't hold yourself out as
10 that kind of expert, do you?

11 A No. Actually, we can just look at those questions by
12 looking across the claims data. So, I think you're
13 misunderstanding the person's abuse whose data are not to
14 assess the validity of any individual claim; it's to look and
15 see whether particular groups of law firms have unusually
16 high rates of missing information.

17 Whether it's common or not depends, and can be
18 determined, by looking at the other claims. And so, for
19 example, you can look at claims that were signed by attorneys
20 versus those that were signed by claimants. So, that would
21 be one way to look at this question to see whether these
22 particular claims look unusual or not, and you don't need to
23 be an expert in sexual abuse to do that analysis.

24 Q Can we go back to my question, do you fancy yourself an
25 expert on the question whether it is common among abuse

1 survivors to have forgotten the last name of an abuser 30
2 years prior; that's my question.

3 Are you so an expert?

4 A I'm providing expert testimony that includes
5 information about the frequency of certain pieces of
6 information provided by claimants. So, you can decide for
7 yourself whether that means I'm an expert of the type that
8 you describe, but I'm representing myself as an expert in
9 claims estimation and analysis, and so I am trying to, in
10 this table, show descriptively, what frequency of these types
11 of deficiencies are in particular groups of claims so the
12 Court can decide whether that warrants asking further
13 questions or not.

14 Q I see. So, can I take that as a no to my question, the
15 actual question I asked?

16 A Well, I'm sorry, I just didn't understand your question
17 fully enough in terms of describing expertise --

18 Q All right. Let's move on. I think I probably made the
19 point.

20 Let's look at Table 3 together. Tell me when you're
21 there.

22 A I'm there.

23 Q And one of your columns is inconsistent age, correct?

24 A Yes.

25 Q And to figure out what you mean by inconsistent age,

1 one of the things we should look at is how you define that
2 category in Footnote 13 of you report on page 6; am I
3 correct?

4 A Yes.

5 Q And so, if there is a mismatch, for example, between
6 the type of scouting that the claimant purports to have been
7 part of and the age of that particular claimant, that could
8 very well be the kind of inconsistency that would result in
9 showing up in the so-called "inconsistent age" column of
10 Table 3; am I correct?

11 A I think just to put it simply, you know, all I'm doing
12 is how old were you when the abuse occurred and were you of
13 scouting age, based on the type of scouting activities that
14 you were involved with as a child.

15 Q Well, let's suppose --

16 A There are different ages --

17 Q I'm sorry, go ahead.

18 A I was just saying, you know, based on, you know, some
19 people were in the Cub Scouts, some people were in the Eagle
20 Scouts and we looked at the information from -- on scouting
21 on the Boy Scouts of America website to determine the age
22 ranges for kids in those different scouting activities, so if
23 you were --

24 Q I really appreciate that -- sorry, go ahead.

25 A You know, so I'm just saying --

1 Q That's exactly what I want to ask you --

2 A Right. So, if you were -- if you know that you were
3 abused when you were too old or too young to be a scout, then
4 that raises certain questions. So, we classified those
5 claims.

6 And that's not to say that some of those claims, if
7 given the opportunity, might be able to clarify that
8 information, but all we're doing here is indicating that that
9 is an inconsistency. It may be a little bit technical, but
10 it might have useful in this, you know, in the process of
11 identifying proofs of claim where we have additional
12 questions.

13 Q All right. Well, let me ask you a concrete example and
14 see, because I appreciate your clarification. Let me give
15 you this example, Mr. Hinton.

16 Suppose the given survivor fills out a proof of claim
17 and states that he was born in 1952 and that the abuse took
18 place when he was a Boy Scout in 1961 when he was 9 years
19 old. And he otherwise provides all bells and whistles, every
20 bit of data that you could possibly want, but he calls
21 himself a Boy Scout and not a Cub Scout in 1961 when he was 9
22 years old.

23 My question to you is whether that proof of claim for
24 that claimant, that survivor, would or would not show up in
25 your inconsistent age category, yes or no?

1 A I think based on Footnote 13, you have to be -- if you
2 were a Boy Scout, you would be age 10 to 18, so that would be
3 an inconsistency, if he -- that particular claimant said they
4 were abused at age 9 as a Boy Scout.

5 Q So, if -- so, just to be clear, if a claimant is 9
6 years old at the time of the abuse and calls himself in the
7 proof of claim, a Boy Scout and not a Cub Scout, why then, he
8 would show up -- his claim would show up in your column of
9 Table 3 called "inconsistent age."

10 Isn't that true?

11 A That's right, it's showing up there because it's an
12 inconsistency that deserves a little further investigation.

13 MR. ROBBINS: All right. Your Honor, I think I'm
14 through with this witness. Thank you very much.

15 THE COURT: Thank you.

16 Any other counsel who wishes to cross-examine?

17 MR. SULLIVAN: Your Honor, Bill Sullivan. I have
18 a follow-up question.

19 THE COURT: Mr. Sullivan?

20 CROSS-EXAMINATION

21 BY MR. SULLIVAN:

22 Q Mr. Hinton, staying with the inconsistent table, which
23 is Table 3, would it also be correct that if a Boy Scout who
24 resided in Delaware traveled to Maryland for a camp and was
25 abused at that camp, that that would, nonetheless, show up in

1 your inconsistent information table?

2 A Well, it depends, whether I was able to get background
3 check information that provided the historical residence
4 information. But if I were able to do that, that would get
5 flagged, but, again, that doesn't say anything about the
6 validity of that particular claim, right. All it's doing is
7 saying when we look at particular groups of claims together
8 of particular law firms, is there any reason to expect that
9 there were more, going to be more inconsistencies for one law
10 firm than another or for claims brought by and signed by
11 lawyers versus claims signed by claimants.

12 And when you see these differences or statistically
13 significant differences in these indicators, it can look
14 unusual and raises questions, and that's why we're doing
15 this. We're not doing it to suggest that there's not an
16 explanation in some of these cases or that individual cases
17 might be cured of inconsistencies, but we're looking at them
18 here as groups.

19 Q But the answer to my question is, if you were able to
20 determine from historical information that the Boy Scout
21 resided in Delaware and he alleges that he was abused at a
22 camp in Maryland, that would show up as an inconsistency in
23 Table 3, correct?

24 A Yes, that's true.

25 Q Thank you.

1 THE COURT: Thank you.

2 Any other counsel with cross?

3 MR. TAYLOR: Yes, Your Honor. Joel Taylor with
4 Kagen Caspersen & Bogart on behalf of Slater Slater &
5 Schulman.

6 THE COURT: Mr. Taylor?

7 CROSS-EXAMINATION

8 BY MR. TAYLOR:

9 Q Mr. Hinton, can you turn to Table 2, please.

10 A Yes.

11 Q Here, you performed an analysis of claims filed by the
12 columns that are listed on the left-hand column; is that
13 correct?

14 A Yes.

15 Q And have you performed -- are there claims that have
16 been filed by firms, other than those that are in the left-
17 hand column?

18 A Yes.

19 Q And did you perform an analysis of this kind with
20 respect to the claims filed by those firms?

21 A I think we computed these metrics for all claims in the
22 database. We just haven't reported them here because --

23 Q Because why?

24 A Because this analysis was motivated by looking for
25 lawyers who signed the highest volume of individual claims.

1 Q Okay. And so, let me just -- we'll look at the right-
2 hand column there and there are conclusions there that as to
3 the claims filed by those that you identified in the left-
4 hand column, 65 percent are missing some element of
5 information; is that correct?

6 A Yes.

7 Q And do you present anywhere in your analysis, the
8 percentage of the claims filed by other law firms that are
9 missing this information?

10 A In my second declaration, what I do to make a
11 comparison is compare claims that were filed and signed by
12 attorneys versus those that were signed by claimants, but I
13 do that --

14 Q I understand that. That's not my question, right.
15 My question is, did you perform an analysis of the
16 frequency with which there was information missing from
17 claims that are filed by law firms, other than those that are
18 listed in the left-hand column?

19 A I have done that analysis, it's just not recorded here
20 for the reason that I described.

21 Q Right. So, it may well be, and we don't know because
22 you haven't submitted the information, that those claims that
23 were submitted by firms other than those in the left-hand
24 column, in fact, report a higher frequency of missing
25 information; isn't that correct?

1 A Well, no, in fact, they have a lower frequency of
2 missing information, because I have done that work and I have
3 looked at that question, and I don't --

4 Q But you don't report that in our --

5 A It wouldn't be wise to do that.

6 Q You don't have that in your report, do you, Mr. Hinton?

7 A It's not included in the report because I think 65
8 percent speaks for itself; that's a pretty high number.

9 Q But for all we know, the other firms may have an 85
10 percent missing information rate; isn't that correct?

11 A Well, I think you have access to the Omni data, as
12 well, so I certainly hope you don't know that, because that
13 would be wrong, in fact, (indiscernible) what we think is
14 true.

15 Q Am I correct that you have chosen not to share with the
16 Court, the results of your analysis as to the rate of
17 incomplete information contained in claims filed by firms,
18 other than those in the left-hand side; isn't that correct?

19 A It's true that those additional numbers for the other
20 firms is not reported here.

21 Q Okay. Now, can we please turn to Table 3.

22 The same is true of Table 3, isn't it, Mr. Hinton?

23 Isn't it the case that you have chosen not to report to the
24 Court the frequency with which there is so-called
25 inconsistent information in claims that are filed by law

1 firms, other than those in the left-hand column.

2 A Well, I just want to -- I don't really agree with the
3 phrasing of the question, because you have articulated that
4 it's something that I've chosen to do.

5 I was charged with a particular scope of work, with
6 regard to this declaration, which was very narrow and related
7 to identifying, as narrowly as possible, which of the law
8 firms that show with the indicators I've developed, unusual
9 frequency of claimant characteristics that warrant further
10 inquiry or raise questions.

11 Q Well --

12 A Yeah, I could have added more law firms, but I was
13 asked to just for focus on those law firms that had attorneys
14 who filed the most claims and that was the starting point and
15 so, it was my mandate. It doesn't like I chose not to give
16 you information that would be useful to the Court. I was
17 narrowly focused in my inquiry for this particular
18 declaration.

19 Q Okay. So, you report that 78.4 percent of the claims
20 filed by the firms in the left-hand column had inconsistent
21 information of some sort, correct?

22 A That's correct, yes.

23 Q And you have been mandated to not share with us the
24 rate of inconsistencies that may appear in claims filed by
25 law firms other than those in the left-hand column; isn't

1 that correct?

2 A I think that's really a mischaracterization of how I
3 was given my mandate. And I've already told you that
4 actually the rates are actually relatively lower for the
5 other firms and the *pro ses* in general.

6 Q But you have chosen, or you have been mandated not to
7 share that information with the Court, correct?

8 A As I said, I was asked to start by looking at the
9 lawyers who signed the most claims and that was the starting
10 point for my analysis. We then looked at all the claims that
11 were filed by those law firms.

12 Q Okay. But based on the information that you have
13 chosen or mandated to share with us, we and the Court, have
14 no way of knowing whether or not those claims filed by those
15 listed, the firms listed in the left-hand column are any more
16 or less likely to have missing elements of information or
17 inconsistent information than those claims filed by firms
18 that are not on that list; isn't that true?

19 A No, absolutely not.

20 Everybody, all the experts, all the parties have access
21 to the same Omni data. This declaration was filed almost a
22 month ago. All the parties have claims analysis experts who
23 are able to access these data and look at them. So, I can
24 only infer that you have looked at this and you've seen that
25 the numbers aren't actually supportive, and you're not -- you

1 haven't decided to reference that or cross me on that.

2 Q Okay. But let me just repeat my question, which is
3 based on the information that you have chosen to give to the
4 Court or that you have been mandated to the Court, there is
5 no way for us to know whether or not the rate of
6 inconsistency or rate of missing information is any higher or
7 lower for the firms listed in the left-hand column than it is
8 for those that you have chosen not to present information
9 for; isn't that correct?

10 A I disagree with your characterization that there's no
11 way that you can find that information; that's just not true.

12 Q That was not my question. My question was, based on
13 the information that you chose or were mandate to furnish,
14 there is no way to know; isn't that correct?

15 A Well, yes, I guess if you're just referring to the work
16 I've done.

17 My understanding is that all the parties have experts
18 who are doing work and can answer whatever questions they
19 have about the claims data.

20 Q Okay. Thank you.

21 Another set of questions related to Tables 2 and 3. Am
22 I correct that as to both Tables 2 and 3, the analysis that
23 you have performed relates to all claims that were filed by
24 the firms in the left-hand columns and not just those claims
25 that were signed by attorneys?

1 A Yes, in columns 2 and 3, they include all the claims
2 that were filed as of the date that we downloaded the data
3 from Omni, which was January 4th for the purposes of this
4 table --

5 Q And so, Tables 2 and 3 contained in your declaration
6 tell us nothing about whether or not the claims that were
7 signed by attorneys are any more or less likely to contain
8 missing information or inconsistent information than those
9 claims that were signed by claimants themselves; isn't that
10 correct?

11 A I did that analysis in my second declaration.

12 Q Right. I'm asking you about your first declaration.
13 The information contained in Tables 2 and 3 tell us nothing
14 about the rate at which there are inconsistencies or missing
15 information contained in those claims that are filed by
16 attorneys, as opposed to those claims filed by someone, other
17 than an attorney; isn't that correct?

18 A Yeah, these two tables report those numbers together,
19 so you're seeing the average.

20 Q Right. So, when you see, for example, in Table 2 that
21 65 percent of the claims are missing information, we don't
22 know if that means 80 percent of the claims filed by non-
23 attorneys are missing that information and only 20 percent of
24 the claims filed by attorneys are missing that information,
25 we don't know, right?

1 A Well, not by looking at that table, but you can find
2 that answer by looking at my second declaration.

3 Q Okay. So, just finalizing on your first declaration,
4 the information contained in there doesn't really give us any
5 insight into whether those claims filed by attorneys are any
6 more or less reliable than those filed by non-attorneys,
7 correct?

8 UNIDENTIFIED: Your Honor, we would like to offer
9 the second declaration. He's opened the door for us to offer
10 the second declaration. We would like to offer it.

11 THE COURT: I don't think he's opened the door for
12 the second declaration. I don't know who's speaking. I
13 don't think counsel did.

14 Overruled.

15 BY MR. TAYLOR:

16 Q So, can you please answer the question, Mr. Hinton.

17 A I'm sorry, you had just wanted me to confirm that
18 Tables 2 and 3 don't look at the question of the frequency of
19 missing information or attorney-filed claims versus claimant-
20 filed claims.

21 Yes, that's correct, I don't address that question in
22 the first declaration.

23 Q Right. So, it could well be that the attorney-signed
24 claims are more reliable in that they contain fewer
25 inconsistencies and less missing information than those

1 claims that are filed by claimants; isn't that correct?

2 A Well, no, that's not true. The opposite is true.

3 Q Well, that's not contained in your declaration,
4 correct? You did not do that analysis.

5 A That's right. Not in the first declaration, that's
6 correct.

7 MR. TAYLOR: Okay. Your Honor, I would like to
8 reserve the opportunity to cross-examine Mr. Hinton with
9 respect to his second declaration if it is moved into
10 evidence, otherwise, I have no other questions for him.

11 THE COURT: Yes, that's reserved. It has not been
12 moved into evidence yet.

13 Any other cross-examination?

14 MR. GOODMAN: Your Honor, this is Eric Goodman.

15 Can you hear me?

16 THE COURT: Yes, Mr. Goodman?

17 MR. GOODMAN: Thank you. I just have four
18 questions for the witness.

19 CROSS-EXAMINATION

20 BY MR. GOODMAN:

21 Q And, again, Eric Goodman, counsel for the Coalition for
22 Abused Scouts for Justice.

23 Are you aware that 47 -- sorry, let's try that again --
24 are you aware that 40.7 percent of the claims filed by the
25 law firm Jeff Anderson & Associates, were attorney-signed?

1 A (No verbal response.)

2 THE COURT: Okay. I've lost volume.

3 THE WITNESS: Oh, I'm sorry, I think I put myself
4 on mute.

5 I don't recall exactly what the fraction was for
6 that particular law firm, I'm sorry.

7 BY MR. GOODMAN:

8 Q Okay. But you would agree with me that that law firm
9 does not appear in any of your tables?

10 A Any of the tables in the first declaration, that's
11 right.

12 Q Okay. Another question.

13 Are you aware that the law firm Hurley McKenna & Mertz
14 filed other 4,000 proofs of claim in these cases?

15 A Again, I looked at -- I summarized all the claims by
16 law firm, but I don't recall -- I don't remember all the
17 numbers for every law firm, so I apologize.

18 Q Okay. You would agree with me that the law firm Hurley
19 McKenna & Mertz does not appear in any of the tables in your
20 first declaration?

21 A That's true.

22 MR. GOODMAN: No further questions.

23 THE COURT: Thank you.

24 Any other questions?

25 (No verbal response)

1 THE COURT: Okay. Redirect.

2 REDIRECT EXAMINATION

3 BY MR. ELIAS:

4 Q Mr. Hinton, I just have one or two questions for you.

5 Do you recall earlier you were asked about the
6 designation of claimants as to whether they participated in
7 Boy Scouts, Cub Scouts, or Explorer Scouts, do you recall
8 that line of questioning?

9 A Yes.

10 Q And do you know on the claim forms whether claimants
11 are asked to provide that information in a free-form text box
12 or whether they're asked to check the box for the appropriate
13 scouting organization?

14 A I believe they have the opportunity to provide the
15 information both ways, but that's my recollection.

16 Q And do you recall seeing checkboxes with the scouting
17 organization names on them?

18 A Yes, I recall seeing them.

19 Q So, if a claimant was checking the box for the Boy
20 Scouts, in your analysis, you would assume they were a Boy
21 Scout and not a Cub Scout, given the choice they made when
22 they filled out the form.

23 Do I understand that correctly?

24 A Yes.

25 MR. ELIAS: I have nothing further, Your Honor.

1 THE COURT: Okay. Thank you.

2 Mr. Hinton, thank you for your testimony. You're
3 excused.

4 THE WITNESS: Thank you.

5 (Witness excused)

6 MR. SCHIAVONI: Your Honor, I think we can go to
7 argument now with the --

8 THE COURT: Let me ask before we do that if any of
9 the objectors have any evidence that they're going to be
10 presenting?

11 (No verbal response)

12 THE COURT: Okay. I hear no one.

13 Argument, Mr. Schiavoni.

14 MR. SCHIAVONI: Thank you, Your Honor.

15 Rule 9011 applies to proofs of claim. It embeds
16 in it the proof of claim, the oath that's there to affirm the
17 contents of the proof of claim. It's an essential part of
18 the, in essence, statutory scheme here for 502. That 502 may
19 create a presumption of validity if the questions posed in a
20 proof of claim go through all the elements, but if it does,
21 the protections built into the statute include the
22 verification of the contents of the proof of claim. It's an
23 essential element of that statutory scheme.

24 The cases that have looked at 9011 make that
25 really clear. And, Your Honor, you know, there's always one

1 or two cases in every case that, you know, every motion you
2 want to sort of like to refer the Court to, but In re Obasi,
3 which is a Southern District of New York case, Westlaw
4 6336153 is one of those cases. It's a case that talks about
5 the 9011 requirement, the context of proofs of claim, and,
6 you know, critically it says in compliance with 9011 is
7 particularly important for proofs of claim because a properly
8 filed proof of claim may constitute *prima facie* evidence of
9 validity. And because of that, it's essential that the Court
10 know that there's integrity in the proof of claim process
11 itself. It's a key protection.

12 We cite in our moving papers, the cases that apply
13 the 9011 requirement and talk about what has to do done and
14 why it's important. We cite in Obasi itself, it makes
15 crystal clear that that's an obligation that when a lawyer
16 signs, right, that when a lawyer signs a proof of claim, that
17 that's a nondelegable obligation, that the person signing,
18 who's giving the oath, has to verify that the oath is correct
19 and has to do it in the context of the actual proof of claim.

20 The other point we make in our brief in citing
21 cases, In re Rivera, 342 B.R. 435, is that you may not, you
22 cannot comply with 9011 by attaching pre-signed signature
23 pages. This is not the first case where this has happened.
24 Other bankruptcy courts have looked at this and said, you
25 cannot do this.

1 And the reason is sort of clear that if you're
2 pre-signing signature pages and giving them to someone else
3 to attach, you're not complying with the fundamental elements
4 of 9011 which require that you personally vet the contents of
5 the proof of claim. In re Rivera talks specifically about
6 that, and that decisions we cite some other cases that talk
7 about other instances in the bankruptcy context where people
8 have tried to, basically, either pre-print signature pages or
9 give signature pages to other people.

10 THE COURT: Let me ask you a question --

11 MR. SCHIAVONI: Yes?

12 THE COURT: -- let me ask you a question on
13 Rivera, because I spent a lot of time in Judge Lane's opinion
14 in Obasi, which was in the context of a sanctions motion.

15 What's the context of Rivera?

16 MR. SCHIAVONI: Rivera deals with certifications
17 of -- it's a certification of compliance. I forget exactly
18 with what, but it's something that has to be signed. It's
19 the same context of a lawyer signing.

20 And in this particular case, the signatures have
21 been -- it's like they were pre-done, the certifications, and
22 given to others to attach.

23 THE COURT: Okay. Because Judge Lane does not
24 disallow the proofs of claim because of the attorney's
25 impropriety in Obasi, right?

1 MR. SCHIAVONI: Your Honor, the procedural context
2 of that case was a little complicated. There was an issue
3 about the trustee being involved and whatnot, as I recall,
4 but definitely, in Obasi, the Court definitely held that you
5 cannot delegate the signing of the proof of claim. It was --

6 THE COURT: Yes.

7 MR. SCHIAVONI: It was a sanctions case.

8 THE COURT: Uh-huh.

9 MR. SCHIAVONI: I don't think the exact issue of
10 the proof of claim is even before the Court, and the Court
11 ended up dealing with the sanctions issue in the context of
12 sanctions. But I don't think the Court ruled anything about
13 the propriety of the proof of claim without the signature
14 attached, without the appropriate signature.

15 THE COURT: Well, he did note that the defect had
16 been, that the firm had taken steps to remedy the defect and
17 had amended the proof of claim to include the electronic
18 signature of the attorney who actually did the review, as
19 opposed to the attorney who had signed the proof of claim.

20 So, clearly, Obasi is right on point on what your
21 obligations are, with respect to a proof of claim and how to
22 sign it. So, I do want to hear in your presentation what it
23 is that you want to do with the -- I want to hear the
24 purpose, I want to hear the purpose of the discovery you want
25 from the law firms.

1 MR. SCHIAVONI: All right. Your Honor, here's the
2 thing here. This is not -- we're not asking here to
3 disallow. This is not a disallowance motion. We're not
4 seeking that as a remedy now to disallow the claims. We're
5 also not seeking sanctions in connection with this motion.
6 That's not what the motion is.

7 The motion is -- you know, at the very beginning,
8 I sort of introduced these two motions as sort of the two
9 ends of the pipe --

10 THE COURT: Uh-huh.

11 MR. SCHIAVONI: -- you know, one being the kinds
12 of claims that were coming out and the other, the process
13 that generated the claims. And just one minute of background
14 before I can get into, like, you know, the purpose, but it's
15 like getting the notion of how the claims were prepared, the
16 process of the claims. 502 builds into that some assurance
17 of reliability of the process.

18 And one of the elements of that is having the
19 claims vetted and having someone personally attest to the
20 claim. There was at least, at a minimum, a sufficient
21 concern in Obasi about the situation that some remedy was
22 done after the fact.

23 Here, it's like where the evidence takes us from
24 here and, critically, the testimony we put forward who
25 reviewed the actual signatures on the proofs of claim, they

1 don't just show that signatures were pre-signed and given to
2 others. They show, critically, further, that the signatures
3 were given to third parties. They were given to claims
4 aggregators, for-profit shops that do this work, and that the
5 role of interviewing the claimant and vetting the claimant
6 was delegated not to one's associate, but to these claims
7 aggregator firms.

8 All of the exhibits that are cited, all of the
9 factual assertions cited in our brief about those claims
10 aggregator firms, they've all come in now uncontested.
11 They're all attached to exhibits from Mr. Kirschenbaum's
12 declaration and Sergi's (phonetic) declaration, and they all
13 show, not just a failure of lawyers not just that the
14 signature pages have been passed to others, but they have
15 been passed to third parties who aren't even lawyers.

16 And, further, it's like we have also put in
17 evidence of indications that the claims are bought and sold.
18 Among that evidence, Your Honor, is a tweet from Mr. Kosnoff
19 himself after this motion was filed, which talks about
20 inventories of claimants being bought and sold. He talks
21 about them being acquired from, quote, TV advertisers. This
22 is direct reference and there was nobody better placed to
23 know how this was done than the man behind it, the man who
24 founded the Coalition. And that concern goes to how -- goes
25 to the process, the process by which these proofs of claim

1 were generated and whether or not they were really vetted.

2 The discovery we've asked for, the purpose of it
3 isn't really to sanction people, per se, or at least,
4 initially, to disallow the claims, but the purpose of it is
5 to identify the breadth and scope to which the claim, like
6 the actual claim process was delegated out to non-lawyers,
7 third parties, in violation of 9011, so that we all, in
8 connection with Obasi, can make an evaluation about the
9 integrity of the proofs of claim as a general matter, the
10 extent to which this was done, and, frankly, to confirm, to
11 be confirmatory about exactly how many it was done in
12 connection with it.

13 The evidence that we've offered, it gets us enough
14 of the way along to show that this sort of thing was done.
15 We walked through in our brief four different examples of
16 collections of these mass-signed declarations that are all
17 supported by the uncontested declaration that's now in
18 evidence of the gentleman that reviewed the actual signature
19 pages, the metadata embedded in those signature pages, and
20 the verification sheets attached to them that show that
21 signature pages were generated and attached to proofs of
22 claim before the proofs of claim, like the signature page
23 was -- one of the examples that's on page -- this shows up in
24 our moving brief on page 10 through 12, is an example that
25 was called out that specifically walked through in the

1 declarations, where signatures were generated before the
2 proofs of claim were created and essentially attached after
3 the fact.

4 And then the same sets of these proofs of claim,
5 gets a trace through the metadata and the other electronic
6 data associated with them to the third-party claims
7 aggregators who were the ones who were actually submitting
8 the proofs of claim.

9 This is a failure in the process. In is exactly
10 what those 9011 cases talk about that the process was
11 supposed to have lawyers vetting the claims and that's all
12 indications that that's absolutely not what happened here.
13 But we're not asking -- again, we're not asking for sanctions
14 on this right now. We're not asking for anything else,
15 except we're asking for some very targeted discovery directed
16 at establishing the full extent to which this happened, so we
17 can focus on those groups of claims for further question and
18 study.

19 And, again, talking about the overall process that
20 Hartford and Century have tried to come forward here with to
21 be constructive, to give some sense of where there are issues
22 with these proofs of claim. This is one of them. This is an
23 effort. We didn't jump the gun. We didn't move for
24 sanctions. We didn't try to take -- you know, we didn't rush
25 out and immediately file objections on these. We'd like a

1 better understanding of the breadth to which this happened.

2 And, Your Honor, just to bring you back to when we
3 all faced -- you know, remember what happened. The TCC here,
4 which has the fiduciary duty to all the claimants, they
5 signed off on, and a bar date order was entered that required
6 the claimants to actually sign and to use real signatures.

7 It was the Coalition that came in and asked that
8 that be changed. We had argument on that, and Your Honor
9 decided to grant that motion.

10 But, importantly, I think some of the concerns
11 that we raised then about what might happen, you know, I
12 think Your Honor took some of those things to heart. And the
13 Court, in connection with that, if you remember, you know,
14 you recognized the risk created by permitting lawyers to sign
15 the proofs of claim, the Court noted, quote, that it was ill-
16 advised for lawyers to sign proofs of claim -- this was at
17 the October 14th, 2020, hearing; it's pages 190 to 12 --
18 lines 12 through 17 -- it's on the docket as 1520.

19 And, you know, obviously the Court is free to --
20 I'm not quoting Your Honor back as if you're authority to
21 yourself; that's not the point. I want to make a different
22 point here, and that point is, really, that the claimants,
23 the plaintiffs' lawyers here were completely forewarned not
24 to do this.

25 The Court went on to tell them at that hearing on

1 October 14 that it was, quote -- that the Court would be,
2 quote, concerned, closed quote, if, quote, a thousand claims
3 are signed by a particular lawyer. And Your Honor went on to
4 add that an attorney signing a claim, quote, might have to
5 give a -- to become a fact witness and may be subject to
6 deposition. That's on page 183, line 9 through 22, of that
7 October 14 deposition.

8 And despite this, this is exactly happened. This
9 is exactly happened. And the reason is, if you look at these
10 firms, many of them are fairly small. It's almost
11 implausible that they could have generated this volume of
12 claims on their own. It's like, we've submitted to you, and
13 it's in the exhibits that are attached to these declarations,
14 that have quoted in the fact section of the moving brief,
15 from these aggregator firms that, you know, the sections
16 where they talk about in their own marketing that, we will
17 take care of everything for you. We will run the process.
18 We will submit the claim. We will speak to the people. And
19 there's every reason to believe, based on what we've
20 submitted, that that's exactly what happened here and that,
21 in many ways, is how this mass-tort process has changed.

