



Kelly T. Currie  
(212) 895-4257  
KCurrie@crowell.com

November 29, 2021

**BY CM/ECF**

Hon. Laurie Selber Silverstein  
Chief Judge, U.S. Bankruptcy Court, District of Delaware  
824 North Market Street, 6th Floor  
Wilmington, Delaware 19801

Re: *In re Boy Scouts of America, et al.*, Case No. 20-10343 (LSS): Zurich Insurers' Response to Motion to Quash Subpoenas Served on Slater Slater Schulman LLP and Eisenberg Rothweiler Winkler Eisenberg & Jeck, P.C.

Dear Judge Silverstein:

The Zurich Insurers hereby respond to the motions to quash filed by (i) Slater Slater Schulman LLP ("Slater") and (ii) Eisenberg Rothweiler Winkler Eisenberg & Jeck, P.C. ("ER"). Slater's motion seeks to quash the deposition subpoenas issued by the Zurich Insurers to Slater attorneys Michael S. Werner and Jonathan E. Schulman (Dkt. No. 7465) and ER seeks to quash the deposition subpoenas issued by the Zurich Insurers to Eisenberg attorneys Stewart Eisenberg, Joshua B. Schwartz, and Rita Assetto-Sherry (Dkt. No. 7466). The Zurich Insurers respectfully request that these motions be heard at the hearing scheduled on December 2, 2021.

**INTRODUCTION**

The integrity of the aggressive nationwide claims solicitation, aggregation, and submission process that Slater and ER attorneys engaged in (as well as others) is a central question before this Court. The Zurich Insurers have already asked these law firms to produce documents related to this campaign, and are now seeking to ask the lawyers, who submitted thousands of these claims, questions about the fidelity of their claims due diligence process.

Both ER and Slater take offense that the Zurich Insurers' deposition subpoenas were sent before the Court had ruled on their objections to Zurich Insurers' document requests. But Zurich Insurers are merely complying with the Court's scheduling order, which set December 1 as the deposition deadline. The Zurich Insurers are willing to defer the ER and Slater attorneys' depositions to a later date, after December 1, provided the depositions can move forward once the Court issues its pending ruling.

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It is regrettable that both ER and Slater chose not to meet and confer with Zurich Insurers about these scheduling issues, and instead rushed to Court to quash the deposition subpoenas.<sup>1</sup> As both ER and Slater concede, the Court will soon delineate the boundaries of discovery that they must respond to, which will, no doubt, impact the questions that they must answer in deposition.

This unexplained rush to file spotlights a larger point. As with their prior blanket objections to Zurich Insurers' document requests, and as with the Coalition's recent claim that it is not an "entity" subject to a Rule 30(b)(6) deposition, it is now clear that ER, Slater, and other firms representing claimants in this case do not wish the Court to learn more about how it came to be that thousands of proofs of claim were submitted by their attorneys hours before the applicable bar date, in what appears to be a coordinated effort to drown the voting pool with potentially unsubstantiated claims. Rather than obfuscate and delay, these attorneys should welcome the opportunity to dispel any concerns that the Plan was not proposed in good faith and that its contours were not skewed by a barrage of unvetted claims. The Zurich Insurers ask the Court to allow these depositions to move forward for this purpose.

## ARGUMENT

### **I. The deposition testimony will clarify whether the Plan has been proposed in good faith and is therefore relevant to confirmation**

ER and Slater both argue that the information Zurich Insurers seek to discover through the depositions of their lawyers is not relevant to plan confirmation. Oddly, neither firm mentions the requirement that the Plan has been proposed in good faith as Section 1129(a)(3) of the Bankruptcy Code commands. Certainly, neither firm ventures to argue that a solicitation, aggregation, and submission process that resulted in ER filing more than 18,000 POCs (on its own behalf and through AIS) and Slater filing more than 15,000 POCs, does not have, at a minimum, the potential to impact the good faith of the proposed plan.

Instead, both ER and Slater claim that their aggressive solicitation and submission campaign is not an issue because the "clients" that that campaign yielded will make their own decisions about whether to vote for or against the Plan.<sup>2</sup> But mere voting is in no way an indication that those claims have gone through an adequate vetting process. That is especially the case given that the current Plan contemplates that claimants can elect to receive an Expedited Distribution of \$3,500, just for filing a POC. If these firms collect a contingency fee of about 35%, then they would each earn tens of millions of dollars even if every single one of their supposed clients elected this \$3,500 option. Therefore, under the Plan, there is a clear incentive for attorneys to sign up as many "expedited distribution" claimants as possible (and collect fees on those payments), and those claimants, in turn, have a clear incentive to approve the Plan. Evidence that ER and Slater attorneys did not seek to substantiate their clients' claims, instead filing as many claims as possible before the bar date, will be a clear indication that the Plan that incentivizes such rapid filings was not proposed in good faith, and that

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<sup>1</sup> In accepting service of the subpoenas on November 24, counsel for both ER and Slater stated they were willing to meet and confer. But instead of attempting to meet and confer, both counsel choose to file the motions to quash on November 26. *See* Declaration of Danielle Giffuni In Support of Zurich Insurers' Response to Motion to Quash Subpoenas Served on Slater Slater Schulman LLP and Eisenberg Rothweiler Winkler Eisenberg & Jeck, P.C., dated November 29, 2021, Exhibits A, B.