22 You heard someone in the prior argument this
23 morning talk about the three prior cases they have worked on.
24 They were Takata and two other cases that had nothing to do
25 with sexual abuse. We put in the fact section that it's

1 clear that many of the lawyers that came in to the, you know,
2 and are now part of the Coalition, and, critically, not all
3 of them, to be clear, but many of them were firms that have
4 no connection with sexual abuse cases, have no history in it
5 at all. That their history, their commonality is that
6 they're filing proofs of claim in one after the other mass-
7 tort bankruptcy. The only commonality of it is they're mass-
8 tort bankruptcies. The claims are all being generated out of
9 this, this central, like, these central, you know, claims
10 aggregators.

11 The point here is that without the protections of
12 9011, there's not the same assurance that the claims are
13 valid. Just like in Obasi, the Court said, look, once they
14 got hold of the facts on that, and, again, it's not -- that
15 case is not really one where they took at issue directly the
16 proof of claim. They were dealing with the sanction motion.
17 But the Court looked at that and said, Yes, and there was
18 some mention of, yes, it was the follow-up on that.

19 That's what we're, like, what we're trying to do
20 is just that. This process of you know -- it's like you've
21 seen the evidence in the examples in the moving brief. It's
22 uncontested. The targets here of this motion very easily
23 could have put in one-paragraph declarations saying, yes,
24 just like the gentleman did on cross with Mr. Hinton that,
25 like, yes, we thoroughly reviewed these in the months prior

1 to the filing and then we filed them.

2 That's not what they did. To be clear, that's not
3 what they did. There's not an affidavit from a single one of
4 them here that in any way contests any of the evidence that
5 is now uncontested in the record which points entirely in a
6 different direction, where when you get into the metadata,
7 you have signature pages coming in and being submitted
8 seconds after each other in series and machines on file that
9 could only be done, the only plausible explanation for this
10 is that it's being done out of an aggregator, submitting
11 large numbers of claims all at once.

12 That's not a good process. That's not a process
13 that 9011 has in mind. That's a process that generates
14 claims that are not of the same quality. That's a process
15 that generates suspect claims.

16 And, yes, you can cross Mr. Hinton about, you
17 know, maybe this or that is driving the high number of
18 disparities, but the disparity on these, on the Coalition
19 claims is very, very significant and there's significant
20 oddities among those claims, including just -- I mean, some
21 of them are almost hard with a straight face, to explain.

22 You know, in example four in our brief for the
23 Paul Napoli firm, and, by the way, the whole thing about,
24 like, mentioning some complaint about mentioning the father
25 instead of the son, it's not in this motion. If it was a

1 typo in the other brief, apologies to the Napoli family. I'm
2 completely unaware of that, but it's not in this motion,
3 because we pointed out that Paul Napoli, he allegedly signed
4 over 500 proofs of claim in the days leading up to the bar
5 date. Four hundred of those proofs of claim were essentially
6 blank, blank with just a similar symbol at the bottom of it.
7 This is not a sign of a normal process. There is something
8 wrong.

9 We pointed Your Honor also in the brief, and it's
10 uncontested to the Junelle (phonetic) firm, which actually
11 publicly published that they, the firm, was going to, quote,
12 have their proofs of claim completed and filed without the
13 claimants, even getting back to them, that they created like
14 a negative opt-out, that if you wrote them, unless you wrote
15 them, they would finish your form and file it.

16 This is not a reliable process. It's a process
17 that causes great -- it's a suspect process. It's in
18 violation of 9011, to start with, and it's entirely
19 legitimate for us to say that the evidence we've offered is
20 enough to say, please give us, you know, a few depositions of
21 these folks.

22 If Your Honor, you know, thinks 15 is too large a
23 number, so be it. You could cut it in half. You could just
24 pick the ones who have the most numbers of claims. But
25 getting a handle on, and a sense before the Court of how the

1 claims were actually prepared, it goes right to the -- like,
2 can you rely on the integrity of this process.

3 And that's really a key issue here, how these
4 claims were prepared. All of those examples are uncontested.
5 We attach, again, you know, four of the different --
6 (indiscernible) embedded in the proofs of claim, you know,
7 the verification stuff, information showing that they come in
8 from (indiscernible) Consumer Attorney Marketing, a firm
9 called Archer, a case called case management. Actually, they
10 tout that they take over your management of your claims.

11 This is wrong. It's a classic reason for Rule
12 2004 discovery, and we cite In re Subpoena Duces Tecum as a
13 2004 case where the Court actually talked about how the
14 process on which the proofs of claim were being prepared was
15 a legitimate form of question for 2004.

16 Here, I'd be the first to tell you, Your Honor,
17 this is sort of a unique process. This is unique. I will
18 tell you that.

19 The shadowy role that these claims aggregators
20 have played has not been one that's really been inquired
21 about. Everyone thought the plaintiffs' firms just made, you
22 know, ran some ads and they, themselves, did the interviews.
23 The notion that this whole process is one that third-party
24 investors, working together with claimants, is running is one
25 that only raises concern about this process, because, look,

1 like, we (indiscernible) one of these firms, one of the
2 funders for this is a Wall Street hedge fund which is known
3 for, you know, distressed investing.

4 You know, I have clients that do -- that are
5 distressed-investing hedge funds. We all know that they're
6 very, very aggressive, and they know how this process works.
7 Fill out 15 questions, file the form, it's presumptively
8 approved, everything is confidential about it, we're going to
9 make it incredibly hard to attack it.

10 And by the way, it's like Your Honor has seen the
11 retention agreements in connection with the 2019s. I thought
12 it was important that you saw those and saw how the
13 retentions were set up. I'm not going to disclose what the
14 fee percentages there were. I don't have to, because in the
15 UCCs filed by the funders, they tout the fact that they're
16 taking -- in the UCCs, they're in evidence, but, you know,
17 uncontested, as part of this brief -- that they're going to
18 take 40 percent of the claim. When you add on top of that
19 the coalition's rates, you know, the charges of the
20 Coalition, half the money goes out the door to the people who
21 have generated the claims and own the claims. It's a process
22 that is problematic.

23 But at the end of the day, the thing that is most
24 convincing here is -- Mr. Stamoulis, could you bring up Mr.
25 Kosnoff's tweet for a second.

1 MR. STAMOULIS: Your Honor, I'm going to share my
2 screen. This is Stam Stamoulis.

3 THE COURT: Okay.

4 MR. SCHIAVONI: I (indiscernible) before Your
5 Honor --

6 MR. STAMOULIS: Go ahead.

7 MR. SCHIAVONI: The screen-sharing is disabled in
8 my -- as my participant's view -- okay. Well, there we go.
9 I was going to make a joke about how I'm no more
10 sophisticated than Your Honor in using the screen-sharing,
11 but I guess I proved it even better.

12 But the tweet that we're relying upon or that we
13 offer, it's like, I got it, it's a tweet, but it tells it
14 all, because, you know, Mr. Kosnoff talks in there about
15 inventories of claims being bought from TV advertisers. He
16 talks about how the lawyers handling those claims, he talks
17 about them in derogatory terms, and it's probably unfair, but
18 the gist of it is that they're just moving from one of these
19 cases to another, but they're not professional at handling
20 sexual abuse cases.

21 And I have no doubt that there are lawyers on this
22 phone -- we heard one earlier -- who has spent his career on
23 this sort of work and, if anything, it's people like that
24 gentleman who are, and their clients, who are the ones who
25 are potentially victimized by this, because bringing in this

1 sort of mass numbers of claims, if we're not able to inquire
2 about them and look into it, you know, it does hurt the
3 claimant. It hurts those claimants with meritorious claims.

4 The integrity of the process is important. And
5 I've got it. It's like, you know, Greeks bearing gifts,
6 hearing it coming from me, but it's true, nonetheless, it's a
7 true fact about this, that having the unreliability of the
8 proofs of claim is a real problem.

9 So, Your Honor, I'd ask you, respectfully, to give
10 this some serious thought. I continue to think that these
11 two motions are, to some extent, the most important motions
12 you'll hear on the case, because if we're just simply, our
13 hands are tied behind our back and, you know, we're
14 blindfolded and our ears are stuffed and we're just told, you
15 know, here's 95,000 claims that were done through an
16 aggregator, mass-tort process system, and no matter what it
17 is, you have to take them all and let the tort claimants
18 generate the values, it's like it becomes an impossibility to
19 deal with the situation. It becomes one that can only be
20 resolved fundamentally by the Circuit, and it's like one that
21 will just buy tremendous amounts of litigation.

22 Letting us have some ability to, like, get into
23 this -- and this is not, you know, to be clear, like the
24 folks that we have asked for this discovery from, cut the
25 number in half if you think, focus on some of the ones that

1 we offered the most compelling evidence in that group, but
2 these are people at the end of the day that, respectfully,
3 you warned in very clear terms that if you sign, you may be
4 deposed. And the case law supports that. We offered those
5 cases, and it makes clear that if you sign, you know -- and
6 that's not something -- like, to honest I've had a couple of
7 clients call me at the last minute and tell me to sign and,
8 you know, I don't like to turn away business, but, you know,
9 I said, I'm not going to do it.

10 I did it once when it was just a bond, you know,
11 it was like I was just attaching a bond, but to submit, you
12 know, after the Court has told you to submit 2,000 claims in
13 your own name or to submit hundreds and hundreds on a given
14 day when the Court has warned you that if you do that, you
15 may be deposed, all notions of proportionality and prejudice,
16 I think genuinely go out the window. It's like these folks
17 happen to have an obligation to step forward, and in a
18 deposition, they'd be asked, basically, the fundamental
19 questions of, is that really true what you heard before?
20 Were you really vetting these over the last three weeks? Or,
21 you know, is what's in the metadata the story, that, in fact,
22 you signed this, sent your signature page to Verus, and Verus
23 handled the whole process, just like they tout in their
24 advertisements.

25 And that's something that we don't have,

1 necessarily, the metadata from all of the claims, so we can't
2 build this out, but getting into this process a little bit,
3 we could isolate the broader group here.

4 And, by the way, there's one other element to it.
5 You know, there was a key part of the proof of claim where
6 there was an issue about should we have verifications for the
7 claimant signatures, all right. And most of the claimant
8 signatures here are electronic; they're not handwritten. And
9 of the electronic ones, some had verifications, but many
10 don't, because that ended up being something that wasn't
11 required.

12 But the indication that they were using the
13 aggregators and what we have already, it looks like the
14 signatures, many of them were attached by the aggregators and
15 not separately by the claimants.

16 But we need discovery. We need the ability to get
17 a little discovery on this to really kind of confirm that,
18 and make an issue about, and see whether there's an issue
19 about how many that happened to. And, again, that's not just
20 important to us, that's important to the claimants at the end
21 of the day, those with meritorious claims.

22 And, yes, you know, the TCC has not opposed this.
23 There are -- by no means is Mr. Stang in any way working with
24 us or Mr. Stang like insurers or anything like that. I'll be
25 the first to show up at Mr. Stang, you know, valedictorian to

1 give him that, like, he is against insurers and whatnot.

2 But the bottom line is, I think, and, you know,
3 they have not opposed this, because it's not -- it's
4 discovery that isn't anti-claimant; it's discovery that could
5 be beneficial to the claimants with meritorious claims.

6 Thank you, Your Honor. Sorry I got a little
7 passionate about it.

8 THE COURT: Okay. Thank you.

9 It's 4:20 and I need to take the hearing in my
10 other matter, so we're going to do that. We're going to
11 adjourn until 5:00 and then I'm going to hear the response,
12 the objectors' arguments. We're not getting to the Rule 2019
13 today. That's just not going to happen, but I want to close
14 the argument on this particular motion.

15 So, we're adjourned until -- we're in recess until
16 five o'clock.

17 (Recess taken at 4:17 p.m.)

18 (Proceedings resumed at 5:08 p.m.)

19 THE COURT: Thank you, this is Judge Silverstein.

20 We're back on the record in Boy Scouts.

21 Mr. Schiavoni has finished his argument.

22 Is there any other party in support who wants to
23 speak before I go to the objectors?

24 MR. RUGGERI: Your Honor, James Ruggeri for
25 Hartford, very briefly, just to make a couple of points, Your

1 Honor.

2 We join in full in Mr. Schiavoni's comments this
3 afternoon. His motion is well-supported by evidence, and
4 we'd just note, again, that the Coalition or the objectors, I
5 should say, could have offered competing evidence. They
6 didn't. The objectors could have cross-examined Mr. Speckin
7 this afternoon about his declaration and all of the
8 irregularities that he found with regard to the signatures on
9 the proof of claim forms. He didn't.

10 On cross-examination of Mr. Hinton, the only
11 witness they chose to cross, all it really showed is that his
12 claim count would have someone who lived in one state and
13 camped in an adjacent state and those instances, no doubt,
14 are few and far between, but more importantly, that point
15 doesn't do anything to undermine the credibility of his work
16 in this case. I mean, again, this afternoon, the objectors
17 are going to be left not with evidence, but with argument of
18 counsel.

19 These motions, this motion, as the other one, in
20 our view, they're about integrity and they're important, Your
21 Honor. And thank you for your time today.

22 THE COURT: Thank you.

23 Okay. Let's hear from the objectors.

24 MR. GOODMAN: Good afternoon, Your Honor.

25 Eric Goodman, Brown Rudnick, counsel for the

1 Coalition of Abused Scouts for Justice.

2 Just two matters before I get into argument on the
3 2004 motion, themselves, or the 2004 motion, directed at
4 attorneys. The first is we did have some discussions
5 regarding an order, a lineup, if you will, in terms of who
6 wants to talk and when. I will note, and if the Court will
7 agree with this, we would certainly appreciate it, although,
8 the Court is obviously free to call on anyone she wants and
9 at any time.

10 But after I am done speaking, I would like to turn
11 the virtual podium over to Mr. Robbins, who represents
12 Andrews Thornton and ASK. And then following Mr. Robbins
13 would be Mr. Taylor, who represents Slater Slater & Schulman.
14 Following Mr. Taylor would be Mr. David Wilks, who represents
15 Mr. Kosnoff, and following Mr. Wilks would be Mr. Hogan, who
16 represents the Eisenberg firm. There may be others who want
17 to speak after Mr. Hogan, but those are the initial lineup,
18 if you will.

19 The second matter before I get into argument, a
20 matter was brought to my attention at lunch that I wanted to
21 address. Apparently, the insurers made a representation that
22 there were some 80,000 claims filed in this case that are
23 deficient because the victims did not allege an affiliation
24 with scouting.

25 Apparently, that is factually not true. There are

1 claims where the survivors did not check the box in
2 Part 3(e) (a) of the claim form, indicating an affiliation
3 with scouting, but, instead, included a detailed narrative,
4 explaining their affiliation with scouting, instead.

5 Since the insurers evidently, have not reviewed
6 all of the claim forms, or at least the vast majority of the
7 claim forms submitted by survivors, they kept asserting that
8 some 80,000 claimants have no affiliation with scouting.
9 Again, we believe that that is factually not true, and I was,
10 specifically, asked to bring that to the Court's attention
11 before beginning argument.

12 So, with those two points --

13 THE COURT: Okay. I will -- your lineup is fine,
14 and I would ask everyone to please check your phones. I'm
15 getting some feedback. Make sure you're muted.

16 MR. GOODMAN: Okay. Thank you, Your Honor.

17 So, there are three key points this time that I
18 would like to make in response to Century and Hartford's Rule
19 2004 motion, seeking discovery on attorneys, Your Honor. The
20 first is, this is not about the survivors, nor is it about
21 their claims; this is about the law firms.

22 And I thought that Century and Hartford's reply
23 brief was very clear on this point. According to Century and
24 Hartford, the discovery they're seeking from the law firms
25 is, and I quote, not material, or material, not because the

1 Plaintiffs' lawyers may have knowledge of the underlying
2 abuse, but to determine whether they conducted any pre-filing
3 investigation.

4 I agree with the insurers' own characterization of
5 their motion. The Plaintiffs' lawyers have no personal
6 knowledge of the underlying abuse. When they signed the
7 claim forms, they did not travel back in time and witness
8 abuse that occurred decades ago.

9 The attorneys are not fact witnesses, as to the
10 allegations contained in the proofs of claim. Seeking
11 discovery from the law firms is not about the survivors.
12 This is about the insurers' ongoing war against law firms
13 that seek to help tort victims and it goes beyond this case.

14 The insurers are seeking discovery and aid of a
15 sanctions motion, which itself is improper, but more
16 importantly, it's not about the survivors or their claims,
17 and, therefore, it's not about the debtors' liabilities,
18 which takes this out of Bankruptcy Rule 2004 entirely.

19 Bankruptcy Rule 2004 has never been used for this
20 purpose. In the history of bankruptcy, no court has ever
21 granted a Rule 2004 motion like this one. The Obasi case,
22 which was discussed --

23 THE COURT: I'm sorry, in the history of
24 bankruptcy, no court has ever granted a Rule 2004 motion like
25 this one?

1 I don't know whether they have or they haven't,
2 but let me ask you a question --

3 MR. GOODMAN: We haven't located anything close to
4 it, Your Honor. Obasi involved a Rule 11 motion and
5 Subpoena Duces Tecum involved a nationwide review of claims
6 by mortgage servicers conducted by the United States Trustee.

7 Again, we haven't found, and no case has been
8 cited, where anything like this has been done before. And
9 the reason, I think, for that is it doesn't fall within the
10 scope of Rule 2004, which is --

11 THE COURT: Okay. So, what would be the remedy or
12 what would be the appropriate way to investigate process
13 issues?

14 MR. GOODMAN: So, I think we would look at
15 Rule 9011, Your Honor, as that deals with the specific issue.
16 And I think the starting point would be that if a party
17 identifies a claim in this case that they believe has not
18 been asserted and doesn't, you know, contain appropriate
19 information, that they could send a letter; in fact, that's
20 what Rule 9011 requires before a party should come before the
21 Court on a motion for sanctions.

22 I think that the Bankruptcy Rules, themselves, set
23 in place a process by which these types of challenges can
24 occur and it's not about free-range discovery under Rule
25 2004, because, again, whether the attorney did his job or not

1 is not something that is related to the validity of the
2 claim, which is, again, what takes you out of Rule 2004
3 entirely.

4 The debtors, again, are not seeking this relief.
5 From our perspective, Century is seeking to use Rule 2004
6 here to further its own personal agenda, and that's not an
7 appropriate use of the bankruptcy statute.

8 Second point, Your Honor, there's no evidence of
9 fraud. I'm going to say that again: There's no evidence of
10 fraud.

11 Let's go through it. One, attorney advertising
12 happened. The debtors, themselves, engaged in a robust
13 nationwide noticing campaign. That's not fraud.

14 A lot of claims were filed on the eve of a bar
15 date. That happens in every bankruptcy case. That's not
16 fraud.

17 People used electronic signatures. So did the
18 insurers on the pleadings they file in this case. That's not
19 fraud.

20 Lawyers used photocopies of signatures. I'm sure
21 The Center for Disease Control appreciates that. That's not
22 fraud.

23 Duplicate claims were filed; in fact, Hartford
24 apparently filed duplicate claims in this case, and I will
25 say, probably not fraud.

1 Claims have deficiencies; again, not uncommon in
2 mass-tort bankruptcies.

3 If the Court wants to see a truly bare-boned proof
4 of claim, one that lacks almost any description or detail at
5 all, you should look at the claims filed by Hartford or
6 Century. I still can't figure out how they have claims in
7 these cases, but not fraud.

8 Attorneys signed claim forms. This is permitted
9 by the Bankruptcy Rules. This was already litigated, not
10 fraud.

11 Abuse victims have criminal records. Yes, they
12 do, because they were abused as children. Also, not fraud.

13 Family members doubt that their sons or siblings
14 were abused. That's actually fairly consistent with social
15 science and heartbreaking in many ways, but also not fraud.

16 People who have been named as abusers have denied
17 such accusations. Also, not surprising, also does not prove
18 fraud on behalf of any of the attorneys.

19 There was a, quote, explosion of claims before the
20 bar date. Yes, we know that. Look at Purdue. Look at PG&E.
21 Look at Takata.

22 Attorneys have litigation funding; again, not
23 fraud.

24 Your Honor, the insurers are employing a logical
25 fallacy, known as proof by assertion. If they repeat a

1 statement enough times, regardless of contradiction or lack
2 of evidence, they're hoping that this Court and others will
3 believe that it is true. It is called a logical fallacy for
4 a reason, Your Honor. Simply shouting fraud over and over
5 again does not make it so.

6 Third point, Your Honor. This motion has not been
7 filed for a proper purpose, and I feel obligated to say that
8 because I am not the attorney that's being personally
9 attacked here.

10 I did not sign any claim forms. I did not
11 directly represent any abuse victims. I am counsel for an ad
12 hoc group. I did not counsel any survivors on how to
13 describe being raped as a teenager on a claim form, but many
14 attorneys who are under attack in this courtroom have. They
15 have been on those calls. They have heard the stories and
16 none of them seem remotely surprised by the number of abuse
17 claims filed in these cases.

18 Again, a national organization like the Boy
19 Scouts, decades of known abuse, thousands of known abusers.
20 I checked over the lunch break and the number of known
21 abusers, according to news articles is 7,819, and that's just
22 the ones that are known. Are the insurers really shocked at
23 how many claims were filed?

24 These lawyers are being targeted, Your Honor.
25 First, I would submit that they're being targeted because

1 they're part of the Coalition. The insurers understand the
2 collective votes that we represent and it's terrifying to
3 them and they need a way to attack the firms.

4 When Mr. Hinton testified, I asked him a few
5 questions. I asked him about two law firms; first, Jeff
6 Anderson & Associates. 40.7 percent of the claims his firm
7 filed were attorney-signed. The second firm was Hurley
8 McKenna & Mertz. That firm filed 4,065 claims, putting them
9 in the top five overall. Both firms are completely absent
10 from any of Mr. Hinton's charts. Both firms represent
11 members of the TCC.

12 I'm not suggesting that Century is working with
13 the TCC. I just wanted to be clear that this is a job that
14 is targeting firms that are part of the Coalition.

15 The second reason they're being targeted --
16 because they are on the front lines. Yes. They signed claim
17 forms for their clients because they believed it was the
18 right thing to do, and we should all wish for that kind of
19 courage and dedication. If it means that one survivor of
20 sexual abuse gets compensated, it was worth it.

21 And the insurers have the audacity to come before
22 the Court and accuse lawyers of, quote, outright fraud and
23 Rule 11 violations. Based on what? Advertising? Electronic
24 signatures? Duplicate forms? A surge in filings before the
25 bar date?

1 Your Honor, this has to stop. Insurers should not
2 be allowed to threaten State Court counsel when there's no
3 evidence. This is not how attorneys should be treated. This
4 is not how anyone should be treated. There are a number of
5 complex problems that must be solved for survivors to be
6 fairly compensated and for the Boy Scouts to survive.

7 We are trying to be constructive. Every day I
8 wake up trying to solve the real problems in these cases.
9 Having to spend weeks responding to motions like these when
10 the parties are in mediation, does nothing to advance these
11 cases. It is incredibly expensive. When you look at the
12 agenda for today, it is driven entirely by Century and
13 Hartford. I mean, consider how much time has been spent
14 dealing with their motions and objections. This is all being
15 driven by insurers, not creditors, that won't even admit that
16 they have coverage obligations.

17 At some point, the gamesmanship needs to stop.
18 It's causing real harm. Thank you, Your Honor.

19 THE COURT: So, let me ask you, why did the
20 Coalition feel the need to file something, when they are not
21 the subject of the motion?

22 MR. GOODMAN: That is a fair point, Your Honor. I
23 believe that the attorneys that represent State Court counsel
24 are probably going to have a lot more to say on these
25 specific issues. The reason why the Coalition filed an

1 objection is, one, because we thought that it was an improper
2 use of Bankruptcy Rule 2004 and, most importantly, we think
3 that it is serving as a massive distractions in these cases.
4 We do not want to see this kind of discovery go forward
5 because we are trying to find a constructive solution.

6 THE COURT: I guess I understand that, but you
7 also make factual assertions or representations in your
8 filings, which I assume you have no knowledge of, so I was a
9 little surprised to see the filing. This isn't directed at
10 you. You don't represent these law firms. You don't even
11 represent the underlying claimants. But you're spending time
12 and effort on what you think is a distraction from your other
13 efforts. That's why I ask.

14 You don't know. You do not know what these law
15 firms did or did not do. The Coalition don't, right?

16 MR. GOODMAN: I will answer your question
17 directly, and you're correct. I do not have any personal
18 knowledge.

19 THE COURT: So, how can you tell me what they did
20 or did not do?

21 MR. GOODMAN: I cannot. I can simply look at the
22 data that the insurers have given to you, and to me, it's
23 meaningless.

24 THE COURT: That's a different argument. Okay.

25 MR. GOODMAN: With that, I will cede the podium to

1 Mr. Robbins, Your Honor.

2 THE COURT: Mr. Robbins?

3 MR. ROBBINS: Thank you, Your Honor. Again, this
4 is, for the record, this is Larry Robbins for two firms:
5 Andrews & Thornton and ASK, LLP.

6 I want to join in the arguments Mr. Goodman made
7 on behalf of the Coalition as a whole, but, Your Honor, with
8 respect to the two firms that I represent today, the 2004
9 discovery that's requested by the insurers is especially
10 unwarranted, and I say that for four reasons.

11 First, to our knowledge, Rule 2004 discovery has
12 never been used to take discovery from opposing counsel in
13 the very case, itself. Now, the Court posed a question to my
14 co-counsel a moment ago: Can you really say that in the
15 entire history of the Bankruptcy Code, there's never been
16 such a motion?

17 If there is, Your Honor, I can't find it, and more
18 importantly, neither have the insurers. Now, they did tell
19 you on page 27 of their opening brief, they told you -- they
20 included the following sentence, quote, indeed, they said,
21 Rule 2004 has been used to obtain discovery from counsel.

22 With all respect, that truly misdirects the eye,
23 because what they didn't tell you is that in the only two
24 cases they've cited, the discovery was against lawyers from
25 closed cases, not from the opposing counsel in the two cases

1 before the Court. In the Gawker case, the first one they
2 cite, the only one they cite in text, that was a closed case
3 in which the debtor was taking discovery from a lawyer who
4 had represented a third-party funder; in other words, not --
5 it was Mr. Peter Thiel in the famous Gawker case, who was
6 behind-the-scenes, funding the Plaintiffs' counsel and debtor
7 brought that 2004 motion to get discovery in a closed case.

8 The same is true in the second, and only the
9 second -- they only cite two cases. It's true in the other
10 case, as well, which is cited in the so-called Bewitt
11 (phonetic) case, cited in Footnote 121 of their opening
12 motion. In that instance, the discovery was taken from a
13 lawyer who was basically a business partner in the pre-
14 bankruptcy transactions conducted by the debtor.

15 So, to put it squarely, we are unaware of any
16 reported case in which 2004 discovery has been used as the
17 insurers propose to use it here, to take discovery from their
18 actual litigation opponents. It's never happened and their
19 claim that there are two such instances, which they make at
20 page 27 of their brief is simply untrue.

21 Now, is there a case out there that nobody can
22 find?

23 Obviously, I can't swear to you, Your Honor, that
24 somebody couldn't come up with one, but everybody has had a
25 lot of good reasons to try to find it and nobody has given it

1 to you, and they've given you know good reason to be the
2 first judge to order it against a counsel in the very case
3 itself.

4 Point number two, they told you, Mr. -- counsel
5 for the insurers did, as Mr. Goodman explained in the last
6 sentence of their reply brief, and, actually, in the very
7 first sentence in Mr. Schiavoni's argument today, he made
8 clear that the purpose of the discovery they're seeking, the
9 purpose for this 2004 discovery is to support a potential
10 9011 claim for sanctions. He said he's not actually seeking
11 sanctions right now, but he's looking for the predicate. He
12 wants to know, as he put it, what went on, how were the
13 claims prepared, how we they vetted.

14 Under Rule 11, where the case law tells us, it's
15 supposed to be a benchmark for the application of Rule 9011,
16 as well, the advisory committee notes are emphatic. They
17 state that the Court must, to the extent possible, limit the
18 scope of sanctions proceedings to the record, thus discovery
19 should be conducted only in extraordinary circumstances.

20 It is therefore not surprising that there is no
21 reported 2004 case that we've been able to find in which
22 discovery was permitted for the purpose of predicating these
23 sanctions motions. We've never seen one. The other side
24 doesn't cite one.

25 Now, they do cite cases. To be clear, Your Honor,

1 they do cite cases in which 2004 has been used for discovery
2 into the *bona fides* of claims, but they cite not a single
3 case in which 2004 discovery was used to investigate the *bona*
4 *fides* of the lawyers, themselves.

5 We are aware of no such case and the advisory
6 committee notes to Rule 11 tell us that only in the most
7 extraordinary circumstance should it be granted, and we've
8 never seen one, and they've never cited one. So, for that
9 second reason, this Court oughtn't to be the first to do so.

10 Now, if you were ever going to be the first to do
11 so, Your Honor, it ought to be in a case where there's
12 abundant good cause and that brings me to the third point.
13 At least with respect to the two firms I represent, there is
14 nothing remotely close to good cause. The allegations don't
15 come close to meeting the Millennium standard that this Court
16 articulated.

17 Let's be clear about what the insurers say about
18 Andrews & Thornton and ASK, in particular. I urge the Court
19 to look closely at Tables 2 and 3, and I don't want to
20 restate the points that I hope came clear in my cross-
21 examination of Mr. Hinton, because the data reflected in
22 Tables 2 and 3 to the Hinton declaration call to mind, Your
23 Honor, the adage usually attributed to Mark Twain, that,
24 "There are three kinds of lies: lies, damned lies, and
25 statistics."

1 This is an example of the third kind of lie.
2 Let's start with Table 2. Table 2 asked this Court to infer
3 that the proofs of claim filed by A&T and ASK were missing
4 all sorts of important information and, therefore, must have
5 been filed without proper vetting. That, Your Honor, is an
6 utter canard.

7 Here's what Table 2 actually shows. For, ASK, it
8 shows that of the 3613 proofs of claim listed, 99.9 percent
9 listed the date of the abuse, 99.1 percent listed the
10 location of the abuse, 99.9 percent listed the nature of the
11 abuse.

12 For A&T, of the 3104 proofs of claim listed, 96
13 percent listed the date, 96 listed the location, 99.9 listed
14 the nature of the abuse.

15 The balance Table 2 is equally misleading, I
16 suggest. Take the category called "missing key claimant ID."
17 That certainly sounds ominous, but as the Court will recall
18 from my cross-examination of Mr. Hinton, it turns out that
19 all you have to do to get into that column, Your Honor, is to
20 omit the claimant's zip code. And even under that rather
21 exacting standard, ASK and A&T filed quote, unquote, complete
22 proofs of claim 56 percent of the time.

23 How about the final category on Table 2, "missing
24 abuser's last name." I asked Mr. Hinton about that and, you
25 know, in all fairness, I didn't expect him to profess any

1 expertise in this field, but I would suggest to Your Honor
2 that it is a scarcely surprising that survivors of BSA
3 predation can now only recall the first names of their
4 abusers.

5 Does that, does the failure after all this time,
6 to remember the last name of their scoutmaster, as well,
7 remotely suggest that these law firms, the two that I
8 represent, or for that matter, any of them, have somehow
9 failed to discharge their ethical duties? Could that
10 possibly be a basis for being the first court, to our
11 knowledge, ever to permit 2004 discovery into the ethical
12 conduct of lawyers in the very case, itself?

13 How about Table 3? Table 3 supposedly shows you
14 that a significant percentage of high-volume filers made
15 mistakes in the claims they filed. Unfortunately, this is
16 yet another illustration of the Mark Twain principle at work.
17 For ASK, 99.9 percent of the claims were timely, 90 percent
18 weren't duplicates, 97 percent of the claimants lived in the
19 state of the alleged abuse.

20 For A&T, 87 percent were timely, 90 percent
21 weren't duplicates, 95 percent lived in the state where the
22 abuse took place.

23 But the insurers, like Inspector Javert, are bound
24 and determined to find some kind of impropriety. For
25 example, they pounce on a category called "inconsistent

1 ages," but as the Court will recall from my cross-examination
2 of Mr. Hinton this afternoon, it turns out that when you look
3 at Footnote 13 of the Hinton declaration, inconsistent ages
4 could simply be when a 9-year-old abuse survivor checks off
5 "Boy Scout," instead of "Cub Scout" on the form. And even
6 then, under that cherry-picked standard, ASK got the ages
7 right 81 percent of the time, while A&T got it right 61
8 percent of the time.

9 The notion that data this paltry could launch a
10 Rule 11, a Rule 2004 foray to rummage through opposing
11 counsel's files is absurd, I respectfully suggest.

12 So, what's left over to show good cause in this
13 case? What else do they have?

14 Well, they say that some firms received funding
15 from a hedge fund on Wall Street, no less. I'd suggest that
16 there are a fair number of big law firms that are represented
17 on today's call that gets funding from banks, too, for their
18 operations. I'd suggest that some of them use marketers, as
19 well. I would suggest that some of them use outside vendors
20 or use contract lawyers.

21 This isn't a specialty of Plaintiffs' law firms;
22 it's endemic to the entire profession. There's nothing
23 unique or much less suspect as grounds for launching this
24 kind of rummaging through files.

25 They also say in their reply brief that in the six

1 weeks between the receipt of the financing and the bar date,
2 the two firms filed many more claims than they filed in the
3 six weeks before the financing. But all that shows, Your
4 Honor, is a basic fact about human nature. Busy people tend
5 to finish things close to the due date. If anything, this
6 completely anodyne fact suggests only that the two firms I
7 represent continue to vet claims up through the bar date and
8 only then made the filing.

9 And I want to actually return to a question you
10 posed to my co-counsel. You asked, well, gosh, if this isn't
11 the right way to do it. If this isn't an appropriate use of
12 2004, what actually is the right way to investigate claims
13 that the process was abused or that lawyers have failed to
14 discharge their ethical duties?

15 And there was an answer to that. It's an answer
16 prescribed by the rule itself. Rule 9011 and Rule 11 tells
17 us what the process should look like, and it tells us in the
18 advisory notes that only in extraordinary circumstances shall
19 that process, shall the existing record be supplemented by
20 the launching of discovery. This is not even remotely such
21 an extraordinary case.

22 Finally, the only other piece of so-called good
23 cause evidence that they have as to my two firms are that the
24 firms signed numerous claims on a given day. Again, that's
25 just beside the point. The question is not when did these

1 claims get signed? The question is, did they get vetted?

2 And the fact that they may have been signed on a
3 given day, as the due date, the bar date was fast
4 approaching, sheds absolutely no useful light on when the
5 claims were vetted for their sufficiency and the lawyers'
6 ethical obligations under 9011. It's completely without
7 probative force, much less the compelling probative force it
8 would have to have to allow, to permit this kind of rummaging
9 through opposing counsel's files.

10 In any event, and this is the last substantive
11 point I want to make before just quickly addressing three or
12 four quick things that Mr. Schiavoni said in his argument,
13 even if there were good cause, even if this weren't an
14 untethered use of Rule 2004, even if it were permissible to
15 rummage through opposing counsel's files in a way that, to my
16 knowledge, is unprecedented in reported cases, even if all of
17 that were true, it would be premature to do it now.

18 Mediation is ongoing, as other counsel had pointed
19 out, and if mediation fails, it's quite likely that the
20 plaintiffs will launch an --

21 Somebody's on the phone.

22 THE COURT: Somebody has another conversation
23 going. Please check your phones.

24 MR. ROBBINS: Thank you, Your Honor.

25 THE COURT: Mr. Robbins?

1 MR. ROBBINS: Thank you, Your Honor.

2 And if mediation fails, there's a likelihood that
3 the plaintiffs will seek a 502(c) adversary estimation
4 proceeding. As this Court pointed out in Millennium, once
5 that happens, 2004 relief is no longer available.

6 Now, in our brief, Your Honor, we explained the
7 large swaths of this requested discovery is burdensome and
8 would infringe on privileges and work product, but because it
9 is so plainly -- Rule 2004 is so plainly unwarranted, as a
10 matter of law, I don't think there's any occasion for this
11 Court to wade into the particulars of the discovery requests
12 because they're simply not entitled to it.

13 I'm going to close with four quick points about
14 things that Mr. Schiavoni said that need correction. He
15 pointed Your Honor to a series of tweets from Mr. Kosnoff and
16 he said in his argument -- I wrote this down -- quote, it
17 tells it all, end quote.

18 And point of fact, it tells us nothing, because
19 the tweets of one individual lawyer cannot be admitted for
20 the truth of the matter asserted against the other lawyers
21 involved in this case under Rule 801(b)(2). It simply -- if
22 a party admission is admitted, as this Court well knows, only
23 against the party itself, not against everyone else. So, it
24 tells us literally nothing about the conduct and *bona fides*
25 of anybody else.

1 Second, Mr. Schiavoni said that 40 percent of the
2 total funding is going to the funders. That is untrue. As
3 even a glance at the relevant documents will reveal, it is
4 simply not true.

5 A third point, and, actually, I'm going to
6 close with this, Mr. Schiavoni, at some point, said to the
7 Court, in substance, look, if you don't want to give us
8 everything we want, give us half. Give us 7 out of 15 or 8
9 out of 15.

10 I say this with all respect to opposing counsel,
11 when you are seeking the extraordinary remedy of asking to
12 look through the processes and files kept by your opposing
13 counsel, that is not a moment for such cavalier argument.
14 What Mr. Schiavoni is asking this Court to do is not only
15 unprecedented, to our knowledge; it is deadly serious. It is
16 not a joking matter to rummage through opposing counsel's
17 files, and it is not an occasion for saying, well, gosh, if
18 you don't give us 15, give us 7 or 8.

19 No. The right answer, Your Honor, is to stick to
20 the plain text of Rule 2004, the advisory committee notes to
21 Rule 11, and not to undercut the nature of the adversary
22 system, itself, along with its attendant privileges and work
23 product protections, and allow a motion, whose evident
24 purpose is to disable that adversary process from finally
25 uncovering the truth.

1 And with that, Your Honor, I yield the floor and
2 thank the Court for its time.

3 THE COURT: Thank you, Mr. Robbins.

4 Let me ask you a question, and I don't know if
5 this applies to your two firms -- I don't recall -- to the
6 two firms you represent. Part of the request is to have Rule
7 2004 discovery into Verus Claims Services, Consumer Attorney
8 Marketing Group, Archer Systems, and Stratus Legal.

9 As I said, I don't know if the two firms you
10 represent have a relationship with those entities or not, but
11 I would like your thoughts -- if they are -- I would like
12 your thought with respect to that particular aspect of the
13 request.

14 MR. ROBBINS: Well, I may not be the right person
15 to answer it, because to my knowledge, we have no such
16 relationship --

17 THE COURT: Okay.

18 MR. ROBBINS: -- but since I have the privilege of
19 the lectern for just a moment, I will say that if we had some
20 relationship, which I believe we don't, it would be no more
21 relevant to the question before the Court.

22 Whether a particular law firm uses outside vendors
23 to assist in the marketing process or the advertising process
24 is, it seems to me, a matter of utter irrelevance. If every
25 law firm representing the insurers in this case -- and let me

1 say, I'm rarely in a case where -- I'm not a mass-tort
2 lawyer. I'm not a personal injury lawyer. I don't pretend
3 to know the ins and outs of that profession. I spend most of
4 my time dealing with law firms that are today, in front of
5 you, representing insurance companies.

6 And I can tell you this, there's not a one of them
7 that doesn't use outside vendors, that doesn't use marketers,
8 that doesn't make some kind of advertising, and the
9 suggestion that somehow these law firms, on behalf of
10 individual claimants and survivors are doing something that
11 is unique or endemic only to the Plaintiffs' side of the
12 caption is a canard.

13 But the short answer to your question is, as far
14 as I know, we have no involvement with those particular
15 entities.

16 THE COURT: Thank you.

17 MR. ROBBINS: Thank you, Your Honor.

18 MR. SCHIAVONI: Your Honor, if I may, their
19 involvement is set out on page 13 of our brief. There's
20 specifically, the signature pages were sent to Verus. It's
21 in paragraph 18 of Mr. Speckin's declaration, which is in
22 evidence.

23 THE COURT: Okay. Let me hear from Mr. Taylor.

24 MR. TAYLOR: Good afternoon, Your Honor.

25 Can you hear me okay? I'm on speakerphone. I can

1 put you on --

2 THE COURT: Yes.

3 MR. TAYLOR: So, I will try to be brief, because I
4 think Mr. Goodman has done a very good job of explaining many
5 of these issues already.

6 I'm counsel to Slater Slater & Schulman and speak
7 only to address whether or not good cause has been shown with
8 respect to that firm, to serve discovery on that firm.

9 There are only three allegations made by insurers
10 with respect to the Slater firm; one, which I think has
11 already been generally addressed, both by Mr. Goodman and
12 Mr. Robbins, is that there are two attorneys at the Slater
13 firm who signed claim forms, more than 200 claim forms, and,
14 secondly, which was addressed by Mr. Robbins, is that the
15 Slater firm was also a party to this lending agreement that
16 provided litigation financing. And I think the proper
17 explanations of those two things have already been provided
18 and I won't repeat that.

19 The third factor that the insurers point to is the
20 information contained in the Hinton declaration, which I
21 cross-examined him about, that there are certain claims that
22 were filed that were either incomplete or contained other
23 characteristics that Mr. Hinton suggested may sort of reflect
24 on the reliability of those claims.

25 And that, to me, is really the meat of what it is

1 that is being argued. The rest of these, you know, sort of
2 accusations of impropriety are sort of atmospheric or window
3 dressing, whether or not the claims that are filed have any
4 kind of demonstrable infirmity in a manner that other claims
5 don't.

6 And that was the purpose of my cross-examination
7 of Mr. Hinton that the two principle sources of information
8 that he's providing is Table 2 and Table 3 of his opening
9 declaration is, you know, in Table 2 where he reaches a
10 conclusion that 65 percent of the claims filed by the firms
11 that are listed have some element of information that's
12 missing, but he doesn't furnish you, doesn't furnish the
13 Court, doesn't furnish us any information as to sort of a
14 control group, right. He doesn't look at the other firms to
15 figure out the percentage of those claims filed by those
16 firms that have any missing information.

17 So, when he says that 65 percent are missing
18 information it may well be that the claims filed by other
19 firms have 80 percent of those claims are missing information
20 and, in fact, the firms that he is targeting, that the
21 insurers are targeting, have more complete claims than others
22 and they elected not to furnish the Court with that
23 information.

24 The same is true of Table 3, where there is
25 information that they say is -- and I don't know what the

1 purpose of this is -- they call them "indicators of
2 characteristics," which is meaningless to me, but I assume
3 that these categories that they identified are in some manner
4 that they think they reflect a lack of *prima facie* validity
5 of the claims. And, again, there's no comparison of the
6 claims that are submitted by the firms that they're targeting
7 for discovery to those for claims that are filed by firms if
8 they're not the subject of discovery. There's no control
9 group, right.

10 So, they say that 78 percent of the claims as a
11 group, 78 percent of the claims have, you know, the
12 inconsistent information or one of these other
13 characteristics, but it may well be that the claims by firms
14 that are not the target of this discovery is of a much higher
15 percentage, right. It may well be that this group, in fact,
16 has more reliable claims being filed. So, that's one point.

17 The second point is that none of this information
18 is distinguishing between claims that are filed by attorneys
19 and claims that are being filed by the claimants. So, these
20 are just aggregate numbers. So, in the case of Slater, which
21 filed 15,497 claims, there's a conclusion that 74.5 percent
22 of them -- this is in Table 3 -- has one of these
23 characteristics, but we don't know whether or not those
24 characteristics are more prevalent in attorney-signed claims
25 or non attorney-signed claims. It could very well be that

1 the attorney-signed claims are less likely to have these
2 characteristics than are the non attorney-signed claims. It
3 may be that the attorney-signed claims, to the extent that
4 these are indicators of the prospective validity of the
5 claims, it may well be that the claims being filed by the
6 attorneys have greater indication of validity. And we don't
7 know, because they elected not to provide that information to
8 the Court.

9 And, in fact, Mr. Hinton did file a supplemental
10 declaration addressing that issue, trying to identify as to
11 each firm, the probability that a claim is going to missing
12 information or other characteristics that those that are
13 attorney-signed and those that are not attorney-signed, and
14 they chose not to move that into evidence for reasons I don't
15 understand.

16 I do, I certainly do with respect to Slater,
17 because what it shows is, in fact, that it is the percentage
18 of the claims that are being filed by the attorneys are less
19 likely to have these characteristics than those claims that
20 are filed by the -- that are not filed by the attorneys,
21 right.

22 And you can look at this in the supplemental
23 declaration of Mr. Hinton, right. There are one, two, three,
24 four -- four characteristics --

25 MR. SCHIAVONI: Your Honor, I'm going to object.

1 To the extent counsel wants to talk about the
2 supplemental declaration, we would like to offer it into
3 evidence. We're not hiding from it. We would like it in
4 evidence.

5 So, please, he's opened the door. We'd ask that
6 it be admitted into evidence or he stop trying to sort of
7 cherry-pick things from it and cite them, you know,
8 improperly. But we would like it in evidence.

9 THE COURT: Let's have argument about what's in
10 evidence.

11 MR. TAYLOR: I would -- I think had they moved it
12 into evidence when Mr. Hinton was available for deposition, I
13 think he'd have a better basis, but they chose not to do so
14 at that point.

15 THE COURT: Yes, you're correct. It's not in
16 evidence, so I'm not going to consider it.

17 MR. TAYLOR: So, am I not to speak to it?

18 THE COURT: It's not in evidence.

19 MR. TAYLOR: Well, I will represent to you, if you
20 look at the factors that they say, there's incomplete
21 information or that the information somehow has other
22 characteristics with respect to --

23 MR. SCHIAVONI: Objection.

24 MR. TAYLOR: -- with respect to the Slater firm --
25 I hear your objection and I'll speak, and the

1 judge can decide if she wants to hear it or not.

2 With respect to the Slater firm, it is more likely
3 that a claim that's not filed by an attorney has these
4 characteristics than a claim that is filed by a Slater
5 attorney. And as to those where there is statistical
6 significance, as found by Mr. Hinton, there is not a single
7 one of these characteristics that is more likely to appear in
8 an attorney-signed claim.

9 Those two that have some statistical significance,
10 according to Mr. Hinton, as to both of those, the attorney-
11 signed claims are less likely to have those characteristics
12 than the non attorney-signed claims, right.

13 It is a complete contradiction of the insurers'
14 thesis that somehow these attorney-signed claims are less
15 reliable or some indicator of fraud; in fact, by their very
16 own roster of characteristics, the attorney-signed claims are
17 more likely to be reliable.

18 The only exception to that is what they refer to
19 as incomplete, and incomplete, there are more incomplete
20 attorney-signed claims than there are non attorney-signed
21 claims, which makes a lot of sense for the reasons that
22 Mr. Robbins talked about, is that these are being signed
23 shortly before the bar date, before they have all the
24 information.

25 And if you look at -- and this is the same

1 exercise that Mr. Robbins went through -- if you look -- and
2 this is back to Mr. Hinton's original declaration, right --
3 if you're not interested in hearing anything about the
4 supplemental declaration, because they chose not to move it
5 into evidence -- this is going back to his original
6 declaration, right.

7 MR. SCHIAVONI: We'd like it in evidence.

8 THE COURT: Go ahead.

9 MR. TAYLOR: So, this is something that is
10 certainly in evidence, right, and if you look at the numbers
11 here, it is very similar to what was the case of ASK and of
12 Andrews & Thornton, that the vast, vast majority of these
13 claims contain all of the information, the vast of it. The
14 only exception to that is the category of "missing abuser
15 last name." There's 8,668 of those, right.

16 If you remove that, just that one category, only
17 11 percent of the claims that are filed by Slater Slater &
18 Schulman, are missing any information, right. And for the
19 reasons Mr. Robbins and others have talked about, it is
20 unsurprising that somebody now doesn't remember the name of
21 the scout leader that molested them when they were a child.

22 So, what it comes down to is the entire basis on
23 which the insurers are seeking discovery from the Slater firm
24 is an inflated number of supposedly incomplete claim forms
25 based on the fact that they don't have last names, right.

1 That's the extent of it.

2 Every other indicator that they have of whether or
3 not a claim form is complete or has other characteristics is
4 demonstrable that the attorney, by their own evidence, if the
5 attorney-signed claim forms have fewer of those
6 characteristics.

7 So, that's what I have to say about that. I think
8 the Mark Twain quote is an appropriate one. If you actually
9 look at the numbers, you'll see that a case has not been made
10 that the attorney-signed claim forms are in any way less
11 reliable than non attorney-signed claim forms.

12 THE COURT: Okay. So, your point is on this
13 Table 2, if I'm understanding it right, is that if you look
14 at these claim forms included information almost all the time
15 of when the abuse occurred, where the abuse occurred, and
16 what abuse occurred?

17 MR. TAYLOR: Yes. For example, if there are
18 15,492 claims are filed, only 33 of which were missing
19 information about when the abuse occurred, only 50 of which
20 were missing information about where the abuse occurred, and
21 only 89 of which were missing information about what abuse
22 occurred. That's pretty extraordinary, right.

23 So, they are trying to inflate the number of
24 supposedly incomplete claim forms by including these two
25 categories. And Mr. Robbins also talked about missing abuser

1 last name and missing key claimant information, and it's
2 particularly that "missing abuser last name" category, which
3 in the case of Slater, it's 8,668 that don't have a last
4 name, but that certainly shouldn't be a basis, in and of
5 itself, as Mr. Robbins said, to rummage through the files of
6 your adversary law firm, right, because it's natural that
7 many of these claimants aren't going to know the last name of
8 the people who abused them, right. These are 5-year-old
9 children who were abused by a scout leader who, you know, 20
10 years later, can't remember the scout leader's last name, if
11 they ever knew it.

12 THE COURT: Okay. Well, not now, but, Mr.
13 Schiavoni, when it's your turn, you can tell me why it is
14 that the missing abuser last name column doesn't dominate how
15 this chart comes out.

16 Okay. Anything further, Mr. Taylor?

17 MR. TAYLOR: No, Your Honor.

18 THE COURT: Thank you.

19 Mr. Wilks?

20 MR. WILKS: Thank you, Your Honor, and good
21 evening, everyone. And I'll join everybody else in thanking
22 you for so much time today. Your patience is truly
23 incredible. But if it were earlier in the day, you know,
24 Your Honor, I would have a lot to say, but I know Your Honor
25 reads all the submissions, you know I've written a lot on

1 this motion, and I know what time it is. So I'm going to be
2 just hitting some high points here.

3 I also don't probably need very much time because
4 it feels like the insurers have kind of gone full circle here
5 when it comes to my client, Tim Kosnoff.

6 The original motion that they filed was really
7 bare bones when it comes to Mr. Kosnoff. They talked about
8 the email that we talked about last fall that he had written
9 about some folks in this case. It should never have gotten
10 public anyway because that was a privileged communication,
11 but that we can kind of take that aside, it doesn't really
12 expose him to 2004 discovery. Your Honor already held last
13 fall that it doesn't expose him to discovery on the issues
14 before the Court then and this one is really no different,
15 this was even more attenuated.

16 And then they cite the two statistical points
17 that, gosh, there's an awful lot of attorney-signed proofs of
18 claim and, gosh, there's an awful lot of him close to the bar
19 date. Well, those two things go together, of course, because
20 the attorneys' signatures are required because this is -- you
21 know, we've heard it before today, this is a deadline that
22 had to be met and an attorney who would blow the deadline for
23 a client like this is an attorney with a problem, a much
24 bigger problem than facing a deposition in a 2004
25 examination, which is entirely extraordinary.

1 But the irony not lost on me, I don't know if
2 anybody else picked up on it, is that Mr. Schiavoni even
3 wants discovery from Mr. Kosnoff because the tweet that he's
4 kind of showing Your Honor and keeps talking about has
5 nothing whatever to do with Mr. Kosnoff's practices or
6 anybody that he's associated with. It's -- Mr. Kosnoff is
7 only one man's view of what other nameless, faceless
8 attorneys might be doing in his view, it has nothing to do
9 whatever with --

10 THE COURT: I don't know that I buy that. I don't
11 know that I buy that when he's referring in a tweet to his
12 clients, he's talking about a case; I don't know that I
13 believe that the tweet means nothing. I don't know what I do
14 with it, but I don't know that I believe that it's not in his
15 lawyer capacity and representing his clients when -- I don't
16 have it right in front of me, but I think that's what he
17 talks about.

18 MR. WILKS: Oh, it's about this case. Make no
19 mistake, Your Honor, it's about this case, but he's not
20 talking about, hey, guess what, I have a bunch of fraudulent
21 claims. Guess what, I use hedge funds. Guess what, I use
22 third party aggregators in marketing firms. That wasn't
23 self-referential, he was -- those were his own views of what
24 other people, in his view, he suspects might be doing, which
25 sounds an awful lot like what Mr. Schiavoni is talking about.

1 They're both criticizing the same thing.

2 Our submissions are very clear. We answered the
3 accusations that are set forth in the original motion papers.
4 There's no evidence now supporting or even submitted on any
5 of these new allegations that came in, you know, in the
6 reply, which I don't have to talk about now, I don't think,
7 because Your Honor isn't going to consider the Speckin
8 declaration or anything attached to that.

9 But the fact of the matter is, the record before
10 Your Honor is Mr. Kosnoff is probably the most experienced
11 child sex abuse advocate in the country, although hearing
12 from Carmen Durso today was enlightening too. I mean, these
13 are two old warhorses in this practice area, no one else
14 holds a candle to either of them.

15 THE COURT: Do I have any evidence -- do I have
16 any evidence at all about Mr. Kosnoff? What evidence do I
17 have?

18 MR. WILKS: Your Honor, first of all, we're not
19 obligated to put forth the evidence. And it's interesting to
20 hear Mr. Schiavoni talk about that because he suggests we
21 should put in evidence, we should provide the evidence that
22 he is asking for in a 2004 exam. In order to avoid a 2004
23 exam, we should put in the 2000 -- the information that he's
24 asking for.

25 THE COURT: That's a different argument, that's a

1 different argument, but you told me I had evidence. So I
2 want to know what evidence I have. I don't think I have any
3 evidence in front of me about Mr. Kosnoff or his practice. I
4 have representations from counsel, but I don't have any
5 evidence.

6 MR. WILKS: You're right, Your Honor. You have my
7 representation, that's exactly right, and I, as an officer of
8 the court, take that very seriously, as everyone else on this
9 call does. But what you -- well, let's look at the flipside.
10 What evidence do you have that Mr. Kosnoff uses hedge funds?
11 None. What evidence is there that Mr. Kosnoff uses any of
12 the three third party aggregators that Your Honor named?
13 None, not -- there's no evidence.

14 THE COURT: Does he or doesn't he?

15 MR. WILKS: He does not, Your Honor, and that's an
16 attorney representation. He does not use those three -- he
17 doesn't use third party aggregators.

18 MR. SCHIAVONI: Objection. You can't -- that
19 statement can't be made consistent with the duty of candor,
20 it's just not true.

21 MR. WILKS: It is true.

22 THE COURT: Mr. Schiavoni, this is Mr. Wilks'
23 argument.

24 MR. WILKS: Yes.

25 THE COURT: Is it aggregator by another name or

1 what is it? How did he sign so many claims?

2 MR. WILKS: Well, first of all, as I said, he's a
3 warhorse. He has been on the New York Times; he's been on
4 the Canadian version of 60 Minutes. His name is out there
5 and has been for 25 years handling these kinds of cases.

6 He's also associated with other lawyers who have
7 proprietary software and proprietary methods. I mean, a lot
8 of that is work product, Your Honor. Nobody has really
9 talked about the work product doctrine today. I mean, the
10 work product and privilege issues here are rampant.

11 But, you know, for Mr. Schiavoni to get upset and
12 suggest that Mr. -- there's any evidence that Mr. Kosnoff
13 uses those three organizations that Your Honor asked someone
14 else about, there is no evidence at all. You know why?
15 Because he doesn't. And he doesn't take hedge fund money.
16 There is absolutely no suggestion that each proof of claim
17 filed with the Kosnoff name on it had attorney consideration
18 involved in the process before they were signed, that's the
19 way it was done and there's not a shred of evidence to the
20 contrary.

21 It's not our burden to come forward and show the
22 insurance companies and everybody else exactly what our
23 methods are. That's proprietary, it's work product. In
24 order for that to be required they'd have to come up with
25 something other than plain, bald accusation, which is all

1 this is. He wrote an email last fall criticizing folks who
2 are taking a different tack in this case, those arguments are
3 going to be hashed out someday in this case, I imagine. That
4 has nothing whatever to do with what we're talking about
5 today. He also has the two statistics that are in these
6 charts. I'm not going to slice through them at all.

7 What's important is, how did he get to where he
8 got to? Is there any evidence at all (inaudible) proofs of
9 claim that he -- that came through for his claimants, are any
10 of them fraudulent? Was there ever -- is there any evidence
11 at all that there's no homework done behind it, that there's
12 no attorney work done behind it? Absolutely none. There are
13 trained professionals, there are trained nurses, there are
14 forensic nurses, there are professionals, there are lawyers,
15 there's a big team of people all behind each one of these
16 proofs of claim and we lay that out in our papers.

17 So I don't think it's my burden to come forward
18 with that evidence, it's not our burden to put forth a
19 declaration or an affidavit, which is exactly the ultimate
20 relief that the motion seeks. It's not our obligation to
21 give them what they seek in order to beat the motion. On the
22 flipside, there is absolutely nothing that suggests that any
23 of the Kosnoff proofs of claim are anything other than bona
24 fide claims that pass muster.

25 I don't have to address all the accusations in Mr.

1 Speckin's declaration of course. If there's anything that
2 Your Honor is particularly, you know, worried about of the
3 three things that are in the original, I'm happy to discuss
4 them. But the motion, Your Honor, is improper, it asks for
5 extraordinary, extraordinary relief.