<sup>2</sup> *See* Dkt. No. 7465 at 3; Dkt. No. 7466 at 2.

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these firms used their enormous blocks of claims to push for no-questions-asked payouts. The Zurich Insurers should be permitted to explore these solicitation and submission practices.

What is more, contrary to ER's and Slater's claims, these "expedited distribution" claimants will not be "addressed" post-confirmation (whatever the term "addressed" means). Claims filed by these claimants will never be scrutinized, not even by the Settlement Trustee.<sup>3</sup>

Mr. Eisenberg and other lawyers at ER signed thousands of POCs despite this Court's warning that it was "ill-advised" for lawyers to sign POCs and that the Court would be "concern[ed]" if "a thousand claims [are] signed by a particular lawyer."<sup>4</sup> Mr. Eisenberg signed 963 POCs, 959 within two weeks of the bar date.<sup>5</sup> Mr. Eisenberg executed approximately 190 POCs in a single day.<sup>6</sup> Mr. Schwartz signed 1,438 POCs, and 314 in a single day (November 12, 2020).<sup>7</sup> And, as discussed in Mr. Kosnoff's recent deposition, Ms. Assetto-Sherry oversaw a team of non-attorney professionals who were working on the claims that were submitted by ER.<sup>8</sup>

As for Slater, Messrs. Schulman and Werner signed 720 POCs within two weeks of the bar date.<sup>9</sup> Mr. Schulman signed 259 POCs on November 12, 2020.<sup>10</sup> The POCs purportedly signed by Mr. Schulman follow the same pattern—the signature pages are photocopies, and all or nearly all have a photocopy of the exact same signature page appended to them.<sup>11</sup> Mr. Werner signed 461 POCs within two weeks of the bar date, including 224 POCs in a single day (November 10, 2020).<sup>12</sup>

These facts cast doubt on whether Messrs. Eisenberg, Schwartz, Schulman, Werner and other ER and Slater lawyers vetted the claims, let alone complied with (i) the oath affirmed by signing the POCs or (ii) obligations under Rule 9011(b), which states that by signing "a petition, pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support." The Zurich Insurers' depositions of these witnesses will seek to investigate whether ER and Slater conducted a "reasonable investigation" of the contents of the POCs.

Both ER and Slater cite to *Shelton v. American Motors Corp.*, for the proposition that a party seeking to depose another party's counsel must meet a heightened burden.<sup>13</sup> But *Shelton* notwithstanding, depositions of attorneys are appropriate where those attorneys are deposed in their

<sup>3</sup> See *Modified Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC*, Exhibit A (Trust Distribution Procedures), Art. VI at 8-9 (Dkt. No. 6429).

<sup>4</sup> Oct. 14, 2020 Hr'g Tr. at 190:13-14; 183:19-22.

<sup>5</sup> Declaration of Paul Hinton, dated Jan. 22, 2021 ("Hinton Decl."), ¶ 7, tbl. 1 (Dkt. No. 1975-3).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Mr. Kosnoff's deposition transcript has been marked as highly confidential, thus is not attached hereto.

<sup>9</sup> Hinton Decl., ¶ 7, tbl. 1. (Dkt. No. 1975-3).

<sup>10</sup> *Id.*

<sup>11</sup> Declaration of Erich J. Speckin, dated Jan. 22, 2021, ¶ 10 (Dkt. No. 1975-4).

<sup>12</sup> Hinton Decl., ¶ 7, tbl. 1. (Dkt. No. 1975-3).

<sup>13</sup> 805 F.2d 1323, 1327 (8th Cir. 1987).

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capacity as *fact witnesses*.<sup>14</sup> Indeed, even the court in *Shelton* distinguished between attorneys who merely *represent* their clients, and those with a more involved role, like the ER and Slater attorneys here.<sup>15</sup> Last year, this Court echoed this distinction, when stating that an attorney signing a claim “might be[come] . . . a fact witness” and “may be subject to a deposition.”<sup>16</sup> Earlier today, this Court reaffirmed this very proposition by permitting discovery from law firms whose attorneys signed proofs of claims in these cases.