6 In a regular case, if a defense lawyer hired by an
7 insurance company or anybody else suspects that a complaint
8 filed and signed, by the way, by an attorney is unworthy of
9 Rule 11, you don't -- the relief is not to depose that
10 lawyer. The relief is to take discovery in the case and let
11 the case follow its course, unless there are other purposes
12 here behind the motion. Is it an attempt to run out the
13 clock? Is it an attempt to disturb the debtors' hoped-for
14 plan confirmation? I don't know, but if that's the design,
15 this is probably a decent way to go about it because, if
16 we're going to go through discovery of lawyers, the
17 privilege, the work product, the scope questions, we're going
18 to be back in front of Your Honor quite a lot and I don't
19 think that's lost on the insurers.

20 So, unless Your Honor has any questions, I've
21 talked more than I intended to. Thanks very much.

22 THE COURT: Thank you.

23 Mr. Hogan?

24 MR. HOGAN: Thank you, Your Honor. Good
25 afternoon, Daniel Hogan of Hogan McDaniel on behalf of

1 Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C.

2 Your Honor, I don't stand to repeat most of what
3 you've heard today because you've heard a lot. I would and
4 always like to focus on the big picture here, Your Honor, and
5 I really hope that the Court doesn't lose sight of the fact
6 that this case and where this case is, this 2004 discovery is
7 largely premature and specious, at best. The Eisenberg firm
8 has been subject to discovery as a product of these motions,
9 Your Honor, I'm not sure you're aware of that, but we were
10 served with discovery requests, interrogatories, requests for
11 production and requests for admissions relative to these
12 motions and, as a product of that, we have answered some of
13 the questions that the insurance companies are looking for
14 from these other firms. And I can tell you unequivocally
15 that Eisenberg has denied each of the allegations that were
16 brought forth in the requests for admissions and these
17 requests for admissions largely mirror the requests that
18 they're looking for in this 2004 motion. And so it was a
19 little strange for us, honestly, to have to answer discovery
20 about relief that they were requesting in the motion that the
21 discovery was predicated upon.

22 Nevertheless, we responded to the requests for
23 admission, Your Honor, and we denied each of the allegations.
24 Allegations such as whether signatures were photocopied and
25 affixed to claim forms, whether we used -- whether we

1 submitted claim forms without the claim form having been
2 completed, whether AIS counsel did not individually
3 investigate the factual contentions in each claim form,
4 whether AIS counsel did not individually review each claim
5 form that bears the signature.

6 And so from our perspective, Your Honor, this
7 entire process is somewhat backwards, and it's our
8 perspective that this discovery is inappropriate,
9 particularly at this juncture. The Eisenberg firm had a
10 significant vetting process that it undertook with regard to
11 each proof of claim that was filed. In fact --

12 MR. SCHIAVONI: Objection. There's no evidence in
13 on this issue.

14 THE COURT: It's argument. Go ahead, Mr. Hogan.

15 MR. HOGAN: Thank you, Your Honor.

16 In fact, there is -- there's a number of proofs of
17 claims, in excess of 1500 proofs of claims that have been
18 amended post bar date by the Eisenberg firm to in fact
19 replace the signatures of the individual lawyers who reviewed
20 those proofs of claim with the signatures of the claimant,
21 and I think that speaks to the nature of the vetting and also
22 to the nature of the bar date and the fact that these claims
23 were filed at the last moment largely because that's how
24 deadlines work, Your Honor.

25 With relation to the tweets, Your Honor, the

1 tweets really are a sideshow. The tweets were made by Mr.
2 Kosnoff, the tweets weren't made by Abused in Scouting, they
3 weren't re-tweeted by Abused in Scouting, they weren't re-
4 tweeted by the Eisenberg law firm. They are just merely a
5 sideshow; they're a predicate upon which the insurance
6 companies are seeking to have this Court inject itself into
7 these proofs of claims unnecessarily.

8 And so from our perspective, Your Honor, these
9 motions are inappropriate and should be denied.

10 Do you have any questions for me, Your Honor?

11 THE COURT: Thank you.

12 Any other objectors? I think that was the end of
13 the lineup, but I'd like to hear from anyone else.

14 MR. THOMAS: Your Honor, this is John Thomas from
15 Houston, Texas, representing the Junell & Associates firm.

16 THE COURT: Mr. Thomas.

17 MR. THOMAS: Yes, Your Honor. My apologies for
18 not being on camera today. In Houston, we're largely without
19 power and all without water, so my apologies. I will be
20 brief.

21 I want to respond specifically because Counsel
22 addressed Junell & Associates in its comments, and I got the
23 distinct impression that Counsel was trying to suggest that
24 there was some funny busy or fraud going on in the
25 communications with clients regarding opt-outs. The

1 communication that Counsel was referring to is contained at
2 Exhibit 1 to the Kirschenbaum document contained in their
3 2004 motions. That communication is one that was done by
4 email and text at the end of a lengthy process to evaluate
5 and file claims on behalf of numerous claimants in this case.
6 And I'll direct the Court's attention -- unfortunately, I
7 can't share my screen, Your Honor, but in that communication,
8 which was sent to clients, paragraph 1 states that "Our
9 firm," which is Junell & Associates, "has a signed contract
10 with you to participate in the BSA litigation and, as your
11 attorneys, we are obligated to act as fiduciaries on your
12 behalf in this matter."

13 It goes on to say that the power-of-contract form
14 with our firm that you signed is an obligation that we take
15 extremely seriously with respect to both professional
16 responsibility and the law, and we aim to make certain that
17 all of our BSA clients meet the November 16th deadline.

18 Your Honor, this communication was done three days
19 before the deadline to clients who had not signed their
20 forms, and it reflected the communication with regard to
21 putting the clients on notice that time was running out and
22 that we can complete the claim form with the information you
23 provided over the phone during your first consultation with
24 us about the litigation. And we advised clients -- Junell &
25 Associates advised clients that, unless they told us not to,

1 we were going to go forward and do the job that we were
2 hired, which is to file a claim.

3 And, Your Honor, the claim form, which was a
4 process of negotiation and vetting with the Court, contained
5 a statement that "I have examined the information in the
6 Sexual Abuse Survivor proof of claim and have a reasonable
7 belief that the information is true and correct," and this
8 Court permitted attorneys to make that representation, if
9 needed, on behalf of its clients who it provided the
10 information that was used to fill out this 12-page, multi-
11 question claim form.

12 And, Your Honor, I was not at the October 14th
13 hearing, but I do recall Your Honor making a comment with
14 regard to why would I believe that the attorneys did not do
15 their job? Your Honor, we did not put into the record the
16 specific discovery that was requested by the insurers in
17 response to this motion because there is nothing that they
18 have to suggest that my clients, Junell & Associates, didn't
19 discharge their duties and their ethical obligations to the
20 client and to this Court in filing the claim forms that
21 they've submitted to the Court.

22 And, Your Honor, I don't have the statistics handy
23 at this time and can sure provide them, but there are
24 numerous claim forms that have been submitted post bar date
25 with the clients' signatures.

1 And so, Your Honor, we do object to the discovery
2 for the reasons stated previously and for the reasons stated
3 in my comments. I simply wanted to address Counsel's
4 comments because it suggested some kind of funny business or
5 fraud in connection with these claims submitted by Junell &
6 Associates.

7 Thank you.

8 THE COURT: Very well.

9 MR. SULLIVAN: Your Honor, I think you said me,
10 but I didn't hear, is that right?

11 THE COURT: I didn't hear anyone. Who is
12 speaking?

13 MR. SULLIVAN: Oh, I'm sorry, Bill Sullivan.

14 THE COURT: Mr. Sullivan.

15 MR. SULLIVAN: Your Honor, for the record, Bill
16 Sullivan on behalf of Mark Bern and Partners.

17 Your Honor, from our perspective, the focus on the
18 colloquy that Your Honor had last October is a discussion in
19 the abstract. At best, it may have been a warning for
20 counsel not to substitute convenience for best practices, but
21 I don't read it to be an invitation to demand discovery if an
22 attorney signs a claim form, which is a permitted practice.
23 And I think we can leave that behind because now we also have
24 the benefit of hindsight.

25 The principal point I'd like to make, Your Honor,

1 is that the broad-brush approach here is not appropriate to
2 meet the for cause standard that applies to the Rule 2004
3 examination that they're requesting. The insurers' requested
4 discovery doesn't go to all of the claims signed by
5 attorneys, it doesn't go to all of the attorneys who signed
6 claims, it appears and based on the Hinton testimony that
7 it's only directed at attorneys who signed claims at or near
8 the bar date. And I think that shows that it's really the
9 spike of activity near the bar date that is the insurers'
10 concern, but I don't think that's an unexpected occurrence.
11 It may have been that because the bar date process was
12 extended in this case that people thought it would be
13 otherwise, but human nature is what it is and attorneys
14 respond to deadlines, and they also try to get their clients
15 to do the same.

16 Your Honor, the reality is is that a signature on
17 the proof of claim is the last act before it's filed. And so
18 whether it's signed by an attorney or not or whether it was
19 filed two days before the bar date or two months before the
20 bar date, none of that is proof of a lack of vetting of the
21 proof of claim. I think Mr. Robbins' questions of Mr. Hinton
22 brought that out. And so the discovery that is being sought
23 on a broad basis from a large number of law firms isn't
24 really appropriately targeted and there isn't cause for Your
25 Honor to grant it.

1 Your Honor, I think the parties recognize that
2 Rule 11 applies to proofs of claim; I don't think any party
3 has disputed that.

4 Your Honor, with respect to attorney discovery, we
5 also pointed out that the Shelton rule applies and that, you
6 know, in order to get it, there are three standards that
7 should be met, and that is no other means exist to obtain it,
8 the information that's sought is relevant and not privileged,
9 and the information is crucial to the preparation of the
10 case. I don't think that standard has been met either.

11 Your Honor, we referred to a Law Journal article
12 by Young and Hefter (ph) from 2014 in our response, but --
13 and I think it echoes your comments about the Obasi case --
14 and that is Rule 11 does -- Rule 9011 does apply to proofs of
15 claim, but the signing of a proof of claim by an attorney
16 does not and should not automatically turn the attorney into
17 a fact witness.

18 And, Your Honor, respectfully, the grounds to
19 obtain this discovery have not been met and we ask that Your
20 Honor overrule the motion.

21 THE COURT: Thank you.

22 Is there anyone else?

23 MR. HARRIS: Your Honor, Jim Harris with the James
24 Harris Law Firm. Can you hear me okay? Your Honor, can you
25 hear me?

1 THE COURT: Yes, I can --

2 MR. HARRIS: Okay.

3 THE COURT: -- and go ahead.

4 MR. HARRIS: All right. Thank you, Your Honor.

5 The general points that have been made so far, I
6 won't go over those again, they've been made and I would join
7 in them. I would just say, with respect to each individual
8 attorney that's been targeted here, I ask the Court to just
9 make sure that they've met their heavy burden with respect to
10 each attorney. There's been a general tendency to try to
11 paint everyone with the same brush. In the case of my law
12 firm, I don't believe that they've met their burden. They've
13 not shown good cause.

14 It seems that their complaint is with the number
15 of claim forms that were signed by myself and I don't think
16 that's probative, it's just -- it's part of this innuendo
17 that there must be some sort of fraud going on. And my
18 understanding is the rule allowed attorneys to sign, Your
19 Honor allowed attorneys to sign, and so the number of times
20 that a lawyer did what you said they could do and what the
21 rules say they could do can't be probative. It's not
22 evidence of fraud; it's just evidence that they're following
23 the rules and they're following your order and doing what you
24 allowed them to do.

25 So I think they need to show something more

1 because they start rummaging through clients' files and
2 privileged materials and, in my case, I don't think they've
3 met that burden.

4 Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. PICKENS: Your Honor, this is Joe Pickens,
7 Taft, Stettinius & Hollister on behalf of Babin Law.

8 I'll be brief. We agree with and we echo the
9 arguments that were made by Mr. Goodman and Mr. Robbins and
10 the other objectors, I won't rehash those here, and we have
11 nothing more to add. Thank you.

12 THE COURT: Thank you. Anyone else?

13 (No verbal response)

14 THE COURT: Okay, I hear no one else. Mr.
15 Schiavoni?

16 MR. BUSTAMANTE: Your Honor, Brett Bustamante on
17 behalf of Napoli Law.

18 THE COURT: Yes --

19 MR. BUSTAMANTE: Can you hear me?

20 THE COURT: -- Mr. Bustamante.

21 MR. BUSTAMANTE: Again, we'd like to join in the
22 concerns of our colleagues. We believe there's no good cause
23 for discovery, specifically from Napoli. Just a couple of
24 points that I'll try and keep as brief as possible for Your
25 Honor.

1 First, there's been no attempt to meet and confer
2 specifically with me. I appeared before this Court three
3 times and I'm counsel of record on every case. So, you know,
4 the fact that they haven't met and conferred with me on the
5 motion kind of shows that it's more about harassing our law
6 firm than it is about actually solving issues in the
7 litigation.

8 And to that point, if they honestly believed there
9 were deficiencies of any kind, why not give us a list of some
10 kind? Why not tell us what those deficiencies are?

11 Just first to very quickly deal with the
12 conspiracy theory. Napoli has been lumped in with other law
13 firms. Obviously, we don't think any of those law firms have
14 done anything wrong either. But just very quickly, the
15 insurers have not established any evidence that we have any
16 connection to Tim Kosnoff, which we don't, there's no
17 evidence that we coordinated any of our filings or advertised
18 any with other members of the coalition.

19 They also make the claim that we used claim
20 aggregators to file cases and they pushed this point in their
21 reply. They claimed that they have evidence that -- some
22 type of forensic evidence that we used claim aggregators to
23 actually file claims, and they cite to paragraph 18 and 19 of
24 the Speckin declaration. If you look at that citation, that
25 simply doesn't refer to Napoli. So the citation is a

1 misrepresentation on their part. And, again, there's just no
2 outright fraud on behalf of Napoli.

3 As far as the one other argument I wanted to bring
4 to the Court's attention, they initially claimed in their
5 opening motion that we filed 1700 cases and a large amount of
6 them had no attorney signature and -- or had an attorney's
7 signature and were largely blank. This was a direct and very
8 intentional misrepresentation. It omitted the fact that
9 there were amendments made by Napoli. Our opposition pointed
10 out that we only have 1300 cases, about 1300 cases, so we
11 can't possibly have 1700 cases on file, there has to be a
12 large amount of amendments there.

13 In their reply, the insurers capitulate to that to
14 some extent. They claim that there's 93 amendments that we
15 did, we claim there are far more. Just for Your Honor I
16 could represent that we mark 690 cases to be amended, we
17 believe that we've amended 391 of them and we have 299 left,
18 which we intend to do that and we are doing so through even
19 today.

20 Regardless, their capitulation shows that there's
21 essentially no fraud taking place by the Napoli firm. If
22 we're able to amend the cases and they now bear an
23 attorney/client signature, regardless of their number or not,
24 there simply can't be fraud unless we've made up the names of
25 the claimants as well and their signatures as well, which I

1 think would be a very bold claim and I don't think the
2 insurers have made that claim.

3 And just to very quickly address -- if Your Honor
4 has any questions, I don't want to cut you off. I'm sorry.

5 To address some of the other arguments, there was
6 an argument made about fonts, that certain claim forms have
7 different fonts on the signature page. Just in dealing with
8 the clients myself, I know that sending out a proof of claim
9 and getting it back, they sometimes sign it independently of
10 us filling -- of completing it over the phone with them or
11 they may use a different software program when signing the
12 proof of claim. So that certainly is no evidence of fraud in
13 itself.

14 There was a point made about sharing contingency
15 fees. I think that largely got glossed over, but I can
16 assure you our law firm, but certainly any law firm that
17 works with contingency fees is not sharing those contingency
18 fees, it's an illegal practice.

19 And I echo the concerns brought up before about
20 evidence, you know, it's not our burden to show that we are
21 not part of some made-up fraud.

22 And then just finally, Mr. Schiavoni addressed the
23 issue of naming Joseph Napoli, our senior partner's father,
24 in their briefing. He claims now that it's a typo, but in
25 their papers they again said Mr. Napoli also (indiscernible)

1 the insurers, they're accusing his father, Joseph Napoli, of
2 impropriety, but the insurers do not mention Joseph Napoli
3 anywhere in their brief. So the accusation is hard to
4 understand.

5 Mr. Schiavoni's name is on the signature block of
6 that briefing. So, technically, he's the only person who
7 signed it and violated Rule 9011 so far.

8 With that, if Your Honor has any questions?

9 THE COURT: Thank you.

10 MR. BUSTAMANTE: Thank you.

11 THE COURT: Anyone else?

12 MS. LEVICK: Hi, this is Stephanie Levick on
13 behalf of D. Miller and Associates. I just want to echo and
14 join in all the arguments made by Mr. Goodman and our other
15 colleagues, which I won't repeat given that it's already
16 6:30.

17 I just wanted to add that we don't believe that
18 the insurers have demonstrated good cause to take discovery,
19 specifically from our client, D. Miller, and note only that
20 the insurers' papers make no specific allegations regarding
21 D. Miller beyond their argument that somehow the volume of
22 attorney-signed claim forms or forms submitted close to the
23 bar date are somehow inherently suspicious.

24 That's all I had. Thank you.

25 THE COURT: Thank you.

1 Anyone else?

2 (No verbal response)

3 THE COURT: Mr. Schiavoni?

4 MR. SCHIAVONI: The reason why, Your Honor, I feel
5 a little like Custer going to Little Big Horn by myself, but
6 sometimes, you know, just one man in the wilderness is right
7 and, this one, we're right on; this is not a close call.

8 The arguments you've heard, almost all of them are
9 straw man arguments. This is not a motion to seek discovery
10 for sanctions. I don't know how anyone could perceive that
11 somehow that would be in our advantage. This is a motion to
12 seek discovery in furtherance of what 502 objections should
13 be filed. We were explicit about it. The two motions that
14 we filed are both unified, they are both tied to the omnibus
15 objection motion. We've made that very, very clear. I
16 understand why there's concern here about sanctions by some
17 of these folks, but that is not what we're seeking discovery
18 about.

19 Two, this is not a motion where we have the
20 obligation to prove fraud, nor is it even really an element
21 of the motion that we have to show fraud or that we are
22 showing fraud, or whatnot. We've made a specific showing
23 here through the evidence that was uncontested, the exhibits
24 that are in, the forensic document examiner declaration
25 that's in that none of these folks really wanted to talk

1 about, but the illustration of that is almost best made by
2 you heard from Mr. Krause's lawyer -- I forget his name, he's
3 a very eloquent fellow -- but here's what's in the
4 declaration and in the brief, and the brief is all summed up
5 on page 13 and tied to the declarations, but Adam Krause
6 signed -- or his signature is affixed to 890 proofs of claim
7 in one day, overall it's affixed to 2500 proofs of claim.
8 Assuming an eight-hour day, you know, we say this in our
9 papers, he'd have to be affixing it every 32 seconds to get
10 that 890 that day.

11 But what's important about it -- and this is
12 what's been missed in all the arguments you've heard -- is
13 they've all sort of selected out individual pieces and not
14 tied them together, but they're tied together in the moving
15 brief and they're tied together in the declarations, and that
16 is we went a step further. It's not just that 890 proofs of
17 claim went in one day and that carries with it some real
18 oddities about what was happening, they got -- the forensic
19 document examiner got into those individual documents and
20 what he found inside of them was he found that the signature
21 was -- that this affixed signature was pasted as part of a
22 PDF image onto the proofs of claim of over 1900 proofs of
23 claim.

24 What else did he find? And it's in his
25 declaration, you know, paragraph 18, he found that those were

1 all submitted by this firm Verus.

2 What was the other thing that we put in as
3 evidence that ties this together? We put in -- and it's
4 cited and quoted on page 13 -- we put in in the Kirkland
5 declaration, Exhibits 2 and 3, we put in documents that we
6 got from Verus. Verus actually couched what they're doing on
7 the Boy Scouts and this is what they say: "Verus will be
8 handling the complete process of the proofs of claim forms,
9 as well as the actual submission of the claims to the Chapter
10 11 proof of claims submission." The complete process. Even
11 when 90 signatures get imaged, they get given to a third
12 party aggregator, they get affixed to 1900 proofs of claim,
13 and they all get submitted.

14 You know, we don't have a videotape of Mr. Krause,
15 what he was doing in the weeks before, but there's enough
16 evidence there to warrant the discovery we've asked for
17 because what it indicates is that these proofs of claim were
18 done exactly what Verus says, that they will be handling the
19 complete process of the proofs of claim.

20 And we heard, we heard Mr. Krause's lawyer get up
21 -- and I'm going to be clear, Mr. Krause's lawyer sounded to
22 me like a very eloquent fellow, I don't know, and I 100
23 percent believe that he believed everything he said because
24 he did condition it saying this isn't his area of practice,
25 okay? But he actually got up and said we don't use Verus,

1 despite the fact that that's the evidence, that's the
2 evidence here. There's not an affidavit from Krause denying
3 this, there's no -- none of the evidence submitted on it was
4 contested. Mr. Kosnoff, the linkup is the same.

5 You don't even have to take Mr. Speckin's reply
6 declaration, who was replying just to the submission that Mr.
7 Kosnoff made. In Mr. Kosnoff's own opposition papers he
8 says, well, like somehow if we weren't -- we weren't using --
9 and this is in his surreply -- we weren't using these other
10 aggregators, we somehow used reciprocity. Well, if you try
11 to go on the website for reciprocity, it's an aggregator.
12 It's owned by Mr. Van Arsdale. I think he refers to that
13 actually in his reply paper.

14 And, okay, we didn't put on the reply declaration
15 of Mr. Speckin because -- like all the hoot and hollering
16 about somehow that's -- you know, it would be ambushing the
17 poor Mr. Kosnoff, but my goodness, we'd have to be ostriches
18 with our heads in the sand not to know that what's in there
19 is actually evidence that Mr. Kosnoff is using reciprocity to
20 submit his claims and that's -- which is something he's
21 admitted himself, and they're the ones -- it's a call center,
22 it's a call center, it's not a marketing firm, they're the
23 ones who actually spoke to the people. How do we know that?
24 Mr. Kosnoff is a solo practitioner, how on earth could he
25 generate these numbers? And we can go through each one of

1 these.

2 To hear Mr. Napoli get up and now Mr. Napoli is
3 suggesting maybe sanctions are appropriate against me. To be
4 clear, in this motion, in the motion about the claimants'
5 signatures, we do not refer to his father. Apparently, in
6 the motion that Mr. Ruggeri argued, it may be they have the
7 name wrong, in which case -- and I acknowledge my name is on
8 that, in which case I acknowledge it's a typo and it
9 shouldn't have been there. Okay? So no insult intended to
10 Mr. Napoli's father. But the reality is what matches, the
11 Napoli firm submitted hundreds of claims that were blank that
12 just had S slashes on them.

13 You can't fathom how any of this is even close to
14 consistent with what the statutory scheme envisioned with
15 regard to the importance of having a lawyer vet the claims.
16 You know, not somebody who the week before was working at a
17 pizza delivery company and for 15 bucks an hour is on the
18 call center phone, filling out proofs of claim and maybe
19 getting a bonus to submit them for it. It's like, no, an
20 actual member of the bar actually sitting down with people
21 and making sure that the claims were -- are in fact should be
22 submitted.

23 And that gets to another point. I want to answer
24 Your Honor's question about the Hinton declaration. It gets
25 to what is really off the rails about this kind of case.

1 Your Honor, you easily could miss the big picture by sort of
2 focusing on is the proof of claim, are the 15 questions
3 perfectly filled out? This type of mass tort is very
4 different from some of these other latent injury one, at
5 least like in the asbestos or some of these others, talc, but
6 fundamentally the claims turn on some very objective
7 evidence. You've heard some of it in Imerys. Do you have
8 ovarian cancer? Do you have lung cancer? Do you have
9 another cancer? At the end of day there's to be debate about
10 like what proof they've done on that, but there's some tie-
11 down on what the proof is. These kind of claims are very
12 different.

13 You did hear from a gentleman who I give great
14 credit to from Massachusetts who said he's got attached to
15 his declaration, it's in his proof of claim, 15 or 20 pages
16 of exhibits. I have not seen a single proof of claim like
17 that. I'm happy to sit down with him and his proof of claim
18 and try to resolve that with Mr. Ruggeri, but that, my
19 goodness, is the absolute oddity here. It's like here all
20 you've got to do is answer the 15 questions. And the
21 suggestion that perfectly filling out the 15 questions leads
22 to like, okay, pay \$2 million is absolutely not how any of
23 these claims are normally handled in any way because the
24 credibility of the claimant and the collaboration that one
25 can get through a sworn exchange with the claimant is

1 absolutely critical to verifying the claims. To simply hand
2 them out and say, did you fill in the questions perfectly,
3 you know, it's like that's -- that doesn't get there. It's
4 like that's almost as much of the problem as anything else.

5 So the notion that they're perfectly filled out --

6 THE COURT: How does that relate to what you're
7 looking for here? You're really arguing then that there
8 needs to be a different focus -- and I haven't even seen a
9 focus yet -- on who a trustee might be, what the trust
10 distribution procedures might look like, what will be
11 acceptable documentation to support a claim, isn't that
12 really what you're getting to with this?

13 MR. SCHIAVONI: So, admittedly, Judge, you are
14 sort of reaching forward -- and maybe I am a little bit too,
15 because you will hear argument from us about that at some
16 point perhaps because that is an issue, that's a problem
17 here, okay? But to suggest that the purpose of today -- and
18 I want to come back to answering a Hinton question and also
19 like dealing directly with how this would be helpful, this
20 discovery -- it's like to suggest that like, well, like maybe
21 if they're perfectly filled out, everything is, you know,
22 copacetic, it's not really the case. That's not really the
23 situation because think what we have, think what we have. We
24 have a non-member of the bar hired by a for-profit company
25 called Verus saying we will be handling the complete process,

1 the complete process. Okay? It's like they could be trained
2 to perfectly, you know, fill out the form, but it's like we
3 need to know that to know how to -- how to -- in essence,
4 where there are problems here and where there aren't.

5 The discovery we've sought, it is specific. It's
6 like we would like to speak to -- and some of these folks
7 like Mr. Krause who submitted hundreds and hundreds of claims
8 on a given day and who are linked to what appear to be just
9 giving it to Verus and we would like the subpoena to Verus to
10 show how -- what was the process here that generated these
11 things. Because I think 9011 and I think the statutory
12 system, like the scheme was intended that, as members of the
13 bar, we're kind of bound by ethics rules and procedures about
14 how we would go about preparing a proof of claim and how we
15 would vet someone when they come in the door, not even go
16 into someone who's a for-profit entity. It's like it's a
17 totally different, Wild West entity. It's like we ought to
18 know what proofs of claim come out of there and the process
19 for -- and if we're all wrong about it, so be it, but letting
20 us have some discovery on this when there's this kind of
21 evidence, it's like I think this is the kind of thing that
22 actually really would concern the circuit if they see 96,000
23 claims coming down valued at millions of dollars, every one
24 of them, it's like it's a process off the rails to not let us
25 even look under the hood and see what is going on with these

1 folks.

2 And, again, you know, I picked Krause out. I
3 could go on through each one of these. I'd ask you to look
4 at the Speckin declaration. And, yes, the proof is sort of
5 different for each one of them and for some it's not as
6 complete as the others, but it's there and it's linked
7 together about how these entities were involved and how they
8 were generating claims. And the importance of it, yes, is
9 9011 was a substantive protection.

10 And the discovery we want, it's not to sanction
11 people, that's not the point. The point is what is the scope
12 and extent of this? And where were these claims emanating
13 from and what commonality could we then draw from them, so we
14 could make some assessment about what to deal with the proofs
15 of claim objections as a general matter and how to deal with
16 the claims. And that's a very valid point in using 2004.

17 I disagree about the case law and somehow this is
18 the first time ever that 2004 has been used to look at the
19 process of proofs of claim being produced. But you know
20 what? If they want to say it's the first time, tell me
21 another case, another case in this district where somebody
22 submitted 890 proofs of claim, they signed them, and then
23 their signature turned out to be affixed to a PDF coming from
24 a third party entity. It's like there's a first time for
25 everything and this might be it, if that's really the view,

1 but it's like that -- you know, that is really a process
2 that's off the rails and it's something that merits some
3 targeted discovery.

4 And, you know, what we've asked for here is not --
5 you know, it's not really that much. Okay? And the notion
6 that, you know, these folks saying, oh, yeah, it's like, you
7 know, we didn't do anything, they're not really 100-percent
8 upfront about the evidence that's out there. There's a
9 reason why they didn't put declarations in, they can't. It's
10 like a lot of what we've heard is utterly inconsistent with
11 what's actually happened.

12 And, you know, I'd just like to wrap up on two
13 points. Your Honor, I went back and I looked at the Riviera
14 case -- I don't know if I've pronounced it right -- Rivera
15 case -- and it's worth a read what the court there said about
16 the use of, you know, pre-signed certifications in that case
17 and they were used, they were being attached to stay motions.
18 And what the Riviera court that this District of New Jersey
19 talks about is that, quote, "no reasonable attorney would
20 consider" -- and then a, you know, bracket -- "forms with
21 pre-signed signatures to be certifications, nor would any
22 reasonable lawyer engage in the practice of using un-signed
23 signature forms."

24 The case goes on and on about the judge talking
25 about the practice is in violation of 9011 because writings

1 were presented for, you know, an improper purpose. They had
2 the court believe that they were certifications. Moreover,
3 the threshold factual contention in each one of these
4 submissions was that the signatory read and signed is flatly
5 untrue. That's the situation here.

6 But we're not seeking this discovery to sanction
7 these people. Okay? You know, it's sort of a distraction to
8 what's really important to us and that is how big a problem
9 is this. Because, yes, we thought and I think the Court
10 thought when it was getting the signatures on it that it was
11 getting someone verifying that they read this and they
12 thought about it before they submitted it. It's one of the
13 reasons, by the way, in the tort system that we ended up in
14 the filing with 275 claims because the lawyers had to make
15 actual, real decisions before they took on claims. They
16 weren't having a third party just saying, well, you know, for
17 every one of these we will fill out, we're going to sell it
18 to you for X dollar amount and you're going to be able to
19 then turn around and turn it for another dollar amount. It's
20 a totally different process.

21 But, you know, Judge, a point I'll end on is the
22 one other quote from the hearing, you know, on October 14th
23 that you told the parties -- and, again, you're obviously
24 free to rule any way you want about this, I'm not quoting you
25 -- I'm not quoting back to you -- but what you warned the

1 parties was, quote, "Think long and hard before you sign a
2 proof of claim form because you may become a witness."

3 These folks were definitely, like they were
4 warned, but they -- you know, they went ahead and did it
5 anyway. Asking Mr. Krause to sit for a deposition to
6 explain, you know, what happened here is just -- it would be
7 very productive and it would not lead to a huge distraction.

8 Thank you, Your Honor.

9 THE COURT: Thank you. Okay.

10 MR. SCHIAVONI: Oh, I did -- if you want to hear
11 about Hinton, I'm sorry to miss that, but I'm happy to answer
12 that question. Hold on, let me just --

13 THE COURT: You did answer the question. If I
14 eliminate the abuser last name column from Table 2, does it
15 look that bad?

16 MR. SCHIAVONI: Okay. So, Judge, first of all, if
17 you set aside the missing abuser last name, there's still
18 tens of thousands of proofs of claim among the 66,000 that
19 were submitted by these high-volume-signing firms with other
20 infirmities that are flagged by Mr. Hinton in Tables 2 and 3.
21 So just simply sort of putting that aside, it doesn't really
22 -- it's like there's still a very significant issue with the
23 other things made in Tables 2 and 3.

24 The other point is that like I've got it that some
25 victims may not remember their abuser's name, we're not

1 saying otherwise. It's like that easily -- that could
2 happen. Okay? But what we're saying is to have almost 60
3 percent of the proofs of claim in this kind of case missing
4 that kind of information, it is noteworthy, it is something,
5 it is noteworthy and it does go into the analysis here.

6 THE COURT: Doesn't it matter if the rest of the
7 proof of claim form is very specific? It has a troop number,
8 it has a date, it has -- so that you could figure it out by
9 the first name?

10 MR. SCHIAVONI: Again, Judge, in any one case
11 that's -- I hear you, I completely hear that, you know, but
12 in this large -- it's the overall percentage of it in the
13 context of this kind of matter. Okay? Where there's -- like
14 the allegation is long-term grooming, et cetera.

15 And, look, I already can hear it, so, you know,
16 the objectors need not put on an argument about it. I can
17 tell you they'll say, oh, well, there's a million
18 psychologists who could explain it away in any one case, and
19 that may be the case, but the overall number is significant,
20 60 percent.

21 THE COURT: Okay. This is the flipside, these
22 deficiencies are the flipside of what you just postulated
23 that you could hire a whole bunch of people who know how to
24 fill out the form perfectly even though there are no valid
25 claims. So this is sort of the flipside of that. Either

1 they fill it out perfectly or there are deficiencies.

2 MR. SCHIAVONI: Judge, that's -- look, I hear you
3 on that and actually (indiscernible) and I have sort of
4 looked at both. It's like one set of ones to look at were
5 almost the ones that -- and, by the way, like I think they
6 were the ones, some of the ones that HUD pulled, they were
7 the ones, they were absolutely perfect, and that's -- they
8 drew a lot of -- a lot of those turned out to be problematic
9 for reasons -- for reasons that we will put on at some point,
10 but they pulled a small sample of those and, yeah, it's like
11 it was the oddity of sort of the perfect submission.

12 THE COURT: They're too good, they're too good --

13 MR. SCHIAVONI: Too good.

14 THE COURT: -- they can't be right.

15 MR. SCHIAVONI: But, Judge, here's the thing.

16 We're not here today to prove fraud. I have -- and to be
17 100-percent clear, we haven't accused anybody of fraud.

18 Hartford and Century have tried to be careful, cautious;
19 we've tried to come up with a process that gives us a good
20 faith basis to look at this. Okay?

21 And no one has -- look, I will be the first to say
22 that I think it was wrong for -- it's wrong to the extent a
23 lawyer photocopied a signature and attached it, I don't take
24 it you've just excused that, but it's -- but we haven't
25 accused any claimant of fraud, we haven't accused any lawyer

1 of fraud at this point. We're looking to try to identify and
2 get a handle on these claims and this is -- what we've come
3 up with is a legitimate, good faith effort to try to do that
4 and, you know, without objecting to every single claim, it's
5 a good faith effort to try to address the issue.

6 THE COURT: Thank you.

7 Okay, it's 7 o'clock. I don't know what else is
8 on the agenda. I don't recall, other than the Rule 2019
9 motion, which we're not going to get to tonight. Is there
10 anything else that I have to address tonight?

11 MR. ABBOTT: Your Honor, it's Derek Abbott. There
12 were a handful of sealing motions, as well as a motion
13 requesting the ability to file a surreply, but the 2019 is
14 the only thing -- and there's a motion to strike by Mr.
15 Kosnoff, but I would suggest, Your Honor, that the 2019 is
16 the only other thing of real substance or import tonight that
17 remain on the agenda.

18 THE COURT: Okay. We'll find a time for that -- I
19 don't know when that will be, but we'll find a time for that
20 and I'll take these matters under advisement.

21 Thank you.

22 COUNSEL: Thank you, Your Honor.

23 THE COURT: Thanks for the day, guys, and I will
24 be -- and we're adjourned.

25 COUNSEL: Thank you, Your Honor.

1 (Proceedings adjourned at 6:59 p.m.)

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CERTIFICATE

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8

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

9

10 /s/Mary Zajaczkowski February 19, 2021
Mary Zajaczkowski, CET**D-531

11

12 /s/William J. Garling February 19, 2021
William J. Garling, CE/T 543

13

14 /s/ Tracey Williams February 19, 2021
15 Tracey Williams, CET-914

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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|---------------------------|-------------|---|----------------------------|
| | | . | Chapter 11 |
| IN RE: | | . | |
| | | . | Case No. 20-10343 (LSS) |
| BOY SCOUTS OF AMERICA and | | . | |
| DELAWARE BSA, LLC, | | . | |
| | | . | |
| | Debtors. | . | |
| <hr/> | | . | |
| BOY SCOUTS OF AMERICA, | | . | Adv. Pro. No. 20-50527 |
| | | . | |
| | Plaintiff, | . | |
| | | . | |
| | v. | . | Courtroom No. 2 |
| | | . | 824 Market Street |
| A.A., et al., | | . | Wilmington, Delaware 19801 |
| | | . | |
| | Defendants. | . | March 17, 2021 |
| | | . | 9:00 A.M. |

TRANSCRIPT OF TELEPHONIC OMNIBUS HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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25

1 MATTERS GOING FORWARD:

2 2. Debtors' Second Omnibus (Substantive) Objection to Certain
3 (I) Cross-Debtor Duplicate Claims, (II) Substantive Duplicate
4 Claims, (III) No Liability Claim, (IV) Misclassified Claims,
5 and (V) Reduce and Allow Claims (Non-Abuse Claims) (D.I. 2020,
6 Filed 2/3/21)

7 **Schedule 1: Supplemental Revisions Needed**

8 **Schedule 2: Supplemental Revisions Needed**

9 **Schedule 3: Objection Sustained**

10 **Schedule 4: Objection Sustained**

11 **Schedule 5: Objection Sustained**

12 MATTERS GOING FORWARD AS A STATUS CONFERENCE:

13 6. Amended Chapter 11 Plan of Reorganization for Boy Scouts of
14 America and Delaware BSA, LLC (D.I. 2293, Filed 3/1/21)

15 7. [SEALED] Hartford and Century's Motion for an Order (I)
16 Authorizing Certain Rule 2004 Discovery and (II) Granting
17 Leave from Local Rule 3007-1(f) to Permit the Filing of
18 Substantive Omnibus Objections (D.I. 1971, Filed 1/22/21)

19 8. [SEALED] Insurers' Motion for an Order Authorizing Rule
20 2004 Discovery of Certain Proofs of Claims (D.I. 1974, Filed
21 1/22/21)

22 ADVERSARY PROCEEDING:

23 *Boy Scouts of America v. AA, et al.; Adv. Pro. No. 20-50527*
24 *(LSS)*

25 1. The BSA's Motion to Extend Preliminary Injunction Pursuant
to 11 U.S.C. §§ 105(a) and 362 (D.I. 144, filed 2/22/21)

Ruling: Approved/Order Entered

1 (Proceedings commenced at 9:09 a.m.)

2 THE COURT: Good morning. This is Judge
3 Silverstein. We're here in the Boy Scouts of America case;
4 Case No. 20-50527.

5 Let me remind everyone to make sure your computers
6 are muted when you are not addressing the court.

7 I will turn it over to Mr. Abbott.

8 (No verbal response)

9 THE COURT: Can parties hear me?

10 UNIDENTIFIED SPEAKER: Yes, Your Honor.

11 THE COURT: Okay. Thank you.

12 Mr. Abbott?

13 MR. ABBOTT: Thank you. Derek Abbott here of
14 Morris Nichols on behalf of the debtors, Your Honor.

15 We have a modestly long agenda today so we will try
16 to get through it quickly, Your Honor.

17 In accordance with the second amended agenda that
18 was filed -- and I want to make sure that Your Honor has it.

19 THE COURT: I do.

20 MR. ABBOTT: Thank you, Your Honor.

21 Item one, orders have been entered. We are good
22 there.

23 Number two, Your Honor, is, I believe, the second
24 omnibus claims objection. There were certifications filed,
25 but we understand the court may have some questions about the

1 matters raised in that objection.

2 So we're at the court's pleasure. I believe Mr.
3 Linder will be responding to the court on these issues. So we
4 are happy to respond as appropriate.

5 THE COURT: Okay.

6 MR. LINDER: Good morning, Your Honor. Matt Linder
7 of White & Case.

8 Can you hear me okay?

9 THE COURT: Yes.

10 MR. LINDER: As Mr. Abbott mentioned, the second
11 omnibus substantive claims objection it relates to
12 approximately sixty non-abuse claims. In particular, we are
13 seeking to expunge certain duplicate claims and no liability
14 claims to reclassify certain claims that were inappropriately
15 asserted as having priority under the bankruptcy code, and to
16 reduce and allow certain claims in revised amounts.

17 Your Honor, we had a few informal comments that we
18 received from counterparties to fund the claimants. We were
19 able to resolve those without any further filings. Those were
20 noted in the certification of counsel filed at Docket No.
21 2315. We did not receive any formal responses, but we're
22 happy to address your questions.

23 THE COURT: Okay. Thank you.

24 Yes. I have reviewed the second omnibus objection
25 and -- I'm sorry, I'm getting feedback. Am I the only one?

1 MS. BATTIS: Your Honor, this is Cacia. I will go
2 ahead and contact Rob and let him know that you are --

3 THE COURT: Thank you.

4 MS. BATTIS: You're welcome.

5 THE COURT: The -- we've reviewed the objections
6 and I have questions with respect to Schedule 1, Schedule 2,
7 and Schedule 3 generally.

8 With respect to Schedule 1 it labels these cross-
9 debtor duplicate claims and by definition if they're cross-
10 debtor they're not duplicative. Okay. These persons or
11 entities have asserted a claim against two different debtors,
12 often on the same day. So it's clear they intended to assert
13 claims against two different debtors. So they're not
14 duplicative. So why should I disallow them as duplicative?

15 MR. LINDER: I'm happy to address that, Your Honor.
16 Delaware BSA is the other debtor in this case, and Delaware
17 BSA is a non-operating company that is not party to other
18 contracts, it's not entered into any guarantees other than
19 being a co-obligor on Boy Scouts of America's prepetition
20 funded indebtedness.

21 Certain of the claims, for example, certain
22 liability, rather, under the Boy Scouts restoration plan which
23 is a prepetition retirement plan. For example, Delaware BSA
24 has no connection to that plan. So your comments are well
25 taken in that they are not duplicates asserted at two

1 different debtors. The basis for our objection was that
2 Delaware admits they have no liability on account of these
3 claims.

4 THE COURT: But that wasn't the basis of your
5 objection. The basis of your objection is that they're
6 duplicative.

7 MR. LINDER: We'd be happy, Your Honor, to go back
8 and clarify the objection. It's really a no liability basis
9 for the objection. We can substantiate that with a
10 supplemental declaration if you would like.

11 THE COURT: Okay. You need to do that and you need
12 to serve that on the claimants. Then we will take this up
13 again at another hearing.

14 I have similar questions on Schedule 2.
15 Substantive duplicate claims. Some of them appear to be claims
16 against different debtors. Some of the claims appear to have
17 been purchased, perhaps. But I don't know if -- I'm not sure
18 that I know the basis of objecting to these claims. They are
19 not purely duplicative. In fact, they are different on their
20 face.

21 MR. LINDER: I think generally, Your Honor, we --
22 rather than being able to address these in a non-substantive
23 fashion on the basis that they're true duplicates and that
24 they are exact matches you are correct, for example, there are
25 a couple of vendor claims that has been filed, on one part, by

1 the actual counterparties and contract, and on one hand, as we
2 noted, by a third-party who may have purchased the claims.

3 We're happy to go back and take a look. And to the
4 extent that it's not clear in the objection that we filed
5 we're happy to revise it to further substantiate the
6 objections.

7 THE COURT: Okay. I think you need to do that and
8 also address, as with the first schedule, the claims that are
9 against different debtors.

10 MR. LINDER: Understood, Your Honor.

11 THE COURT: With respect to Schedule 3 I was
12 generally okay with that except I have a question with respect
13 to two of the claims where the reason for disallowance, among
14 other things, is that the debtors do not believe these two
15 invoices are valid. What does that mean? You think they made
16 them up?

17 MR. LINDER: Your Honor, we did take a look in
18 preparation for this hearing. What that means is that we --
19 the debtors searched its files, its accounts, payable systems,
20 its records, and although it provided services to that
21 counterparty, the invoice that is asserted as to the debtors
22 and the future claim there is no record of those services ever
23 having been provided.

24 THE COURT: Okay. So that is a substantive
25 objection that we have no liability for this because we didn't

1 get the services. Okay. That one is close enough. I will
2 accept that.

3 I did not have any questions on Schedules 4 or 5.
4 So I will sustain the objection as to Schedules 3, 4 and 5.

5 Mr. Linder, you will supplement with respect to
6 Schedules 1 and 2.

7 MR. LINDER: Thank you, Your Honor. We will
8 bifurcate the order and we will submit the claims under
9 certification of counsel that you are sustaining the
10 objections and then we will do as you requested with respect
11 to the balance of the claims.

12 Thank you very much.

13 THE COURT: Thank you.

14 MR. ABBOTT: Thank you, Your Honor.

15 Items three through five on the agenda are the 2019
16 matters that the court previously heard and indicated that it
17 would not be addressing today.

18 So that moves us along to number six on the agenda,
19 Your Honor which is the debtors' plan as to which the court
20 requested a status conference. I am going to cede the podium
21 to Ms. Lauria who will address the court on that. I believe
22 there are some others who also, obviously, want to be heard on
23 that issue.

24 Maybe, perhaps, if the court has specific questions
25 that they'd like us to address we can prime the pump so to

1 speak.

2 THE COURT: Well, I do. I want to take five
3 minutes because I am getting significant feedback in the
4 courtroom and see if we can get this cleared up. So let's
5 take five minutes.

6 MR. ABBOTT: Thank you.

7 (Recess taken at 9:20 a.m.)

8 (Proceedings resumed at 9:33 a.m.)

9 THE COURT: Okay. May apologies. Hopefully we
10 have this fixed.

11 Can you all hear me?

12 (No verbal response)

13 THE COURT: Okay.

14 MR. ABBOTT: Yes, Your Honor.

15 THE COURT: Okay. Thank you.

16 Let's start with the status conference. I had
17 requested a status conference to have a discussion about
18 whether there's a realistic timeframe for confirmation or what
19 the realistic timeframe is for confirmation given where we
20 currently are.

21 Debtors have filed a plan. I have reviewed it. I
22 noted that the debtors inserted a confirmation date of July
23 26th which was not vetted with Chambers. And I don't know --
24 and that date, by the way, is not available, but the question
25 I really have is where are we. I wanted to know whether the

1 debtors were planning estimation procedures, when I can expect
2 TDP's; all of the things one would expect a Judge would have
3 questions about when asked for confirmation dates and when
4 there is currently a disclosure statement hearing scheduled
5 next month.

6 I have seen the flurry of paper. I have read the
7 flurry of paper. And I would like to have some discussion.
8 If we were in the courtroom I might have it in Chambers, but
9 we're not. So we are going to have it on the docket.

10 Ms. Lauria?

11 MR. LAURIA: Thank you, Your Honor. Again, for the
12 record, Jessica Lauria, White & Case, on behalf of the Boy
13 Scouts of America.

14 Why don't I start, Your Honor, with where we're at
15 and then turn to the importance of the debtors' timeline, and
16 in particular a summer 2021 confirmation timeline.

17 I am sure Your Honor saw that in addition to the
18 plan and disclosure statement, and solicitation procedures
19 motion we also filed, on behalf of the mediators, the first
20 mediator's report. I think the fact that they used the term
21 first was no accident. That was intentional. And it suggests
22 that there are additional mediator reports to come.

23 In fact, if I could, I want to quote the tail-end
24 of that mediator report which says,

25 "The mediators are confident that the mediation

1 will foster additional constructive discussions between and
2 among the debtors and other mediation parties. Accordingly,
3 the mediators do not consider the mediation to be closed."

4 That was a mere two weeks ago. And we agree with
5 the mediators. In fact, we have had mediation sessions since
6 that mediator report was filed. And we have also had
7 mediation -- we have a group mediation session scheduled for
8 the end of the month.

9 Now we are, Your Honor, keenly aware that we are
10 not there yet. We also saw the flurry of pleadings, plan
11 response pleadings, that have been filed to date both by
12 survivor constituencies as well as the insurers. And like, I
13 think, the sentiments that were expressed in those filings the
14 debtors are also frustrated that we're not there yet.

15 I will say, Your Honor, that we're particularly
16 frustrated that because of the impact of COVID we have been
17 unable to have in-person face to face mediation sessions.
18 It's frustrating, I know, just even from a courtroom
19 experience. Well that has been extremely frustrating from a
20 mediation experience. And that has made our bankruptcy
21 mediation, which as you will recall kicked off in the middle
22 of COVID, extraordinarily challenging. And I don't think that
23 is putting it mildly.

24 We didn't file a responsive pleading to those
25 pleadings. I am not here today to air our grievances with

1 other mediation parties and what has happened in the
2 mediation. I think suffice it to say the debtors are
3 committed to continuing to work with the mediation parties.
4 We're working with the mediation -- excuse me, with the
5 mediators on global resolution.

6 As I mentioned, we have sessions scheduled
7 regularly, literally daily, and we believe this is going to
8 culminate in group mediation sessions at the end of March,
9 early April.

10 As you will hear about later today in the hearing
11 we now have consensus around an extension of the preliminary
12 injunction. That gives us the breathing spell, we think, to
13 continue the mediation. Your Honor, we know we have a lot of
14 wood to chop. I don't think it's the entire forest, as some
15 people in this case would have you believe, but we know we
16 have a lot of wood to chop. We have got a process to resolve
17 that and we need -- from the debtors' perspective we need to
18 let that process play out.

19 In terms of timing I'm going to start with
20 confirmation timing because I know that is where you started.
21 Our apologies, Your Honor, for putting the date in the
22 documents. From our perspective it is important that we
23 maintain an emergence by the end of summer 2021 for a lot of
24 reasons. We kick-off recruiting, in earnest, in the fall.

25 The debtors need to put this bankruptcy matter

1 behind them. We have talked in the past about liquidity
2 concerns, financial concerns with the bankruptcy case.
3 Suffice it to say, the case has cost the debtors tens of
4 millions of dollars, upwards of \$100 million. With the
5 litigious environment that we are finding ourselves, the case
6 is running around \$10 million a month from an estate cost
7 perspective.

8 If this litigation, between, frankly, the
9 plaintiffs on the one hand and the insurers on the others with
10 the debtors stuck in the middle, continues to escalate that
11 number is only going to go up. And we think that that is just
12 entirely inappropriate for a non-profit debtor whose revenue
13 is generated by donations, and children attending, you know,
14 youth serving camps. We just don't think that is appropriate
15 for the size of this case or the nature of this debtor. So we
16 are trying to cabin-in those costs also on the timeline. That
17 is why we are looking at a summer emergence.

18 We would like that hearing to be fully consensual.
19 We have got the mediation set-up, we think, to do that. We
20 recognize it probably won't and we will probably need multiple
21 days of Your Honor's time. That doesn't mean we won't have
22 consensus with some parties, but it may be that there are
23 parties, even as we get to the end of the summer, that aren't
24 entirely happy with where we have ended up. We will see when
25 we get there.

1 In terms of Your Honor specifically asked about
2 estimation. We understand that last night the TCC, the FCR
3 and, I believe it was joined by the coalition as well, filed a
4 motion to estimate claims. That is scheduled to be heard, I
5 believe, at the April 15th hearing.

6 As Your Honor noted, that April 15th hearing is
7 currently scheduled as our disclosure statement hearing. I
8 think given the fact that we have mediation later this month,
9 late this month, into early April holding that date is going
10 to be very difficult for a disclosure statement hearing. We
11 fully acknowledge that, but we want to stay within the overall
12 timeline.

13 So if the date needs to move for the disclosure
14 statement we understand that, but we would ask that it not be
15 moved by much because I think we've got momentum in the
16 mediation right now. We think we should continue to take
17 advantage of that and see where we are at the end of these
18 sessions that are at the end of the month.

19 THE COURT: Okay.

20 MR. MASON: Your Honor, Richard Mason for the ad
21 hoc committee. I'd be happy to speak for the ad hoc committee
22 if -- I apologize, I didn't mean to interject on Ms. Lauria, I
23 Ms. Lauria is done for the moment.

24 MS. LAURIA: I am unless Your Honor has any further
25 questions for me.

1 THE COURT: Not right now.

2 Mr. Mason?

3 MR. MASON: Yes. Thank you, Your Honor. Good
4 morning. Again, Richard Mason of Wachtell, Lipton, Rosen &
5 Katz for the ad hoc committee of local councils.

6 Just as a very brief reminder, Your Honor, the ad
7 hoc committee consists of eight local councils drawn from
8 across the country. We are all volunteers as (indiscernible)
9 chair and my firm is pleased to represent the committee *pro*
10 *bono*. We reflect a variety of the 253 local councils that
11 deliver the scouting product on the grounds, Your Honor, to
12 over a million youth today.

13 The ad hoc committee, importantly, for purposes of
14 the mediation, consists of councils with higher numbers of
15 claims against them and those with lower numbers, councils in
16 plaintiff friendly states with open windows, and those in
17 states where the statute of limitations has long since expired
18 and is very unlikely to be revived, frankly, including because
19 of state and constitutional provisions, and councils with
20 relatively higher net worth, and those towards the lower end
21 of the financial scale.

22 Despite that variety, Your Honor, we have a common
23 goal to achieve, if we can, a solution that compensates
24 victims of abuse claims and preserves scouting for the young
25 men and women it serves. We are a mediation party, the ad hoc

1 committee is, and we believe that we have been engaged
2 productively with other mediation parties including the BSA,
3 the coalition and others.

4 Recently we have worked very well with the TCC and
5 the coalition on the proposed extension of the preliminary
6 injunction. That is a matter that you will hear from my
7 colleague, Mr. Celentino, and others later in the agenda.

8 Your Honor, to be clear, no individual council is a
9 mediation party. Over the past year the ad hoc committee has
10 been engaged intensively with local councils both to keep them
11 informed about the BSA bankruptcy and particularly recently to
12 see, frankly, what the art of the possible is with regard to
13 local councils aggregate contribution to a global settlement.

14 Now because the numbers are covered by the
15 mediation confidentiality, Your Honor, I am not intending to
16 discuss on the record the amount that we think we can circle
17 from the local councils based on our own analysis and
18 thousands of hours, frankly, we spent with them. But I just
19 want Your Honor to know that the local councils are fully
20 engaged through the ad hoc committee's efforts to achieve a
21 resolution on a timely basis.

22 I would agree with Ms. Lauria's comments about the
23 need for speed in the matter to achieve a resolution of one as
24 soon as possible and, frankly, we all look forward to the
25 continuing mediation that, from our perspective, has and

1 should be intensifying.

2 I do want to say a brief word, Your Honor, about
3 the TCC's status report if I might. Frankly, I read it very
4 briefly last night, much like a disclosure statement objection
5 which is for another day. I guess possibly not next month,
6 but hopefully soon thereafter. But there is one point that I
7 would like to address that I think is relevant for today and,
8 you know, in mediation.

9 The TCC says that based on its analysis of local
10 council properties, I think all of which have been appraised
11 at this point, the local councils can contribute to
12 "multiples" of the \$300 million number that the BSA has
13 identified in the plan that it filed as the local council
14 aggregate settlement contribution.

15 Now we have done our own analysis and we disagree
16 vehemently with the TCC's view of that potential. We think
17 that the appraisals do not properly account for deed
18 restrictions and conservation easements and other limitations
19 on local council properties across the country. We have other
20 issues, frankly, with the appraisals.

21 We also think that these types of disputes are
22 exactly why we have mediation with three very able mediators
23 appointed by Your Honor so that we can discuss the issues and
24 avoid litigating them if we can. So we would invite the TCC
25 to share their analysis with us in mediation. And if we can

1 find common ground that is fantastic, like we did on the
2 preliminary injunction extension. And if we don't, at least
3 we will have tried our hardest. I'm sure they will as well
4 and we will know where we disagree and we can proceed from
5 there.

6 I do just want to mention that the TCC said in its
7 status report that it had reached out to certain individual
8 local councils to discuss the TCC's view about their
9 properties based on the appraisals. The local councils to
10 whom Mr. Stang reached out to discuss these matters are not
11 mediation parties. I believe almost all of them have
12 responded, and to the extent that they have they have asked
13 the TCC to work with the ad hoc committee which I would just
14 reiterate we are fully prepared to do.

15 So thank you, Your Honor. That is all I have for
16 the moment.

17 THE COURT: Thank you.

18 Let me hear from the tort claimants committee.

19 MR. STANG: James Stang, Pachulski Stang Ziehl &
20 Jones, for the tort claimants committee.

21 First, Your Honor, we want a consensual resolution
22 of this case. Survivors and -- well, the (indiscernible)
23 committee has been accused more than once in conversation with
24 other parties that (indiscernible) and the local councils.
25 That simply is not true. I (indiscernible) the tort claimants

1 committee is not concerned about whether the Boy Scouts
2 (indiscernible) exists post-confirmation. Their concern is a
3 reasonable compensation (indiscernible). If the Boy Scouts
4 cannot continue to (indiscernible) post-confirmation so be it.
5 Our goal is to protect our constituencies and get them
6 compensation. Our goal is always not the liquidation
7 (indiscernible) for the local councils.

8 The issue that Ms. Lauria described was -- we were
9 informed of that on Monday in a phone call with counsel. We
10 have not received a single notification from the mediators
11 that that mediation has been since scheduled. No one has
12 asked the tort claimants committee if they were
13 (indiscernible). No one has discussed with us whether it was
14 safe to travel to Miami for mediation.

15 I have (indiscernible) creditors committee. I
16 don't know if he's willing to -- he lives in South Florida,
17 whether he is willing to travel to White & Case's offices. I
18 am not available to White & Case's. I have several previous
19 (indiscernible) conditions that can be at home. I have
20 vaccinated and I have asked counsel what precautions they were
21 taking to ensure that it was safe to go their offices. They
22 said they have (indiscernible) protocol.

23 So COVID issues aside the fact that we have not
24 even consulted (indiscernible) about any availability to go to
25 -- it sounds like counsel hopes that their case

1 (indiscernible). I think it is just (indiscernible) of what
2 is going on in the mediation process generally.

3 So Mr. Mason's comments about the councils, I
4 think, is a further illustration of where we are. I don't
5 have to have a settlement (indiscernible) in the context of
6 mediation. We have analysis of five local councils
7 (indiscernible), their assets, their cash, their investments,
8 their camp utilization, their camp values, the reviewed deed
9 restrictions on thousands of properties.

10 We reached out to the local councils because they
11 are in breach. There is no invitations to date that we have
12 to have with them about the value of those (indiscernible)
13 which is a huge issue in talking to the parties that are
14 liable. So we decided to cut through that.