The contention that ER and Slater attorneys need not participate in discovery, despite being among the most active participants in this case and acting consistently, regularly, and repeatedly on an organizational basis, completely belies the operation of the discovery rules. The depositions at issue should go forward.

## II. The depositions seek factual information unshielded by the attorney-client privilege or the attorney work-product doctrine

Under Rule 26(b), “parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.”<sup>17</sup> The depositions of ER and Slater attorneys will seek facts surrounding the claims solicitation and verification process that are directly relevant to voting on the Plan. The Zurich Insurers intend to question ER and Slater attorneys on topics concerning the time spent, methods used, and information gathered by ER and Slater attorneys (if any) while investigating and evaluating their clients’ claims.

The Zurich Insurers do not seek communications that implicate the attorney-client privilege. *Facts*, unlike communications, are not protected by the privilege.<sup>18</sup> And, as this Court stated, an

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<sup>14</sup> See, e.g., *Boston Edison Co. v. U.S.*, 75 Fed. Cl. 557, 562 (2007) (finding *Shelton* rule inapplicable because deposing party sought [attorney’s] knowledge of [an] auction process and the surrounding circumstances, not his work in preparing and implementing . . . litigation strategy”); *Sparton Corp. v. United States*, 44 Fed. Cl. 557, 561–62 (1999) (concluding that the *Shelton* test was inapplicable in cases involving the depositions of attorneys who were fact witnesses because “the attorney[s] in those cases] had independent knowledge of the facts underlying the litigated cause of action before depositions of opposing counsel were permitted.”)

<sup>15</sup> *Shelton*, 805 F.2d at 1330 (“In-house counsel in this case had nothing to do with this lawsuit except to represent her client. She did not design the jeep or have any duties in relation to the design of the jeep; *nor, of course, was she a witness to the accident.*”) (emphasis added).

<sup>16</sup> Oct. 15, 2020 H’rg Tr. at 170:2-12.

<sup>17</sup> The Federal Rules of Civil Procedure apply to these Chapter 11 cases. Fed. R. Bankr. P. 7026, 9014.

<sup>18</sup> *Andritz Sprout-Bauer, Inc. v. Beazer East, Inc.*, 174 F.R.D. 609, 632 (M.D. Pa. 1997) (“Facts gathered by counsel in the course of investigating a claim or preparing for trial are not privileged and must be divulged if requested in the course of proper discovery.”); *In re Grand Jury Proc. (Twist)*, 689 F.2d 1351, 1351 (11th Cir. 1982) (holding that a government subpoena requesting an attorney to produce documents that would reflect date, place and time of meetings with client are not encompassed within the privilege); *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981) (work product doctrine does not extend to the underlying facts relevant to the litigation).

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attorney who signs a POC may be subject to deposition as to the facts underlying the claim, and in turn waives the attorney-client privilege (and work product protection) with respect to those facts.<sup>19</sup>

In addition, the Third Circuit is clear that work product “should be recognized only when necessary to achieve [its] purposes”: to (1) “shelter[] the mental processes of the attorney, providing a privileged area within which” he or she can “analyze and prepare [a] client’s case” and (2) protect “the confidential nature of materials prepared by attorneys in anticipation of litigation[.]”<sup>20</sup> None of these goals is at play here. Further, “[w]here . . . the work product in question is of rather *minimal substantive content*, and presents none of the classic dangers [which the work product doctrine seeks to alleviate], the . . . showing of need can be comparatively lower.”<sup>21</sup>

Even if ER and Slater’s privilege and work-product concerns have some limited merit (they do not), that does not justify blocking, preemptively, the depositions in their entirety. It is black-letter law that blanket claims of privilege are ineffective.<sup>22</sup> If ER and Slater have *specific* privilege objections, the proper thing for them to do is to make them at the deposition, which this Court can then resolve.<sup>23</sup> Courts disfavor preemptively shutting down depositions because of hypothetical privilege concerns and instead address privilege on a question-by-question basis.<sup>24</sup>

Finally, ER and Slater argue that their attorneys should not be asked to testify about their “confidential business practices, including [their] third-party partners and financing sources,” because that is confidential commercial information under Rule 45(d)(3)(B)(i). Neither ER nor Slater explain in what manner these “business practices” are confidential commercial information under Rule 45(d), and indeed they are not.<sup>25</sup> But in any event, the confidentiality procedures established by this Court should be enough to protect adequately any sensitive information that may exist.

<sup>19</sup> See *In re Rodriguez*, 2013 WL 2450925, at \*6 (S.D. Tex. June 5, 2013) (attorney who signed a proof of claim became fact witness with respect to the allegations contained in the proofs and therefore, “[t]he work product and attorney client privileges [were] waived as to the facts alleged in the proof of claim”); *In re Duke Invs., Ltd.*, 454 B.R. 414, 427 (S.D. Tex. 2011) (“There is no question that any attorney is allowed to [sign a proof of claim for its client], but the attorney puts himself at risk by becoming a fact witness.”).