15 The first counsel said we're not interested in
16 talking to you about talking to the local councils. One of
17 them hasn't even responded to our inquiry. The debtors said
18 that (indiscernible) not to you individually, but we will talk
19 to you through the local councils. Two of those local
20 councils are actually members of the ad hoc committee. So I
21 don't understand what (indiscernible) talk to us through the
22 committee, through the ad hoc committee.

23 Frankly, we'd be willing to talk to all 253
24 (indiscernible) but the information we got was confidential
25 and (indiscernible) unless they all agreed. So we have been

1 invited to talk to the ad hoc committee, which we intend to
2 do. Mr. Mason doesn't know that (indiscernible), but it is
3 our intention to do that.

4 That committee has no authority over any of the
5 other local councils. Mr. Mason has repeatedly said that the
6 committee cannot bind them. I don't know what communications
7 are going to go forward from that meeting to the rest of the
8 constituents of the ad hoc committee.

9 So the fact that they're not mediation parties,
10 Silicon Valley, Garden State, Grand Canyon, these are local
11 councils, Your Honor, doesn't mean they flock to us. We are
12 trying to keep our constituents informed of what is going on.
13 We have had three, what I call, (indiscernible) available to
14 all survivors. We have had (indiscernible). We have
15 (indiscernible) a couple of thousands of people that
16 downloaded the recordings of those webinars. We have had town
17 halls (indiscernible) who represent survivors.

18 So they're useful, informing them as to what is
19 going on. Honestly, I have heard, I don't know the
20 (indiscernible), coming onto those town hall meetings to
21 listen as to what is going on. So this notion that somehow
22 there's all this communication going on between us and the
23 local councils. Obviously, we're not (indiscernible) of the
24 mediations at the moment with the BSA. We have had lots of
25 conversations. As you can tell from our (indiscernible)

1 progress to where it should be.

2 Issues that we have with plan and disclosure
3 statements or webinar statements (indiscernible) we have too
4 many things to do today (indiscernible). In a sense
5 (indiscernible) was right, it was kind of a preview of the
6 disclosure statement objection. It also works with some other
7 issues that have not (indiscernible). The estimation matter
8 Mr. Patton talked about it. (Indiscernible) demonstrates how
9 much (indiscernible) and whether (indiscernible) disclosure
10 depends on a lot of the work that the BSA and local councils
11 do.

12 At the end of the day local councils and chartered
13 organizations, (indiscernible) of all liabilities. I
14 understand the actions with the insurers, the settlements. I
15 understand there needs to (indiscernible) for them to continue
16 (indiscernible). The lack of information that is in the
17 disclosure statement that will be provided to the creditors I
18 think there has to be a real change in attitude by councils as
19 to what assets are in the disclosure (indiscernible), what the
20 alternatives are so that they can look at (indiscernible).

21 Your Honor, we will continue working towards a
22 global resolution, but we have a lot of work to do. We are
23 committed to doing it, but we have got to have partners.
24 Telling us that we have to be in Miami without asking us
25 (indiscernible), who's coming, (indiscernible).

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Let me from the unsecured creditors committee.

4 MR. RINGER: Good morning, Your Honor. Rachel
5 Ringer from Kramer Levin on behalf of the creditors committee.

6 Your Honor -- as Your Honor saw from the first
7 mediators report we were able to achieve a resolution for the
8 treatment of our constituency which is embodied in the version
9 of the plan that was filed in early March with the caveat
10 that, you know, given the timing as reflected in that plan and
11 disclosure statement those documents, themselves, we are still
12 in the process of reviewing.

13 In terms of the schedules I generally agree with
14 the comments laid out by Ms. Lauria. From the committee's
15 perspective, and I think as recognized by, effectively, all
16 the parties in the case, you know, our constituency is small
17 by comparison with the exception of really (indiscernible) for
18 pension claims that are resolved through the plan, and the
19 claims held by our constituency, as I think was referenced in
20 the TCC status report, is not the claims that precipitates the
21 bankruptcy filing.

22 With that in mind we did work very hard with the
23 debtor and with JP Morgan to negotiate a deal for constituency
24 that not only addressed our claims, but allow the organization
25 to take what we view is a critical first step for

1 confirmation. We do recognize that there are, you know, still
2 a lot of wood to chop. We are happy to and look forward to
3 continuing to work with the debtors to try and achieve greater
4 consensus around the plan.

5 Key to our agreements and key to the settlements
6 that we reached with the debtor is the continued viability of
7 the organization. That is important not only for the members
8 of our committee and the members of our constituency, many of
9 whom are going to continue doing business with the
10 organization post-bankruptcy, but also because, as Your Honor
11 has heard a little bit about in prior hearings, the assumption
12 of the pension and the avoiding the items that would trigger a
13 potentially very large claim is important for preserving
14 recoveries to, you know, non-general unsecured creditors and
15 preserving recoveries for all other constituencies in the
16 case.

17 You know, we've always believed our constituency
18 could be an important and constructive building block and we
19 are happy to have reached an agreement but also recognize that
20 we, along with debtors and other parties in the case, still
21 have work to do before confirmation.

22 THE COURT: Thank you.

23 Let me hear from the FCR.

24 MR. HARRON: Good morning, Your Honor. This is Ed
25 Harron for the FCR.

1 Can you hear me okay?

2 THE COURT: I can.

3 MR. HARRON: If I may, Your Honor, I'd like to
4 address two things, the plan and the estimation motion that we
5 filed yesterday with the TCC and the coalition.

6 Your Honor, we talked about this in other mass tort
7 cases but its generally the case that a mass tort bankruptcy
8 only concludes when you have some level of consensus between
9 the company and the claimants. And Imerys is an example of
10 that where we have a consensual plan.

11 Unfortunately, Your Honor, the plan that's on file
12 does not reflect any sort of consensus, and I think it's plain
13 from the TCC's response that it will be a subject of claimant
14 opposition.

15 And, just to be clear, at this moment, I know that
16 we're not (indiscernible), but at this moment the FCR does not
17 support that plan. And to be frank, Your Honor, we think it
18 ignores the elephant in the room.

19 You know, this case is unique in many ways. But
20 among the unique facts here is the existence of about 84,000
21 claims that were filed as of the bar date. And Your Honor has
22 heard in prior hearings that the compensability of those
23 claims, the value of those claims, it will be highly contested
24 by among others, but at least we know the (indiscernible) of
25 issues.

1 But those same considerations which claims are
2 compensable and how much are they worth and that feeds into
3 all the confirmation price areas. That informs claimants on
4 the votes that form the criteria and values in the TDP.

5 It's necessary for the court to conduct the best
6 interest analysis to compare to the cover available to tort
7 claimants against -- the tort survivors, pardon me -- against,
8 for example, what the commercial claimants are receiving.

9 Also, this case puts at issue third-party releases
10 to the local councils, to the charter organizations, to
11 insurers. And, of course, the fundamental consideration of
12 the court when evaluating third-party releases is how the
13 consideration compare to the liability.

14 So, to make a long story short, Your Honor, we
15 think the plan is putting the cart before the horse. And
16 we've discussed with the debtor what we believe to be a more
17 appropriate strategy. And we discussed this with them before
18 we filed the motion. But we think the way to advance this
19 case is for a court to determine the magnitude of the
20 liability to the abused claimants. And we're attempting to
21 address that issue via the estimation motion.

22 And Ms. Lauria mentioned that the estimation motion
23 would be up for consideration on the April 15th hearing.
24 That's not our intention, Your Honor. In fact, we wanted to
25 bring the motion to your attention today. Mr. Brady set up a

1 chambers this morning, so we have an opportunity to discuss it
2 with you but later this afternoon we plan to file a motion to
3 withdraw the (indiscernible).

4 We believe (indiscernible) 157 -- pardon me 28
5 U.S.C. 157(b) (2) (b), the liquidation of personal injury claims
6 is beyond this court's core jurisdiction. And because it's
7 our intention, at least, in part, to use the estimation motion
8 of the basis to potentially fix distributions to claimants,
9 again, it falls squarely within 157(b) (2) (b) which said not
10 matters which are among the court's core jurisdiction.

11 So we collectively -- we spent a lot of time
12 consideration which court was best situated to resolve the
13 estimation. And it's our view, particularly in light of
14 157(b) (2) (b), primarily in light of that statute. We believe
15 the District Court is probably the appropriate place to
16 litigate the estimation issues.

17 THE COURT: How does that fit into a timetable that
18 the BSA believes is necessary to make sure we have a
19 continuing Boy Scouts?

20 MR. HARRON: Well, I don't want to speak out of
21 school, but BSA says it does not fit into their timetable. We
22 have -- the motion has an expedited schedule and they'll
23 proceed -- we intend to proceed quickly but when we get over
24 to District Court, you know, it will be subject to the court's
25 availability.

1 THE COURT: Correct.

2 MR. HARRON: But the BSA timetable we think
3 erroneously assumes that confirmation in the near term is an
4 option. We don't accept that premise. We don't think -- we
5 think the current plan is a road to nowhere. And it may be
6 the case of (indiscernible) BSA funds prosecuting that plan.
7 Maybe that's not in the best interest of the estate.

8 THE COURT: It may be. I don't know. I'm
9 surprised that anyone thinks that the plan that was filed is
10 the plan that's going to be confirmed.

11 So I think you've all been in this game long enough
12 to know that's not the case. So what my concern is, though,
13 and I don't know what, you know, you file your motion, of
14 course. I don't know what the District Court will think about
15 the argument you're making with respect to who can determine
16 it.

17 And what concerns me more, quite frankly, is a
18 timeframe with the District Court that has on its plate and
19 coming up with hopefully the relaxation of -- well not
20 hopefully, the relaxation, with possibilities of return to
21 criminal trials, a docket that it has to prioritize. So that
22 is a concern I have.

23 But parties, of course, are free to file whatever
24 motions they think are appropriate and legally required. But I
25 have that concern of the backlog of criminal docket that --

1 it's my understanding the District Court will need to
2 prioritize.

3 But, you know, I read the motion and I've seen
4 what's been filed, as I said, the flurry of filings. The
5 parties are free to take the positions they want to take. I'm
6 not sure if they can take them back at some point.

7 MR. HARRON: Your Honor, I just want to clarify a
8 few points.

9 One, we seem to be committed to mediation. And we
10 don't see the estimation path and the mediation path as
11 regionally exclusive. So it's our hope that the estimation
12 process will bring the parties closer together, rather than
13 further apart.

14 And with the plan and the timing, we do share the
15 concerns about timing. Certainly, my client has no interest
16 in harming a long-term process of the Boy Scouts. But it's
17 our view that, as Your Honor noted, the plan that's on file
18 will not be the plan that's confirmed.

19 But when we play it out, we think that any plan
20 that's going to be confirmed ultimately will require an
21 estimation of some sort. And so, it's our view, that we can
22 proceed with the estimation now and perhaps use that as an
23 opportunity to bring the parties together. And once that
24 litigation is completed or near completed, then we can move
25 more promptly to a plan process.

1 THE COURT: Okay. Thank you.

2 MR. HARRON: Thank you, Your Honor.

3 MR. MOULTON: David Moulton. May I speak for the
4 coalition?

5 THE COURT: Yes.

6 MR. MOLTON: Good morning, Judge. It's David
7 Molton of Brown Rudnick for the Coalition of Abused Scouts for
8 Justice.

9 I want to say a few words. I'm going to try to be
10 as concise as I can, Your Honor. I know that a lot of folks
11 have already spoken about things that I was going to say.

12 I know that folks have talked about a lot of wood
13 to chop. I think that that's a fair statement, but probably
14 an understatement. I think that that's a forest to chop and I
15 know Mr. Stang has talked about the local council issue and
16 the official tort claimants' issues and efforts in connection
17 with local council.

18 I think also, Judge, one of the, as alluded to
19 earlier, one of the elephants in this room, as Your Honor has
20 seen from the history of this case and our involvement in it,
21 is the insurers. And what they're going to do, what they're
22 going to bring to this plan.

23 So I think we can't respoke it. Just looking at
24 the Boy Scout proposal and local council's proposal, but also
25 the issue of the insurers. And I want to address, go right to

1 the heart of what you said about estimation, Judge. Because
2 what you have in the estimation motion, the two fiduciaries
3 for the survivors, plus the ad hoc committee.

4 The coalition that as Your Honor knows represents a
5 significant amount of those survivors for collective purposes
6 in this bankruptcy case joined together, all of those parties
7 are working extremely hard in the mediation. I don't think
8 anybody on this in-conference in your courtroom will say that
9 that's not the case.

10 We've all extended hours of good faith efforts
11 working with the debtors, working with the local council,
12 engaging as appropriate and necessary. And to the extent we
13 can with the insurers through the mediators in order to move
14 this case.

15 At the present time, Judge, the timetable suggested
16 by the estimation is very aggressive. We did that in light of
17 exactly what the debtors concern was and in light of the
18 suggestion and what I knew the question from Your Honor would
19 be.

20 Your Honor said you read it. We appreciate that,
21 Judge. Paragraph eleven is the proposed case management
22 ordered. We narrowed that, that's 111 days' timetable for all
23 of this to get done. You know assuming that the order is
24 granted and estimation is granted in mid-April, that puts us,
25 you know, within fair game of concluding if that timetable is

1 accepted and abided by.

2 And I know that other folks are going to have their
3 say on that timetable and surely the court hearing this will
4 have its say on that. But it puts us not beyond or
5 substantially beyond the timetable that Ms. Lauria mentioned.
6 So we tried very hard to do that.

7 Number two, Judge, and I know it's been talked
8 about earlier in earlier hearings in mass tort bankruptcies
9 estimation often is teed up and often it results in incenting
10 and facilitating the mediation and consent, not the opposite.

11 I refer Your Honor to PGE that I know Your Honor
12 heard from before from some of my colleagues where an
13 estimation was teed up in front of the district judge and soon
14 there afterwards, you had a deal between the debtors and the
15 prior victims on value and the amount that would be paid to
16 them in the plan.

17 Just across the hall, the physical hall, at one
18 period of time, an incest, Your Honor, I think it was -- well
19 it's going to be a year and a half, almost two years ago, the
20 debtor teed up an estimation process very early in the
21 program. And what happened is under the mediation auspices of
22 Judge Carey, mediation happened with that regime be proposed
23 by the debtor which mediation went to a consensual plan.

24 So it's important to understand that from the
25 survivor constituency's perspective, in light of -- and I

1 don't want to get into mediation discussions. That's not
2 appropriate. I'm not even going to allude were they
3 successful, non-successful progress or non-progress. But,
4 clearly, the survivor constituencies in light of everything
5 that Your Honor had seen in this case so it's important and
6 necessary to tee this up at this point in time for the reasons
7 that Mr. Harron described.

8 I will say, Your Honor, that you know the coalition
9 agrees with the TCC and the FCR that the plan itself is
10 unconfirmable and will not be voted. There will be -- I can't
11 say no survivor, but there will be overwhelming survivor
12 opposition and vote no to the plan.

13 There's a lot of issues that I know Mr. Stang stood
14 and raised that 2388 that was filed yesterday, I think it's
15 fair to say that the coalition doesn't have to repeat them or
16 join in them.

17 Just some of the things that weren't said in there,
18 you know, number one, we have great concerns under the present
19 plan. First of all, it purports to be insurance neutral but
20 yet it gives the insurers enhanced rights such as the ability
21 to avoid direct claim litigation where that litigation is
22 allowed in various states.

23 Further, Judge, in terms of the millennium factors
24 because non-debtor releases here as stated by Ms. Boelter from
25 day one, Ms. Boelter, Ms. Lauria, and Mr. Andolina are

1 absolutely essential to Boy Scouts' surviving, if it's going
2 to emerge from Chapter 11 and survive.

3 A key issue in evaluating whether one of the
4 Millennium, Master Mortgage, Metromedia, whatever you want to
5 call the case law that gives the court the criteria for
6 evaluating non-debtor releases. Whether the claim effected by
7 the releases are going to be paid in full. Clearly, the
8 issues there are the value of the claims which is we're
9 dealing with now with the tee up of the estimation, but also
10 the value of the insurance assets.

11 I think it's important to note that no matter what
12 the argument is of the contribution of the local council to
13 the debtors, I think it's undisputed among everybody in this
14 virtual courtroom today, Your Honor, that those assets even if
15 to the maximum requested by the survivor constituencies, the
16 hard assets, you know, will not be even -- will be de minimis
17 in terms of satisfying (indiscernible).

18 So really what is the value of the insurance
19 assets. And we're really concerned, Judge, that a key issue
20 is what are the obligations of those companies with respect to
21 the proposal made by the debtors in terms of transferring
22 insurance rights under the insurance neutral plan to a trust
23 and one of those issues is, I think, is previewed, I believe,
24 in prior hearings whether the insurers can state that all they
25 owe is the amount that was actually paid into the trust,

1 meaning by the Boy Scouts, or whether their coverage
2 obligation is coextensive with the actual value of the claim.

3 Those are all issues that we believe need to be
4 addressed, one way or other in this case before a plan can be
5 confirmed. And in that way will give you, Your Honor, the
6 ability to make the Millennium decision to evaluate those
7 criteria based on actual disclosure and ascertain ability of
8 the value of the claim and what is being transferred to the
9 trust to satisfy those claims.

10 So, Your Honor, I think, what we've asked the
11 debtor's counsel nicely and sometimes not so nicely is put off
12 the hearings next month. There's no reason for all the
13 parties in this room, the talented lawyers in your courtroom
14 to be expending time and resources objecting to a plan that as
15 Your Honor knows won't be the plan that's confirmed and
16 clearly has substantial disqualifications to confirmability
17 now, let alone deficiencies and disclosure.

18 Instead of spending that time and telling us as Ms.
19 Lauria just did, well we think we may have to adjust the
20 schedule, but you know we want to hold it until when? Until
21 everybody files their objection and the debtor replies and
22 further money is spent on a wasted effort that we all know and
23 then to a plan that cannot be confirmed?

24 No, let's put a hiatus on that, Your Honor, and to
25 use that money to allow Boy Scouts that saves money from the

1 Boy Scouts' estate to be channeled, so to say, into more
2 productive activities over the next month. Let's get the
3 estimation motion teed up and decided. And, again, there's a
4 case management procedure proposed therein that we think works
5 and addresses all the issues, Your Honor, that have been
6 previewed to Your Honor before regarding this case and the
7 claim.

8 Get it teed up and continue with Judge Carey and
9 Crofton and Tim Gallagher's efforts to bring parties to some
10 common ground. We're fully behind that, Your Honor. The
11 coalition has been since day one. And I'd ask Your Honor, you
12 know, to consider those points in terms of next step.

13 MS. LAURIA: Your Honor, this is Jessica Lauria.
14 May I just briefly respond to the time line point? Because I
15 think that was, in fact, the purpose of the status conference.

16 MR. BUCHBINDER: Excuse me. This is Dave
17 Buchbinder. May I be heard briefly on behalf of the U.S.
18 Trustee, Your Honor?

19 THE COURT: I'd like to hear from all the parties
20 who want to speak. And then, certainly, Ms. Lauria, I will
21 come back to you.

22 MS. LAURIA: Thank you, Your Honor.

23 THE COURT: Mr. Buchbinder.

24 MR. BUCHBINDER: Thank you, Your Honor. David
25 Buchbinder on behalf of the United States Trustee.

1 I'd like the Court and the parties to be aware that
2 the U.S. Trustee has provided the debtor with numerous
3 comments regarding the plan, the disclosure statement, and the
4 solicitation procedures motion was also fraught with numerous
5 concerns. And we do share many of the concerns echoed, not
6 only by the Court, in your initial comments, Your Honor, but
7 in earlier comments, as outlined by the status report filed by
8 the tort claimants committee. And I would just like the Court
9 to know that at this point in time.

10 Also, as a human being here, it seems that there
11 are two things that are undisputed. Before this case can go
12 to consensus, we need to know the size of two pots, the size
13 of the claimant pot and the size -- from whatever sources they
14 come from -- of the pot that's available to pay compensation.
15 And what I've heard here this morning, as a human being, is a
16 lot of excuses and reasons why we can't do that now, we can't
17 do this for this reason or that reason.

18 And after acknowledging that these are the two
19 issues, that's where whatever little agreement exists breaks
20 down. It's incumbent on the parties to roll up their sleeves
21 and sit down and deal with this seriously and realistically
22 because that's what's going to answer the questions, including
23 getting consensus to this case and minimizing, as opposed to
24 exponentially increasing the administrative expenses. Thank
25 you, Your Honor.

1 THE COURT: Thank you.

2 MR. ANKER: Your Honor, this is Mr. Anker. May I
3 be heard?

4 THE COURT: Yes, Mr. Anker.

5 MR. ANKER: Yes, Your Honor. For the record,
6 Philip Anker from Wilmer, Cutler, Pickering, Hale & Dorr, for
7 Hartford, the Hartford Insurers.

8 Your Honor, I certainly want to echo what Mr.
9 Buchbinder just said, that we all need to roll up our sleeves,
10 and we all need to avoid unnecessary administrative expenses.
11 And Ms. Lauria talked about those expenses.

12 Your Honor may not end up deciding whether there
13 will be an estimation motion in the first instance; it may be
14 the District Court. But that -- since people have started to
15 politic and try to poison the well, let me briefly respond. I
16 think Your Honor's instinct that this is a bad aide and an
17 idea that is simply going to lead to more administrative
18 expense is right.

19 Among other things, let's just start with two basic
20 propositions, which are: One, does the motion have merit?
21 And two, can Your Honor decide it? Your Honor, under 157,
22 cannot liquidate for distribution purposes an unliquidated
23 personal injury claim. The most significant part of the
24 motion that has been in front of you that was filed is
25 Footnote 3. Footnote 3 reads, quote:

1 "Estimation of aggregate liability will not
2 determine the liquidating amount of any particular individual
3 claim. The plan contemplated that the movants will likely
4 provide that such individual amounts will be determined
5 through trust distribution procedures, the TDP, or through
6 release of actions in the tort system through adjudication, as
7 permitted by the TDP."

8 That means, first, Your Honor can resolve the
9 motion; and second, the motion is directly contrary to 502(c),
10 the Bankruptcy Code provision on estimation, which says -- if
11 I can call it up quickly and I apologize, Your Honor:

12 "There shall be estimated, for purpose of allowance
13 under this section, any contingent or unliquidated claim" --
14 singular -- "the fixing or liquidation of which, as the case
15 may be, would unduly delay the administration of the case."

16 Yes, there are procedures for valuing that are done
17 in connection with a plan; for valuing assets of an estate and
18 liabilities of an estate. But what is being proposed here
19 with respect to estimation flies in the face of the words of
20 the statute. And the proposition that Your Honor can't
21 consider it flies in the face of the words of the
22 jurisdictional statute 28 U.S.C. 157. We will make those
23 arguments.

24 But this -- let's ask the real question, what is
25 going on and why it's going on. What's going on -- and Mr.

1 Moulton, with all due respect -- and I've known him for a long
2 time -- is being -- and he smiles, and I think he acknowledges
3 that I know him -- is cute, is being cute. What really is
4 being sought here is some sort of adjudication by someone of
5 aggregate liability, so that, then, when it comes to coverage
6 litigation, someone can say, ah hah, that's already been
7 determined.

8 If we want insurance neutrality here, I agree with
9 Mr. Moulton, the current plan is not insurance-neutral. It
10 denies carriers rights, doesn't grant them rights. One of our
11 rights is to defend every claim in the tort system, if we want
12 to; and, if not, if not, that is a breach of the policy, and
13 it provides for defense to coverage. If there's going to be
14 insurance-neutrality here, there needs to be language that
15 either honors our rights or gives us all defenses to coverage
16 that that creates and doesn't have anything that this Court
17 does or the District Court does affect that ultimate coverage
18 decision.

19 Having said all of that, I want to come back to and
20 actually echo something that Your Honor said and Ms. Lauria
21 said. This case has led to enormous expense and a lack of
22 consensus. There is an ongoing mediation. I am not going to
23 breach the mediation privilege, either. But I think Ms.
24 Lauria would attest that our client has been constructive and
25 helpful, and we are trying to see if we can get to something

1 that ultimately makes sense, given the extraordinary -- and I
2 know Mr. Moulton likes to stay away from this. But going from
3 275 filed claims in the tort system to 86,000 is staggering
4 and tells you something is -- I'm trying to remember what the
5 Shakespeare expression was, something is amiss in Denmark, or
6 whatever that expression was.

7 Something doesn't smell right, and that has to be
8 dealt with, but this estimation process is not the way to do
9 it. It simply is inconsistent with the Code and with the
10 jurisdictional statute. Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. ROBBINS: Your Honor, I wonder if I could --
13 this is Larry Robbins. Our firm is litigation counsel to the
14 coalition in connection with the estimation.

15 I had thought that all we were appropriately
16 supposed to do today was to call the fact of the estimation
17 motion to the Court's attention. Mr. Anker has just given
18 what I assume is the first half of his oral argument on the
19 merits. I don't propose to engage on it. But I also don't
20 want the moment to pass with the suggestion that we believe
21 that that substantive opposition has any merit. We don't.

22 And when Mr. Anker and his co-counsel put those
23 arguments in writing, in due course -- which is how motions
24 are supposed to be handled -- we will respond. And we are
25 confident that whatever court resolves the threshold question

1 of whether there should be an estimation will conclude that
2 it's appropriate and that the time line that we proposed is
3 fully consistent with the debtors' goal of getting a plan
4 confirmed in a timely manner.

5 Unless the Court is asking for argument on the
6 merits today, I'm going to stop here because I don't think an
7 oral argument of the sort Mr. Anker just gave is warranted.

8 THE COURT: Thank you, Mr. Robbins.

9 Anyone else before I go back to mister -- to Ms.
10 Lauria?

11 MR. MOULTON: Judge, it's Mr. Moulton again. I
12 just want to tell Mr. Anker that the last time I was called
13 "cute" was in high school, so thank you.

14 MS. LAURIA: Thank you, Your Honor. And I think
15 we're getting --

16 MR. SCHIAVONI: (Indiscernible) I'm sorry, I had
17 mute on. Your Honor, this is Tanc Schiavoni for Century. May
18 I be heard for just a moment before Ms. Lauria?

19 THE COURT: What hearing would be complete if I
20 didn't hear from you?

21 MR. SCHIAVONI: I -- and Your Honor, what I'm going
22 to say is really -- I really want to talk about estimation,
23 but I'm not going to. Okay? I just want to say something
24 very brief, that I think will be noteworthy, and that is:

25 I have had many disagreements with Ms. Lauria. I

1 don't necessarily agree with a lot of the things in the plan.
2 But I think you should give her some more time and a chance.
3 We're willing to work with her, and I think she can be very
4 creative. So I would give her a little bit more string to run
5 out here, and that's me saying positive things about Ms.
6 Lauria and the Boy Scouts. So let me end on that note and
7 thank you for hearing me.

8 THE COURT: Thank you.

9 Anyone else?

10 (No verbal response)

11 THE COURT: Ms. Lauria.

12 MS. LAURIA: Thank you, Your Honor. Jessica
13 Lauria, White & Case, on behalf of Boy Scouts of America.

14 While Mr. Schiavoni deprived me of the joke I was
15 going to make about my boxing helmet, as you can see, with my
16 big puffy earphones today, because that was an unusual
17 occurrence. But I do wear these things for a reason. And as
18 you can see, we're a little bit stuck in between our plaintiff
19 colleagues -- who we agree with all of the remarks that were
20 made, it is our desire to equitably compensate victims -- and
21 our insurers.

22 But without delving into the merits of the plan or
23 the estimation, I do think we need to return to the time line
24 because that, I think, is where you started, Your Honor.

25 On the estimation, we share Your Honor's concern

1 about the District Court's calendar and the time line that the
2 District Court would be able to accommodate. But even if this
3 were in front of Your Honor, I should note that the hundred-
4 and-eleven-day time line that was proposed in the estimation
5 conveniently expires right at the debtors' statutory
6 exclusivity period.

7 And as I read the motion, it suggested that the
8 bankruptcy cases should hold tight while the estimation work
9 proceeds -- with that hearing at some point in mid-August,
10 again, when our statutory exclusivity expires -- so that,
11 apparently, the other parties can deprive the debtors of their
12 time in Chapter 11 and their attempts to reach a consensual
13 deal. We don't think that's appropriate and we don't think
14 that should guide the Court today in determining what our time
15 line is for confirmation.

16 As I said, Your Honor, and just to put a finer
17 point on it, accrued professional fees through the end of
18 February are upwards of \$100 million. By the time we get to
19 August, we're estimating they'll be around \$150 million.
20 That's just -- that's not right for a nonprofit case. And we
21 are trying to reign that in with the mediation process.

22 With respect to Mr. Moulton's point on moving the
23 disclosure statement hearing, Your Honor, we understand that
24 if we need to move that to accommodate parties, but as I said
25 earlier, only by a bit. We are getting to the point in this

1 case -- and certainly, I think we will be there by the end of
2 April, that we're going to need the Court to start calling
3 balls and strikes on disputed issues. And those disputed
4 issues go beyond 2004 requests and 2019 motions. We have
5 pretty serious issues that we'll need to bring before the
6 Court at the appropriate time on an appropriate briefing
7 schedule. So, in our view, pushing the disclosure statement
8 hearing off indefinitely or to a date past the 111 days or
9 well into the future is just not right for this particular
10 case.

11 So, again, if the Court is inclined to move that
12 date, we would say only move it by a very little bit because
13 we do believe we need to come in front of the Court,
14 potentially in the near term -- let's see how the mediation
15 goes through the month of March -- to call some balls and
16 strikes for us.

17 THE COURT: When you say "a little bit," what are
18 you thinking?

19 MS. LAURIA: You know, I would say two weeks, two
20 to four weeks. I know we have an omnibus mid-May, I think
21 it's May 15th, if I'm not mistaken, or thereabouts.

22 (Pause in proceedings)

23 THE COURT: May 19th.

24 Well, thank you for all of the input. As I said, I
25 have read what's been filed, the flurry of papers noted, the

1 adversary proceeding that's been filed, obviously the
2 estimation motion. Sometimes I think I am not the audience
3 for some of these filings because I can read a mediator's
4 report and understand exactly what it meant. But the -- and I
5 -- so if parties perceive that their filings are helpful for
6 some reason, of course you can file what you want. But again,
7 I don't always think I'm the intended audience.

8 The concern I have with going forward with the
9 disclosure statement at this point is because I don't see some
10 very necessary information and documents, quite frankly, that
11 I would want to see at a disclosure statement, including the
12 TDPs. Those who are involved in Imerys with me know that I
13 did not send out that disclosure statement until we had TDPs.
14 They can be negotiated or they can not be negotiated. But
15 there's -- but I think -- and think this plan has that gap in
16 it, where parties don't know what, in fact, the treatment is
17 going to be.

18 So, for very practical reasons, I think it's
19 difficult, perhaps, to go forward with that hearing in mid-
20 April. On the other hand, I hesitate to move it because
21 deadlines usually focus people and things get achieved. What
22 I think, here, perhaps can focus people are the mediation
23 sessions that are to take place later this month.

24 And whether attending in person or attending via
25 Zoom, I expect everybody to be there, who the mediators

1 request be there. I don't want to hear that someone decided
2 it was inconvenient or they couldn't show. We're \$100 million
3 into fees in this case, I think that is a staggering number,
4 and progress needs to be made. Victims need to be compensated
5 appropriately and the Boy Scouts' mission needs to continue.
6 And that's evident from -- everyone that I see here has voiced
7 that view.

8 And I will say that some of the letters that I've
9 received from individual -- individuals who are abuse
10 survivors, or who say they are abuse survivors -- and they get
11 docketed -- also share that view, which I find quite
12 heartening and somewhat amazing sometimes; that those
13 survivors, some of them, are still involved in scouts, their
14 kids are involved in scouts, and they see a role for scouts
15 going forward. Boy Scouts, I should be specific.

16 So I think that goal needs to be paramount, and I
17 think it affects the mediation. It affects the timing of
18 disclosure statement and confirmation. It affects how much
19 this is going to cost. And quite frankly, every dollar to
20 professional fees is a dollar that comes out of some
21 creditor's pocket.

22 So I'm going to move the disclosure statement
23 hearing to April 29th and 30th. And I will look for any
24 further mediation reports that the mediators find appropriate
25 to file after further mediation sessions. And we'll have a

1 further status report or hearing on April 12th.

2 MR. ABBOTT: Your Honor, Derek Abbott for the
3 debtors. I assume we can just work with chambers to tighten
4 up specific timing for that and get notice --

5 THE COURT: Yeah, I'm looking in the afternoon.
6 And if that doesn't work for parties, generally, we can do it
7 on the 13th. My thought is to try to get in a status before
8 objections are due to disclosure statement, recognizing that
9 some people may still have to work on it notwithstanding, but
10 people seem to have a jump on it. And I want it sufficiently
11 after the sessions with the mediator, so that discussions can
12 continue, as they often do after the mediation, and we can see
13 if -- what kind of consensus, if any, is reached on overall
14 issues or discrete issues. But I'm generally available the
15 afternoon of the 12th and 13th, and I don't have a preference,
16 but that's my thinking.

17 MR. ABBOTT: (Indiscernible)

18 THE COURT: Thank you.

19 MR. BUCHBINDER: Your Honor, Dave Buchbinder for
20 the record.

21 I take it that the objection deadlines will be
22 extended accordingly?

23 THE COURT: Yes, they need to be extended
24 accordingly.

25 MR. BUCHBINDER: Thank you, Your Honor.

1 THE COURT: Thank you.

2 Okay. What's next?

3 MR. ABBOTT: Yes. Your Honor, the next matters on
4 the agenda are related, Items 7 and 8. I believe the Court
5 requested status on the 2004 motion filed by the insurers.
6 I'm suspecting the Court may have questions. But I'll cede
7 the podium, obviously, to the insurers' counsel.

8 THE COURT: Okay. Well, here's my thoughts. I had
9 been working on ruling on these motions when the flurry of
10 paper came in. And quite frankly, I had waited to see what
11 the plan was going to look like before I ruled on these
12 motions. And now I think we've somewhat eclipsed them, in
13 that, if this estimation motion goes forward, then I see no
14 reason why that discovery shouldn't go forward as part of that
15 process. I may not be the person who is presiding over that
16 process or making that decision.

17 But I considered this, the requested discovery --
18 and I should qualify that by saying that certain of the
19 discovery could go forward, was my thinking -- would be or
20 could be relevant to estimation and could be relevant to the
21 TDPs, more so than objections to claims because, at least
22 under this plan, as filed, the survivor proofs of claim are
23 expunged from the docket. I'm not making a comment on whether
24 or not that's appropriate, but that's what this plan says with
25 respect to those proofs of claim form -- forms and said that

1 those claims will be -- I forget exact language, but the
2 claims will be resolved exclusively in accordance with the
3 TDPs, which we've already discussed that we don't have yet.

4 So my inclination was to permit certain of the
5 discovery to go forward, but I think it needs to be racked
6 into where we are now. So I'm going to hold off, again, and
7 let's see where it goes. But I think certain of this
8 discovery is appropriate. And quite frankly, I see in the
9 estimation motion the movants wanting to do similar, if not
10 the same type of discovery, which they opposed -- well, the
11 coalition opposed two weeks ago, so I think it needs to be
12 racked into that. So I'm not going to rule separately on it
13 at this point.

14 MR. MOULTON: Judge, can I add one point, just for
15 clarification, if Your Honor lets me?

16 THE COURT: Mr. Moulton.

17 MR. MOULTON: Yeah. I don't think we oppose,
18 Judge. I think we opposed the 2004 process, which was a
19 unilateral process, I think, at the hearing. We suggested
20 that we were willing to engage in a reciprocal process or come
21 to an agreement as to a process.

22 And I do note, Your Honor -- and Your Honor is
23 correct that that sort of process that was suggested by the
24 first motion, which would -- what I call the "claims motion,"
25 that I think Your Honor is probably referring to --

1 THE COURT: Uh-huh.

2 MR. MOULTON: -- is, in fact, covered by 11(d) of
3 the estimation, but it endeavors a cooperative, collaborative
4 regime. And if that -- a cooperative and reciprocal regime.
5 And if that regime is unable to be agreed to, then the
6 presiding court will decide it.

7 So I do want to say I don't think -- I don't
8 necessarily think it's an accurate characterization that we
9 were opposed to it. I think the survivors have their claims.
10 I think our estimation motion with the TCC and the FCR shows
11 that we believe in our claims. It's interesting, I know,
12 again, referring to my friend Mr. Anker's "cute" reference,
13 but it's almost too cute by half that the very issue that
14 we've been hearing since day one of our emergence in this
15 case, now we put it on, teed it up. Apparently, they're not
16 in favor of it, so that's an interesting thing.

17 But the estimation process and the proposed
18 discovery regime in it does cover that. And it would be my
19 suggestion, Judge, that that be left to the Judge who's
20 administering that to work within -- with the parties and come
21 up with a doable plan and regime. That would be my only
22 point, Your Honor.

23 Otherwise, you know, clearly, with respect to the
24 second motion, what I call the "attorney discovery motion," we
25 just stand on our -- you know, I'm not going to repeat what

1 was said at length a month ago. And the claims -- I note Your
2 Honor's points on claims objection, which we still stand on
3 our arguments. Thank you, Judge.

4 MR. SCHIAVONI: Your Honor, Tanc Schiavoni for
5 Century.

6 We do have -- it could have been lost in the
7 motion, but we do have the request for relief under 3007-1(f).
8 And I'm not -- and Your Honor will obviously rule whenever you
9 choose to. But I just would ask that -- you know, I think a
10 ruling on that could be decoupled from the other issues. If
11 you some -- if you decided you want to deal with this -- the
12 discovery collectively, you know, I defer to the Court's
13 decisions about how to administer matters. But 3007 is a sort
14 of separate issue, and it is sort of tied to solicitation
15 here, about whether -- you know, what claims should vote, what
16 claims should not.

17 We put before the Court specific uncontested
18 evidence of proofs of claim bearing signatures, the same
19 signature for multiple different names of claimants and other
20 such things that are very problematic. We look forward to the
21 U.S. Trustee weighing in on these issues, as they examine the
22 evidence. But we think the 3007 relief is a separate issue
23 that we'd ask Your Honor to take into consideration and
24 consider ruling on. Thank you, Your Honor.

25 THE COURT: Thank you.

1 My thought was that I was going to consider the
2 Rule 3007 issue after I saw what discovery yielded. But I'll
3 make a decision on that when I see whether or not I'm going to
4 be handling the estimation motion and -- because I think I
5 need to see what's happening there. I may decide -- if I'm
6 not handling it, so that I cannot coordinate all of this, then
7 I may rule separately on the Rule 3007 request.

8 I do think, to some extent, all of these issues are
9 intertwined. And the estimation, for example, the discovery
10 you want with respect to the -- or from the attorneys, the
11 individual attorneys and the aggregators may be appropriate
12 discovery in the estimation motion context. And so I'm -- but
13 since I may not be handling that, I'm not going to rule on it
14 for now. And I will consider whether I rule on the 3007
15 separately, once I know whether or not I'm handling the
16 estimation motion.

17 MR. SCHIAVONI: Your Honor, we -- if you recall, we
18 took an appeal on the bar date order that's before Judge
19 Andrews.

20 THE COURT: Ah.

21 MR. SCHIAVONI: One of the issues there was -- so I
22 just -- so, if you remember that, one of the issues there was
23 sort of how the form questions -- the adequacy of the
24 questions, what would happen. It's a -- you know, it's as if
25 a prophet wrote that email -- that brief. It foretells what

1 might go wrong. And I'm not -- no -- and Your Honor, I mean
2 no criticism, obviously, to the Court. It's like, you know, I
3 think we were all faced, at that time, not -- you know, with
4 some novel issues.

5 But Judge Andrews does have before him an appeal
6 that asks him to -- that, because of -- you know, the
7 substance of the appeal is the claim shouldn't be granted
8 presumptive validity. Okay? So that is before him.

9 Now just one thing to close on: It's still before
10 him. I'm not sure how many months have gone by. But you
11 know, perhaps -- Mr. Moulton would be very happy if like he
12 gets to the estimation after he gets out that appeal for six
13 months. Okay?

14 THE COURT: Well, my --

15 MR. SCHIAVONI: I mean --

16 THE COURT: My guess is --

17 MR. SCHIAVONI: -- it's like -- it's illustrative
18 of the case --

19 THE COURT: My guess is, if the District Court
20 takes this, you're going to be in front of Judge Andrews, so
21 you'll be able to address him on multiple issues. I could be
22 wrong, but that's generally how it happens. So -- and I --
23 has he had argument on that yet?

24 MR. SCHIAVONI: No, Your Honor, he hasn't.

25 THE COURT: Okay. Well, I will consider this. I -

1 - as I said, I was going to sequence it a little differently,
2 but I will rethink whether I need to -- how I should sequence
3 it, once I know what I'm handling and what I'm not handling
4 and we see --

5 MR. SCHIAVONI: Thank you, Your Honor.

6 THE COURT: I'd like to see if the mediation
7 results in something that could somehow meet this issue, as
8 well, or address this issue, as well. So we'll see. Okay.
9 Thank you, everyone.

10 What is next?

11 MR. ABBOTT: Thank you, Your Honor.

12 The next item on the agenda is the debtors' motion
13 for preliminary injunction. I believe that matter has been
14 resolved, but I'll cede the mic to Mr. Andolina, Your Honor,
15 who will (indiscernible)

16 THE COURT: Mr. Andolina.

17 MR. ANDOLINA: Good morning, Your Honor. Michael
18 Andolina, White & Case, on behalf of the Boy Scouts of
19 America.

20 Yes, Your Honor. As Ms. Lauria previewed and Mr.
21 Abbott just stated, some continued good news and momentum to
22 report. Your Honor, we filed a motion to extend the
23 preliminary injunction on February 19th. Prior to the
24 objection deadline on that motion, we engaged in extensive
25 mediated negotiations with the UCC, the TCC, the coalition,

1 the FCR, and the ad hoc committee of local councils. And Your
2 Honor, the parties were able to finalize a stipulation and
3 proposed order that was filed at Docket 151.

4 That stipulation was served on all parties in the
5 adversary on March 8th. There were no objections by any
6 plaintiff to either our motion or to that stipulation. As
7 Your Honor is aware, Century had filed a limited objection to
8 the stipulation. We greatly appreciate the conversations we
9 had over the last several days, in particular with Mr.
10 Schiavoni, Mr. Lucas, and Mr. Celentino, assisted by Mediator
11 Tim Gallagher. And we were able to resolve Century's limited
12 objection.

13 Your Honor, we provided a blackline version of the
14 proposed order to the Court. I don't know if Your Honor has
15 had an opportunity to review that. We can -- I can either
16 read the language or we can submit that to Your Honor, you
17 know, through a filing. But all the parties to the
18 stipulation -- the TCC, the UCC, the insurers and the ad hoc --
19 -- have signed off on that additional language to the proposed
20 order. And we would ask that the Court enter the order and
21 stipulation as soon as the Court has an opportunity to review
22 that proposed language.

23 THE COURT: It was just handed to me. Let me see.
24 Okay. It looks fine.

25 Does anyone else wish to be heard?

1 MR. STANG: Your Honor, this is Mr. Stang. I'd
2 like to make a comment, please.

3 THE COURT: Yes.

4 MR. STANG: Your Honor, while it's good news --
5 good that we're not having a preliminary injunction trial
6 today, the real good news will be if (indiscernible) satisfied
7 the conditions for the extension of their preliminary
8 injunction. And this (indiscernible) this is an agreement
9 between the TCC and the (indiscernible) and the counsels have
10 been told (indiscernible) eligible for the extension of the
11 injunction, this is what you have to do (indiscernible)
12 production of documents.

13 And we've talked about (indiscernible) before, they
14 are critically important to our survivors, to our
15 (indiscernible) organizations (indiscernible) liable for the
16 abuse they suffered and may be channeled parties or
17 participating parties under the proposed plan. So we keep our
18 fingers crossed.

19 We've been through this (indiscernible) before,
20 local counsel producing information. And (indiscernible) they
21 have -- they did supply information (indiscernible)
22 disclosures, but there was a response. So we're hoping that,
23 through (indiscernible) the debtor (indiscernible) can
24 (indiscernible) counsel to make those searches (indiscernible)
25 rosters under the conditions specified in the stipulation.

1 Your Honor, Mr. Pfau, who represents abuse
2 survivors, filed a joinder to the (indiscernible) response, I
3 should say, to the preliminary injunction (indiscernible) like
4 to make a comment to the Court.

5 THE COURT: Okay.

6 MR. PFAU: Your Honor, this is Michael Pfau. Can
7 you hear me clearly?

8 THE COURT: I can hear you, yes.

9 MR. PFAU: Okay. My apologies. I'm traveling, so
10 I had to appear via iPhone. But if you can hear me and see
11 me, great.

12 I filed a joinder -- I represent a number of abuse
13 survivors across the country, and I filed a joinder and am
14 appearing in conjunction with David Klauder, a Delaware
15 bankruptcy attorney. We filed that joinder, we thought it was
16 important because we wanted to raise an issue with you that we
17 think is critically important. We styled our joinder a
18 cautious joinder, not an enthusiastic joinder, and it's
19 cautious because we have been seeking the troop rosters for a
20 long time. Don't need to get into that now because we have
21 agreement, or at least agreement on a protocol that will allow
22 us to obtain those rosters.

23 The rosters may not be as important for the
24 bankruptcy lawyers and bankruptcy professionals, but they are
25 of critical importance to those of us who are representing

1 survivors in this case. And you know, why are the rosters so
2 important? The rosters allow the survivors to identify the
3 local council in the sponsoring organization. Not many, but
4 some of my clients have not been able to identify the
5 sponsoring organization that sponsored the troop when they
6 were children.

7 I have been told that there are tens of thousands
8 of claimants who have not identified a sponsoring
9 organization. Now this is important because the injunction
10 does not toll the statute of limitations for the lawyers that
11 are practicing in State Court, and it doesn't allow for
12 discovery.

13 And the reason I wanted to speak, Your Honor, on my
14 client's behalf, and I think on behalf of many of the tort
15 lawyers representing abuse survivors was a timing issue.
16 There are three states who have passed limbo legislation, New
17 Jersey, New York, and North Carolina, where those windows are
18 going to be closing this year. We need to be able to
19 identify, in order to preserve the statute of limitations,
20 those sponsoring organizations, and we need the troop rosters.

21 I'm glad we've reached a point where we have a
22 protocol in place to obtain that discovery. But we thought it
23 was important, Your Honor, to raise this issue. It's of
24 critical important to us, to put it on your radar. Hopefully,
25 we'll not be back asking for any relief in this regard. But

1 we thought it was important to join, important to state our
2 piece, and like I said, put this on your radar. So thank you.

3 THE COURT: Thank you.

4 Is there anyone else who wishes to be heard?

5 MR. CELENTINO: Your Honor, this is Joe Celentino
6 of Wachtell, Lipton, Rosen & Katz, for the ad hoc committee.
7 May I be heard?

8 THE COURT: Yes. Can I remind everyone else,
9 please mute your microphones? Thank you.

10 Mr. Celentino.

11 MR. CELENTINO: Good morning. I'll be brief, Your
12 Honor.

13 As you have no doubt just heard, this -- we support
14 the preliminary injunction stipulation that Your Honor is
15 being asked to enter, and we hope that you will. As you can
16 tell from the comments that were made just now, the injunction
17 stipulation is a compromise, and it's a compromise that we
18 support because it's one that will let the parties focus on
19 mediation, which, as Your Honor heard this morning, is
20 critical, given where we are in the case right now. It is
21 critical that we can get to a global resolution in the short
22 time frame that we have here.

23 We believe this stipulation will help move these
24 cases forward to a positive conclusion, which is in everyone
25 interests -- everyone's interests here. And we hope that Your

1 Honor will enter the stipulation this morning. And we will
2 continue, the ad hoc committee will continue to work to move
3 these places -- these cases to a global resolution. Thank
4 you, Your Honor.

5 THE COURT: Thank you.

6 Anyone else?

7 (No verbal response)

8 THE COURT: Okay. Well, I have reviewed the
9 revised form of order and I will enter it as consensual and
10 recognize that it is a compromise that the parties who
11 negotiated it have reached. I do not have any plaintiff in
12 the underlying litigation in front of me objecting to any
13 further extension of the preliminary injunction, and so I will
14 grant it. I will address whatever subsequently occurs with
15 respect to the compromise, as and when it's brought in front
16 of me. So that will be signed.

17 MR. ABBOTT: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MR. ABBOTT: Thank you, Your Honor. Your Honor,
20 Derek Abbott again for -- on behalf of the debtors. No, that
21 completes the agenda. We appreciate the Court's time and
22 guidance today.

23 THE COURT: Thank you. And I encourage everyone to
24 make good use of the mediators and the mediation session that
25 was coming up. If I were channeling Judge Fitzgerald -- who

1 many of you have been in front of on mass tort cases -- I
2 would say bring your toothbrushes and be prepared to come to a
3 resolution. We're adjourned.

4 UNIDENTIFIED: Happy St. Patrick's Day, everyone.

5 UNIDENTIFIED: Thanks, David. Nice hat.

6 UNIDENTIFIED: Thank you, everybody. Thank you,
7 Judge.

8 UNIDENTIFIED: Thank you, Your Honor.

9 (Proceedings concluded at 11:05 a.m.)

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14

CERTIFICATE

15

16 I certify that the foregoing is a correct transcript
17 from the electronic sound recording of the proceedings in the
18 above-entitled matter.

19

20 /s/Mary Zajaczkowski
Mary Zajaczkowski, CET**D-531

March 17, 2021

21

22

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24

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
BOY SCOUTS OF AMERICA AND Case No. 20-10343 (LSS)
DELAWARE BSA, LLC,
824 Market Street
Wilmington, Delaware 19801
Debtors.
Monday, April 12, 2021

TRANSCRIPT OF VIDEO HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES VIA ZOOM: (On the Record)

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WACHTELL, LIPTON, ROSEN & KATZ

For the Tort Claimants
Committee: James Stang, Esq.
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1 (Proceedings commence at 3:04 p.m.)

2 THE COURT: Okay. Good afternoon. This is Judge
3 Silverstein. We're here in the Boy Scouts of America case,
4 Case Number 20-10343, for a status conference.

5 And I will turn it over to Ms. Lauria --

6 UNIDENTIFIED: (Indiscernible)

7 THE COURT: -- and ask all others to please make
8 sure you're muted.

9 MS. LAURIA: Thank you, Your Honor. Jessica
10 Lauria, White & Case, for the debtors.

11 Your Honor, with -- in connection with today's
12 status conference, the debtors wanted to address three issues
13 with the Court:

14 First, we wanted to talk through at a very high
15 level where we're at on the mediation and the plan and
16 disclosure statement.

17 Next, we wanted to alert the Court to a motion that
18 the debtors expect to file on Thursday.

19 And then, finally, we wanted to address the time
20 line and, in particular, the time line for the disclosure
21 statement hearing.

22 So, if I could I'm going start with sort of where
23 we're at, again, very high level, not getting into any
24 mediation confidences, with respect to the mediation and talk
25 a little bit about the plan and disclosure statement.

1 Following our last hearing, which I think was March
2 17th, the mediators conducted both virtual mediation and
3 optional, in-person mediation March 30th through April 1st.
4 We did make progress during those sessions. But as the Court
5 can probably guess due to the lack of a mediation statement,
6 we did not reach a resolution as a result of those sessions.

7 We did, however, have great momentum coming out of
8 those sessions. And certain of the parties have kept at the
9 mediation, literally with daily mediation sessions, including
10 on the most recent holidays and weekends, since the virtual
11 in-person sessions concluded on April 1.

12 As we always do at these status conferences, we, of
13 course, want to thank the mediators and all of the mediation
14 parties for their efforts. We specifically want to thank the
15 attorneys representing coalition members for their efforts,
16 they've been working around the clock, as well as the FCR and
17 certain of our insurers. We appreciate their commitment and,
18 really, everyone's commitment to trying to get this
19 bankruptcy case to a place where we can confirm a plan of
20 reorganization.

21 While we still have very strong momentum, we
22 recognize that there are some parties that we don't have that
23 momentum with that aren't happen with where the mediation
24 stands today. Candidly, the debtors aren't happy with where
25 the mediation stands today. We wanted to come before the

1 Court today and announce a global resolute -- excuse me --
2 resolution of the cases. We're simply not there yet. But
3 that's not to say, Your Honor, that we've reached an impasse;
4 we haven't. In our view, we haven't reached an impasse with
5 any of the mediation parties. We are still negotiating on
6 multiple fronts and we intend to continue to negotiate on all
7 of those fronts.

8 But as I said at the last hearing, we're coming
9 very close to a time where we will call upon Your Honor to
10 start calling balls and strikes when it comes to the
11 disclosure statement and plan. I think -- and you've seen
12 this in the pleadings before -- if you polled the parties in
13 the case, I think we would agree on one thing, and that is
14 there are some issues that will have to be litigated in
15 connection with the plan.

16 We believe, Your Honor, that the best forum for
17 those issues and the best procedural posture to resolve the
18 open issues through litigation is through plan confirmation
19 in front of this Bankruptcy Court, we think that's the most
20 efficient process for all of the parties. That has the
21 ability to, not only equitably compensate a few survivors,
22 but also preserve our mission.

23 To that end, Your Honor, unless the stars align
24 tonight and we reach some sort of meaningful resolution with
25 one or more parties this evening, the debtors intend to file

1 tomorrow an amended plan, an amended disclosure statement,
2 trust distribution procedures, and a trust agreement. I want
3 to outline very briefly the structure that we're
4 contemplating for that plan, in light of where we are in the
5 mediation and the bankruptcy cases, more generally, just to
6 provide context for what, not only you, but all of the
7 parties that are present here today will see in that filing.

8 In short, the plan that we intend to file tomorrow
9 has been designed to continue the momentum that we have in
10 the mediation and with other negotiations, to facilitate a
11 global resolution of these cases, while addressing concerns
12 that we have heard from the TCC and others, and while
13 addressing the BSA's timing needs.

14 In short, Your Honor, what we are going to file
15 tomorrow is what I can best describe as a "toggle plan." The
16 sort of default or the Plan A version of that is a global
17 resolution plan, very similar to what we have filed in the
18 past. It provides for local council releases, in exchange
19 for substantial contribution. It would provide for releases
20 of chartered organizations that have claims exposure that
21 contribute voluntarily to a trust. It would provide, just
22 like the plan today provides a framework for insurance
23 settlements.

24 This global resolution plan would have an added
25 feature, and that's an estimation of the debtors' abuse

1 liability. You've heard a lot about estimation over the last
2 several weeks, as have we. We've heard the parties loud and
3 clear. We believe there should be an estimation in
4 connection with confirmation. We think the settlements that
5 we are hopeful you will see in the global resolution
6 component of the plan, we think, in the Court's consideration
7 of those settlements, the Court would benefit from an
8 estimation. We think all parties, candidly, will benefit
9 from an estimation in that world, so we are going to propose
10 one.

11 We think this global resolution plan -- what I kind
12 of refer to in discussions on our side as the "Plan A plus,
13 plus, plus" -- is the absolute best plan for BSA. We think
14 it's the best plan for the survivors, we think it provides
15 them with a structured and centralized means to receive
16 timely compensation and equitable compensation. We think
17 it's far preferable to what they would face in the tort
18 system. And we also think it continues the mission for BSA
19 and the local councils. But that's the global resolution
20 side of the plan.

21 As I mentioned, the plan does contain a toggle
22 feature, so a BSA toggle feature. If the abuse claimants do
23 not vote in sufficient numbers to accept that global
24 resolution plan and Your Honor is, therefore, reluctant to
25 confirm that global resolution plan, the plan of

1 reorganization would drop the global resolution component.
2 And again, that's the component that requires the plaintiffs'
3 support with the nondebtor releases, including the insurance
4 settlements. We would drop the global resolution component
5 and we would proceed with a BSA only toggle, a BSA only plan,
6 where BSA could still emerge from bankruptcy.

7 We would save millions of dollars of professional
8 fees. We would avoid what we think would be wasteful and
9 destructive bankruptcy-related litigation. We would maintain
10 our time line. So those are the positives of the BSA toggle.

11 The negatives are it's sub-optimal in our view,
12 worse than sub-optimal for the victims. We would -- in that
13 world, we wouldn't have the local council contributions, we
14 wouldn't have chartered organization contributions. We
15 wouldn't have a centralized forum to liquidate and provide
16 timely compensation to creditors. We would have certainly
17 complications with our insurance, due to the shared insurance
18 features of BSA's insurance program, with the local counsels
19 not being part of the plan. It would be difficult to
20 contribute certainly the policies to the trust or anything
21 that infringes upon their rights.

22 But that is a sub-optimal plan that's confirmable.
23 We think it's very close to what the TCC was actually
24 suggesting in their pleadings. We hope that the abuse
25 victims vote in favor of the global resolution plan, and we

1 hope other parties come to that table. But if not, we have a
2 confirmable plan that will get BSA out of bankruptcy.

3 I should note that the UCC/JPMorgan settlement that
4 was reached in connection with the mediation would be a
5 feature that is present in both plans. Both plans would
6 provide for that feature. So that's where we're at with the
7 plan and the mediation.

8 I can turn to estimation, et cetera, if that would
9 be helpful, Your Honor, and then go to time line. And I'm
10 sure there may be others that wish to be heard, and I'm happy
11 to answer, of course, any questions.

12 So the next piece. At our last hearing, I believe
13 it was counsel for the FCR mentioned that the TCC, FCR, and
14 coalition would be filing a motion to withdraw the reference,
15 as well as an estimation motion, and they did, in fact, file
16 those motions. They are scheduled for an objection deadline
17 of the 15th, which I believe is this Thursday. The debtors
18 will be objecting to both of those motions, both the
19 withdrawal of the reference, as well as the estimation
20 motion.

21 As I just explained, in our view, the best forum
22 and the best procedural posture for resolution of the
23 litigated issues, including estimation in this case, is you,
24 Your Honor. It's also in connection with the plan of
25 reorganization itself. And I understand you're not ruling on

1 either of these matters now. I just want to give you a heads
2 up of where the debtor is coming out.

3 In our view, if we're in the world of that global
4 resolution that I just described, the District Court will
5 likely need to affirm Your Honor's ruling in any event, which
6 would be premised upon an estimation of the abuse liability.
7 If we are flipped into the world of the BSA toggle plan, we
8 don't think District Court involvement is necessary,
9 including with respect to the estimation. So we don't think
10 it's necessary to go before the District Court with respect
11 to that estimation.

12 We appreciate the insurers' 2004 motion. We
13 appreciate the efforts of the TCC, FCR, and coalition to come
14 up with a protocol for estimation. But we are going to file
15 a confirmation discovery motion that includes the estimation
16 component, we're going to file that also on Thursday, the
17 15th. As I mentioned, that will apply to plan confirmation.
18 It's going to be very similar, I'm sure, Your Honor, to what
19 you've seen in numerous other cases and concerning, you know
20 litigated confirmation matters. We will have a protocol
21 that's baked in with respect to the estimation that is
22 designed to get the debtor out of bankruptcy on the time line
23 that we've been discussing.

24 The good news is, on discovery, Your Honor, we're
25 not starting from scratch. I think you probably know we've

1 provided a lot of information to the creditor parties. But
2 we do recognize that, in the context of a contested
3 confirmation hearing and a contested estimation proceeding,
4 people are going to need more, and we need a framework to
5 provide them what they need to work through that process. So
6 we'll be filing that motion, like I said, on the 15th,
7 together with the objections to the other two motions.

8 It's probably -- that's probably a good segue to
9 the timing discussion. You know, at the risk of sounding
10 like a broken record at the last several hearings, the
11 overall time line is still critically important to the BSA,
12 for all of the reasons that we talked about before. The fee
13 burn in the case is extraordinary. We believe that every,
14 you know, additional month takes money out of the trust. The
15 bankruptcy, I think, jeopardizes the BSA's mission, so we
16 need to get this out of bankruptcy.

17 So we've got two matters that I think are coming up
18 in relatively short order. We've got the disclosure
19 statement, which currently is scheduled for April 29th. And
20 I'll come back to the timing of that because I think we
21 understand and have heard from various parties that they
22 would like a little more time on that. And then we have this
23 discovery protocol motion that I just mentioned.

24 Since we do have time with the Court on April 29th
25 right now, we would ask that we still reserve a few of those

1 hours to get things started on the discovery protocol and the
2 estimation protocol. We think sooner, rather than later, is
3 best for that. We want to avoid having parties file before
4 the Court additional 2004 motions and the like. We think we
5 need a centralized mechanism to deal with the discovery
6 motions. So we would like to take advantage of the Court's
7 time on April 29th.

8 With respect to the disclosure statement, a couple
9 of things on that. One, I know the Court is aware of what
10 I'm about to say, but I do feel compelled to address a theme
11 that we've seen in some of the pleadings, which is this
12 notion that, due to lack of support principally from the
13 plaintiff classes, the Court shouldn't hear the disclosure
14 statement or permit the plan to be launched for solicitation.
15 I think it goes without saying there isn't a Bankruptcy Code
16 or Bankruptcy Rule requirement that creditors commit in
17 advance to the support of a plan. We think it's essential,
18 particularly with the amended plan that I just described,
19 that we put that out as soon as possible.

20 Century did file a motion requesting that the April
21 29th date be adjourned. While we are -- we disagree with
22 Century's position on 3017(a) and the notion that we couldn't
23 file an amended disclosure statement during the twenty-eight-
24 day period provided for in that rule -- and I should note the
25 disclosure statement that was filed on March 1st, while it

1 didn't contain TDPs and a trust agreement, it was very
2 robust. It contained a liquidation analysis, as well as the
3 debtors' five-year business plan.

4 But we're sympathetic to Century's view and the
5 views of others. We understand that the parties may need
6 some additional time to review the filings for tomorrow. Our
7 next omnibus is scheduled for May 19th. We would ask that we
8 not go beyond that May 19th date. We don't think there's any
9 reason to. Even if you were to adopt Century's reading of
10 Rule 3017(a), that 28 days, assuming we file the documents
11 tomorrow, expires around, I think it's May 11th. So we can
12 certainly go earlier than that. But we also know that your
13 docket is extremely full, Your Honor, and so understand if
14 there isn't other available time.

15 So that's where we're at on the three topics,
16 including the time line. I'm happy to answer any questions,
17 Your Honor, if you have any with respect to those remarks or
18 other matters.

19 THE COURT: No, I don't have any questions.

20 Let me hear from others who would like to be heard.
21 Mister --

22 MR. MASON: Your Honor, may I -- oh, sorry. I
23 didn't mean to interrupt anyone.

24 MR. STANG: Your Honor, the committee would like to
25 be heard briefly.

1 MR. MASON: And after the committee, Your Honor,
2 the ad hoc committee of local councils, please.

3 THE COURT: Thank you.

4 Mr. Stang.

5 UNIDENTIFIED: (Indiscernible)

6 MR. STANG: Thank you, Your Honor.

7 I can't comment too much on what Ms. Lauria -- I'm
8 sorry -- on what Ms. Lauria said about this new plan. We'll
9 see it and we'll review it.

10 Her Toggle B, at least the way she described it,
11 sounds like what we were referencing in our objection to
12 exclusivity, but we'll see.

13 But I would -- I don't want to turn this into a
14 complaint session about what happened in Miami. But I do
15 want to point out that the committee has been left out of any
16 discussions since Miami. At Miami, we asked for permission
17 to address -- because that's what you have to do, you have to
18 ask for permission -- to address all parties-in-interest, but
19 BSA in particular, about claims models. That request was
20 never responded to by the mediators, except we were told on
21 the last day of the mediation that we were excused because
22 apparently nobody wanted to talk to us.

23 And so, if there is a plan to be filed tomorrow
24 that has a claims matrix in it with values, no one has talked
25 to us about those values, other than a presentation by the

1 debtor as to its claims model, which we asked for an ability
2 to respond to in the mediation forum, and we were ignored.
3 So I don't know what this thing is going to look like. But
4 if the debtors' MO continues, it's going to be that the
5 committee is not a party that it thinks is particularly
6 relevant to the formulation of its Toggle B plan, or, for
7 that matter, maybe its Toggle A plan, and it's unfortunate.

8 But we have not withdrawn from the mediation. We
9 attended the days that we were told we were wanted there. We
10 had some discussions with some of the mediation parties, but
11 obviously not all of the ones we wanted to. And we will
12 continue to participate in an effort to reach a consensual
13 plan.

14 We are having discussions with the debtor regarding
15 our restricted asset adversary proceeding, and it would be
16 great if we could reach a resolution on the BSA contribution
17 around that negotiation. So I don't want the Court to think
18 that we have withdrawn from the process. We have not. We
19 want to be engaged with the debtor, we are engaged with the
20 coalition, we are a joint party in the estimation motion.
21 But the debtor is being very careful about who it's talking
22 to and who it's not talking to. And on certain material
23 issues, they're not talking to us. So we look forward to
24 seeing what they file, Your Honor.

25 THE COURT: Thank you.

1 Mr. Mason.

2 MR. MASON: Thank you, Your Honor. Can you hear
3 me? I just want to make sure the computer is working.

4 THE COURT: Yes.

5 MR. MASON: Thank you, Your Honor. Again, Richard
6 Mason, Wachtell, Lipton, Rosen & Katz for the ad hoc
7 committee of local councils.

8 And Your Honor, just as a brief reminder, the ad
9 hoc committee consists of eight local councils, drawn from
10 across the country. The members of the ad hoc committee are
11 all volunteers, and my firm is representing the committee pro
12 bono.

13 Prior to the petition date, Your Honor, the BSA
14 asked that I form the ad hoc committee, so that local
15 councils could have an active voice in these proceedings, and
16 we have been very active, Your Honor, both in court and
17 outside. Outside of court, in particular, we have spent
18 thousands of hours, volunteer hours, amongst ourselves and
19 with the over 250 local councils to try to determine the art
20 of the possible in meeting the twin goals of the BSA case;
21 that is, compensating victims and maintaining the scouting
22 mission.

23 Now, for a global resolution to be achieved, Your
24 Honor, in our view, that means literally thousands of
25 volunteers across the country have to agree. But we

1 understand that the principal focus of the mediators and the
2 mediation parties over the last several weeks has been, as it
3 should be in our view, I'll just say "elsewhere," without
4 saying too much.

5 When it comes time, Your Honor, to negotiate and
6 finalize the local council contribution, we believe it is
7 essential that the ad hoc committee be involved, much more
8 involved than we have recently been asked to be, if a global
9 resolution is to be achieved, certainly within the time frame
10 that Ms. Lauria has laid out.

11 And for our piece, Your Honor, I'll just say the
12 following: Based on our work and our extensive interaction
13 with our fellow local councils -- far more interaction, I
14 think, candidly, than other parties have had -- we believe
15 that local councils, in the aggregate, can make and are
16 prepared to make a substantial contribution of cash,
17 property, and insurance rights to resolve the BSA case. But
18 the amount and other terms, in our view, need to be
19 realistic, in light of all of the circumstances.

20 So, Your Honor, I just want to say for the Court
21 and everyone our sleeves are rolled up and we're ready to
22 work with the other mediation parties, if they're willing,
23 particularly if we have a bit more time before the disclosure
24 statement hearing to achieve a realistic global solution
25 involving the local councils. We're here and we hope the

1 other parties are, as well. Thank you.

2 THE COURT: Thank you.

3 Mr. Anker.

4 MR. ANKER: Good afternoon, Your Honor. Can you
5 hear me okay and the other parties?

6 THE COURT: Yes.

7 MR. ANKER: Thank you.

8 Your Honor, let me start out by not complaining
9 about the debtor freezing us out and refusing to negotiate.
10 There have been extensive negotiations. And I appreciate Ms.
11 Lauria's comment that she appreciates the efforts by, in
12 addition to the coalition and the FCR, several of the
13 insurers.

14 I'm not going to take personal credit, I didn't go
15 to Miami in person, though I did participate by Zoom. But my
16 colleague Mr. Ruggeri, who is on the line, as well as the
17 head of litigation for Hartford, went down in person and met
18 with the debtor and others. I think it is fair to say there
19 is progress. But it's also fair to say there isn't a deal.
20 And I'm not going to comment further and violate any
21 mediation privilege. But I did want to say people are trying
22 and I'm not here to complain about that process.

23 What I do want to comment briefly about is
24 estimation. We, too, will be filing an objection come this
25 Thursday, both to the withdrawal of the reference and the

1 pending current estimation motion. That motion -- and I
2 don't know if Your Honor has read it yet -- is rather
3 remarkable. What it seeks -- and this is the motion filed by
4 the FCR, the coalition, and the TCC -- is not an estimation
5 of any claim in particular for the purpose of allowance under
6 Section 502, but an estimation of the debtors' aggregate
7 liability by calendar year, and the policies are by calendar.

8 This is an obvious effort to try to get an order
9 out of Your Honor, or the District Court, if not Your Honor,
10 that the plaintiffs can then parade later in coverage for it
11 and say ah hah, the aggregate liability by policy year. So
12 the Hartford policy years are X, Y, and Z; the Century policy
13 years are A, B, and C. We know what the aggregate liability
14 is, that's been liquidated. And this isn't the first time
15 this has been tried in an effort to use Bankruptcy Court
16 orders that plainly are not liquidations, plainly not
17 allowance of claims, not for any bankruptcy purpose, for --
18 but for coverage purposes.

19 I will say, Your Honor, I haven't seen the debtors'
20 motion, so I can't say today whether we will object to it or
21 not. But if it is an attempt to do something similar, to
22 strong arm the carriers and deny them their rights to have an
23 actual adjudication in accordance with their policies of what
24 claims are valid and not and what liability they have, and
25 misuse Your Honor's own orders, A, we're not going to let

1 Your Honor be confused about what's being attempted; and, B,
2 we will certainly object to that and protect our rights.

3 I hope that isn't going to -- what is being
4 attempted by the debtor. It is plainly what is being
5 attempted by the FCR, the coalition, and the TCC. And we
6 will respond to that both in an objection we will be filing
7 before Your Honor this Thursday to the estimation motion, and
8 an objection to the motion to withdraw the reference to the
9 District Court. I just wanted to alert you to that.

10 I'll also say one other thing. To the extent
11 there's been estimation proceedings in mass tort cases, not
12 allowance, the real estimation -- so, for example, for
13 purposes of deciding whether the treatment, for example, of -
14 - whether enough was being contributed by the debtors, so
15 they could treat all claimants as unimpaired. That was the
16 issue in Garlock. In similar cases, you have estimation
17 proceedings that went on a year, literally a year or longer.

18 I appreciate, from Ms. Lauria's standpoint, why
19 that is impossible here. And I'm going to accept that
20 representation at face value. I certainly take at face value
21 that \$100 million in professional fees in a case of a not-
22 for-profit like the Boy Scouts is not viable, and another 100
23 million will be even less viable.

24 And so, if there is an attempt to really get an
25 estimation that is an any way, shape, or form binding or

1 probative, even, for future coverage litigation, we will,
2 regretfully, have to become an obstacle in that because
3 that's not consistent with due process and not consistent
4 with our rights as -- our clients' rights as carriers. I
5 don't want to do that. I don't want to do -- say I'm not
6 going to do it lightly because we, too, would like to see
7 this debtor emerge from bankruptcy and reorganize
8 (indiscernible) our clients' rights.

9 And so we'll oppose the existing motion, which is
10 plainly an effort to do that. And as to what the debtors
11 ultimately file, we will review it in good faith and,
12 hopefully, we won't have to take a similar position. Thank
13 you, Your Honor.

14 THE COURT: Thank you.

15 MR. MOLTON: Your Honor, may I go next?

16 THE COURT: Who was that?

17 MR. MOLTON: Your Honor, may I -- it's Mr. Molton,
18 Your Honor, for the coalition.

19 THE COURT: Yes. Mr. Molton.

20 MR. MOLTON: Thank you.

21 First, I want to respond to my friend Mr. Anker. I
22 had my -- I thought today was April 12th and not May 19th.
23 May 19th is the date for argument on the estimation motion.
24 My friend Mr. Anker has used this opportunity to give us a
25 preview of his argument. Be advised, Your Honor, I'm not

1 going to do the same. We're going to just put on the record
2 that we disagree with much of what Mr. Anker, if not all of
3 what he said.

4 And the time will come when we'll put in front of
5 you, Your Honor, the issues as to estimation, none of which
6 are remarkable, none of which will take the time Mr. Anker
7 said, and all of which will move this case to a successful
8 conclusion, we believe, from the coalition, into 2020, along
9 the lines of what the debtor had articulated as their time
10 line.

11 So, in any event, we'll reserve our rights. And
12 I'm not going to hold Mr. Anker to deduct from his time on
13 the 19th of May, the units he used now, I'll let him do it
14 again, if Your Honor -- if your -- you know, I will not be
15 asking that of Your Honor.

16 In any event, Judge, I do want to say a few things
17 about what Ms. Lauria said because I think there were some
18 points that we should be cognizant of, is that parties are
19 working hard with the debtor and other mediation parties, in
20 the context of a mediated resolution of what is a very, very
21 complicated case, a challenging case, as Your Honor knows.

22 Yes, it's true that no agreements were reached at
23 Miami, that we can report to you today. But the parties are
24 talking, phone lines are open, calls are being responded to.
25 And even as late as within the last hour, Your Honor, the

1 coalition has been hard at work in dealing with mediation
2 issues with respect to the parties, you know, the mediation
3 parties. And we look forward to putting rubber to road, so
4 to say, on that, and seeing if they can bear fruit.

5 I don't want to go any further than that. But
6 nobody should take away from this status conference that
7 Miami happened, and then it was over. No, Miami was a
8 beginning that set -- you know, that the parties were able to
9 understand each other's positions. And it has served for a
10 basis for continual discussions and serious, serious
11 negotiation.

12 I do want to say, Judge, that the coalition had its
13 mediation delegation on the ground in Miami, meeting with
14 various mediation parties that were there, you know,
15 including the debtor and insurers. And we had folks on, you
16 know, digital, as well, participating. It was a challenging
17 endeavor to do this in the way that it was done. But I
18 think, all in all, looking back at it, it was successful in
19 allowing the parties to articulate their positions,
20 understand each other's positions, and set the groundwork for
21 further discussions.

22 So, in any event, Your Honor, that's what I would
23 like to say. And if Your Honor has no more questions, I'll
24 leave it at that.

25 THE COURT: Thank you.

1 Who would -- who else would like to be heard?

2 MR. SCHIAVONI: Century, Your Honor.

3 THE COURT: Yes.

4 MR. SCHIAVONI: If you --

5 THE COURT: Before that, please, everyone check
6 your audio to make sure you're muted. I'm getting some
7 background.

8 Mr. Schiavoni.

9 MR. SCHIAVONI: Thank you, Your Honor. Tanc
10 Schiavoni for Century Indemnity.

11 Your Honor, I flew to Miami, I was there the whole
12 week. I stayed a few days to -- I basically traveled on a
13 safer route back. My client was available. The actual
14 reality on the ground was that Century was excluded from all
15 meetings with -- between the Boy Scouts and the coalition,
16 save for an opening meeting. That's true with respect to, I
17 believe, essentially all of the other insurers, except for
18 Hartford. There were meetings throughout the session between
19 Hartford and the Boy Scouts and the coalition. But by and
20 large, the other insurers -- or not "by and large." The
21 other insurers were -- had one discussion or two with one of
22 the mediators, but were not -- were excluded from all of the
23 discussions between the Boy Scouts and the coalition.

24 We are hopeful that things will go in a positive
25 direction here, and we still are -- you know, hold out an

1 olive branch to engage. But you know, to be clear here, you
2 know, what had happened is the debtor is engaging with an ad
3 hoc committee that isn't bound by fiduciary duties, which has
4 made multiple threats, as we set out in the 2019 motions we
5 filed. These are very challenging discussions, what's gone
6 on here.

7 We're very concerned that we face an enormous moral
8 hazard in how this case reaches a landing. In essence, we
9 are, at this point, almost completely in the dark as to what
10 the debtor is doing. I mean, what I just heard from Ms.
11 Lauria is all complete news to us. I had no idea that this
12 is where they are. It may be a positive; it may be a
13 negative. Anything new, in my mind, is potentially a
14 positive. I'm looking at the glass half full. You know,
15 we've gotten -- we've written them saying -- you know, giving
16 them our phone number to call us. We're, you know, anxious
17 to work with them over the next couple of days.

18 But the bottom line here is that we face a genuine
19 enormous moral hazard, which we're very familiar with how
20 that went down in Imerys. We do think -- we're not seeking
21 delay for the purpose of delay. But under 3017, we ought to
22 have the basic 28 days to, you know, examine the disclosure
23 statement and engage on it. And that's -- you know, our
24 substantive rights in that regard shouldn't be trampled
25 because of the spending.

1 There has been enormous spending here. But Your
2 Honor, the spending is being talked about as if it's almost
3 like an act of God, you know, a drought that's occurred or
4 something that no one has had any control over. The debtor
5 is in significant control over this spending. There has not
6 been open-ended litigation in this case. It is true that
7 Century has brought several motions, but they've been
8 brought, not against the debtor or the TCC; they've been
9 brought against the coalition, which is not an estate
10 professional and doesn't bill the estate. The T -- honestly,
11 both the TCC and the debtor really sat aside on those
12 motions, so we can't be blamed for this spending. The
13 spending has largely occurred in the context of essentially
14 no contested litigation going on.

15 The debtor has huge control over this. We've urged
16 them to do things like enhance the budgets they have. We've
17 urged them to do things like the U.S. Trustee, Mr. Vara, has
18 put in place in another abuse case in the last several weeks,
19 in the District of New Jersey, he's imposed a case-ending
20 holdback instead of 20 percent, so that the estate
21 professionals are -- have a holdback until the end of case.
22 We continue to think that actually would be a very productive
23 suggestion here, and encouraging everyone to really focus on
24 getting the case done. But yes, I got it, that even that
25 suggestion coming from me sounds like, you know, a Trojan

1 Horse, Greeks bearing gifts, et cetera. But it's,
2 nonetheless, a good idea.

3 But the main point here is our substantive rights
4 to deal with this disclosure statement should not be trampled
5 because of the spending, which we have no control over,
6 frankly, at all. This is a huge -- it's like this case poses
7 tremendous threats to these -- you know, my client is a
8 runoff, it has limited assets. You know, you've seen the
9 papers that have been put in. It's like they're
10 (indiscernible) it's like we need our rights under 3017.
11 That's the second point I'd like to make.

12 The third point, Your Honor, is we do have two
13 motions before you. And I just want to just explain to you
14 why they actually are important to be decided. The 2019
15 motion, it's a supplemental motion that -- look, I'm the
16 first to say that I think, when we brought the 2019 motions
17 before Your Honor, you might have been wondering what is this
18 all about, is this a waste of time. But I think as you've
19 seen how the case has evolved, how the negotiations are
20 taking place and how the subgroups have evolved, identifying
21 the subgroups and whether we really have a controlling vote
22 is actually very important. And what's been driving them is
23 very, very important to resolving this case. And we think
24 your rulings on the 2019, so far, have been helpful.

25 What we have on the supplemental motion we have

1 before you on 2019, it deals with a very fundamental problem
2 we have. The coalition, the biggest block of votes within
3 the coalition is by an entity calling itself "AIS," Abused in
4 Scouting. It's sort of -- we've previously argued this to
5 you. It's sort of presenting itself as a conglomerate
6 organization when it's really sort of three firms working
7 together.

8 But we have one of the -- one of the co-lawyers who
9 co-share those claimants is regularly publishing statements
10 about liquidating the Boy Scouts. We've included some of
11 those statements in the 2019 that he publishes on the web.
12 And they go out to like a list of other plaintiffs' lawyers
13 and other claimants. Meanwhile, you know, the negotiations
14 for the coalition are being led at the very same time by his
15 co-counsel, who shares the same exact clients, who is
16 purporting to run the negotiations in the -- in Miami and
17 elsewhere. Okay?

18 It's important for all the parties to know does the
19 coalition, in fact, have a majority vote. You know, is AIS
20 acting as one entity, or is there an issue here because the
21 two -- you know, is this some sort of negotiating ploy,
22 having one co-counsel say he's liquidating the Boy Scouts,
23 and the other saying he's negotiating to a resolution, or is
24 there a genuine conflict between the two counsel? That 2019
25 motion is important for that reason. It goes to who the

1 parties are dealing with and whether they think there
2 actually could be a deal with them.

3 But we would ask you to consider looking at those
4 motions. I don't think Your Honor needs to schedule further
5 argument on them, or at least we'd be prepared to waive
6 argument, if it (indiscernible) decision.

7 The other motions before Your Honor are Century's
8 2004 motions that go to how the claims were generated. And I
9 got it, but there's a huge temptation to sort of put this off
10 and put off decision on it until somehow discovery comes
11 along. But you can see what's happening. It's like there's
12 a proposal now that like we should wait for all discovery
13 until right at the end, right before confirmation, and even
14 defer this discussion until after estimation.

15 The fact of the matter is the 2004 discovery is
16 threshold discovery that was supposed to put us in a position
17 to file omnibus objections before solicitation. So deferring
18 -- if there's a rush to move this forward, I would just
19 suggest that that rush mandates or -- maybe that's too harsh
20 of a word, I apologize -- it, you know, encourages,
21 incentivizes a ruling on the 2004 motion sooner, rather than
22 later.

23 And we do think those motions are extremely
24 meritorious. We don't think solicitation can go forward when
25 there's hundreds of proofs of claim that they're, you know,

1 basically, you know, forged signatures, we've submitted, and
2 other like very serious problems about them. So we would ask
3 that that motion not be held up as part of some package on
4 estimation, but that it be dealt with, you know, as soon as
5 Your Honor can issue a decision on it.

6 And just last, Your Honor, I don't -- I'm not
7 intending to get into arguments about estimations. But you
8 know, to be clear, this is sort of being marshaled as some
9 sort of weapon. If you were to -- if you were to grant an
10 estimation motion, you will be the first judge in the United
11 States of America to estimate sexual abuse claims. The only
12 other judge that's looked at this, it's the only other
13 citation in the TCC's brief, when you read the decision, was
14 horrified at the notion of the complex and bizarre issues it
15 would get involved in.

16 The other thing about it that no one has even
17 mentioned is that this is an estimation motion, not just of
18 the Boy Scouts liability, it's an estimation of nondebtor
19 liability. In other words, they're going to ask -- are
20 asking that you estimate the liability of the local councils
21 and of the sponsoring organizations. To be clear, there's
22 over 5,000 sponsoring organizations and 253 local council
23 entities.

24 We don't think, as a matter of law, the estimation
25 procedures ever could be used to estimate nondebtor

1 liabilities, and we think it's dead on arrival for that
2 reason, all by itself. But we also don't think it's actually
3 possible to estimate, you know, by putting on some
4 statistician, the different liabilities based on 5,000
5 different sponsoring organizations, all with their own kind
6 of unique and peculiar facts involving each of those
7 institutions.

8 And the same goes true with (indiscernible) local
9 councils. Obviously, that kind of discovery would take
10 months, it would be -- it is -- I -- you know, in just the
11 most concise word possible, this estimation is an appeal
12 magnet. It will -- it's like, you know, to the extent there
13 were efforts to do this for an entirely different reason, in
14 W.R. Grace, in Owens Corning, it generated so many different
15 appeal issues. It was like an appellate lawyer's dream.
16 This will be a disaster to go this route (indiscernible) so,
17 Your Honor, we think that's a reason -- the only reason I
18 bring that up is the 2004 and the 2019 discovery rulings
19 shouldn't wait for that to happen. It should go forward now.

20 And again, to just sum up on a happy note, it's
21 like, you know, we're prepared to engage if anybody reaches
22 out to us. But right now, quite bizarrely, I'm with Mr.
23 Stang, and both of us are in the dark on sort of where the
24 debtor is, Your Honor. So thank you. Thank you very much
25 for listening.

1 THE COURT: Thank you.

2 Is there anyone else who would like to be heard?

3 (No verbal response)

4 THE COURT: Okay. Well, I've received a request to
5 push the disclosure statement hearing, and it makes sense
6 because the debtors are going to be making new filings. So
7 we're going to let the debtor make the new filings, and we'll
8 all see what they are. And we will move the disclosure
9 statement hearing to May 19th. And we'll move the objection
10 to the disclosure statement hearing accordingly, objections
11 to the disclosure statement.

12 MR. SCHIAVONI: And Your Honor, does that include
13 the solicitation procedures, too? I think they're part of
14 the same motion, so --

15 THE COURT: Yes, that's going to include --

16 MR. SCHIAVONI: -- they both --

17 THE COURT: -- anything related to the disclosure
18 statement and solicitation procedures. And that should give
19 people plenty of time to take a look at what the debtor is
20 going to file on Thursday.

21 MR. LUCAS: Your Honor --

22 THE COURT: And we'll --

23 MR. LUCAS: -- this is John Lucas.

24 THE COURT: We'll go from there.

25 Mr. Lucas.

1 MR. LUCAS: Yeah, I'm sorry, Your Honor. I'm just
2 not clear when the objection deadline is now. Can maybe Ms.
3 Lauria or somebody clarify that for us?

4 THE COURT: What do we usually --

5 MS. LAURIA: This is Jessica --

6 THE COURT: -- do with --

7 MS. LAURIA: -- Lauria.

8 THE COURT: Yeah.

9 MS. LAURIA: Yeah. I apologize, Your Honor. I
10 don't know the current time line in front of me, and I can't
11 recall if that objection deadline was scheduled 7 or 14 days
12 in advance of the hearing. We would, as Your Honor just
13 suggested, utilize the exact same timing that is currently in
14 place, whether it's 7 or 14 days, and notice it out
15 accordingly.

16 THE COURT: Yes. It will get re-noticed.

17 MR. LUCAS: (Indiscernible) thank you.

18 UNIDENTIFIED: (Indiscernible)

19 THE COURT: I'm hearing somebody's discussion.

20 (Pause)

21 THE COURT: Okay. What is left, if anything, for
22 Thursday?

23 MS. LAURIA: Your Honor, the hearing this Thursday
24 is the hearing with respect to the debtors' exclusivity
25 motion. One objection has been filed, which was the

1 objection of the TCC. Obviously, they have not seen the
2 documentation that we just described, so I'm sure they're
3 unable to represent if they're going to continue with that
4 objection. But we would be prepared to go forward with that
5 on Thursday.

6 THE COURT: Okay. Okay. Well, I appreciate the
7 status. I appreciate all parties' efforts to continue
8 discussions. I'm hearing that some parties were more
9 involved than other parties with respect to the mediation, or
10 at least -- and some parties feel they weren't fully utilized
11 at the mediation.

12 I would, of course, encourage all parties to talk
13 to all other parties, to see what can be resolved. But I'm
14 heartened to hear that the parties -- some of the mediation
15 parties are still having discussions post the March mediation
16 down in Miami. And I would expect that those communications
17 would continue. Any momentum that was generated by the
18 mediation is welcome, and I would hope that that momentum
19 could continue and could broaden to include parties who feel
20 they were not fully utilized during the mediation.

21 Anything else?

22 MS. LAURIA: Not from your -- the debtor, Your
23 Honor. Thank you for your time today.

24 THE COURT: Okay. Thank you, everyone. We're
25 adjourned.

1 COUNSEL: Thank you, Your Honor. Thank you, Your
2 Honor.

3 (Proceedings concluded at 3:55 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



April 12, 2021

Coleen Rand, AAERT Cert. No. 341
Certified Court Transcriptionist
For Reliable