<sup>20</sup> *In re Chevron Corp.*, 633 F.3d 153, 165 (3d Cir. 2011); *In re Grand Jury (Impounded)*, 138 F.3d at 981.

<sup>21</sup> *Id.* at 988 (emphasis added).

<sup>22</sup> See, e.g., *United States v. Ruehle*, 583 F.3d 600, 609 (9th Cir. 2009).

<sup>23</sup> See *Alexander v. F.B.I.*, 192 F.R.D. 12, 19 (D.D.C. 2000) (if the deposing party asks questions that could elicit the mental impressions of the attorneys, then the deposed party is “entitled to claim the privilege and come back to this court to make a proper showing of why the information sought is protected”).

<sup>24</sup> See, e.g., *Nat’l Life Ins. Co. v. Hartford Acc. & Indem. Co.*, 615 F.2d 595, 598 (3d Cir. 1980) (privilege may only be asserted question-by-question, and blanket privilege may not be asserted before hearing those questions); *Robocast, Inc. v. Microsoft Corp.*, 2013 WL 1498666, at \*\*1–2 (D. Del. 2013) (denying motion to quash deposition subpoena of prosecution counsel, rejecting the counsel’s blanket assertion of privilege and instructing that privilege objections could be made on a question-by-question bases at the deposition); *In re Grand Jury Matters*, 751 F.2d 13, 17 (1st Cir. 1984); *In re Cty. of Orange*, 208 B.R. 117, 121–22 (Bankr. S.D.N.Y. 1997).

<sup>25</sup> Courts define “confidential commercial information” as “information, which disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained.” See *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994); *In re Boston*

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### CONCLUSION

For these reasons, the Court should deny both motions to quash.

Respectfully submitted,

By: /s/ Kelly T. Currie  
Kelly T. Currie (admitted *pro hac vice*)  
CROWELL & MORING LLP  
590 Madison Ave., 20<sup>th</sup> Floor  
New York, NY 10022  
Phone: (212) 624-2500  
Email: [kcurrie@crowell.com](mailto:kcurrie@crowell.com)

By: /s/ Robert D. Cecil, Jr.  
Robert D. Cecil, Jr. (No. 5317)  
TYBOUT, REDFEARN & PELL  
501 Carr Road, Suite 300  
Wilmington, Delaware 19809  
Phone: (302) 658-6901  
E-mail: [rcecil@trplaw.com](mailto:rcecil@trplaw.com)

*Attorneys for American Zurich Insurance Company,  
American Guarantee and Liability Insurance Company,  
and Steadfast Insurance Company*

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*Scientific Corp. Pelvic Repair Systems Product Liability Litigation*, No. 2326, 2014 WL 1329944, at \*2 (S.D.W. Va. Mar. 31, 2014); *see also In re Alterra Healthcare Corp.*, 353 B.R. 66, 76 (D. Del. 2006) (finding that information within settlement agreements did not constitute confidential commercial information because it “[did] not relate to the Reorganized Debtor’s commercial operations nor [did] it unfairly advantage competitors”).

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

In re:

BOY SCOUTS OF AMERICA AND  
DELAWARE BSA, LLC,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

**DECLARATION OF DANIELLE GIFFUNI IN SUPPORT  
OF ZURICH INSURERS' RESPONSE TO MOTION TO QUASH  
SUBPOENAS SERVED ON SLATER SLATER SCHULMAN LLP  
AND EISENBERG ROTHWEILER WINKLER EISENBERG & JECK, P.C.**

DANIELLE GIFFUNI, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a member of the bar of New York, I am a counsel at the firm Crowell & Moring LLP, attorneys for American Zurich Insurance Company, American Guarantee and Liability Insurance Company, and Steadfast Insurance Company (collectively, "Zurich Insurers"), and I have been admitted to appear *pro hac vice* before this Court in these chapter 11 cases. *See* Dkt. No. 6823.

2. I submit this declaration in support of *Zurich Insurers' Response to Motion to Quash Subpoenas Served on Slater Slater Schulman LLP and Eisenberg Rothweiler Winkler Eisenberg & Jeck, P.C.*

3. Attached hereto as **Exhibit A** is a true and correct copy of an email and attachments sent by me on November 24, 2021 to Daniel Hogan and Gabrielle Durstein both of Hogan McDaniel as well as attorneys from Crowell & Moring LLP.

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<sup>1</sup> The Debtors in the chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

4. Attached hereto as **Exhibit B** is a true and correct copy of an email and attachments sent by me on November 24, 2021 to Justin Alberto and other attorneys from Cole Schotz P.C. as well as attorneys from Crowell & Moring LLP.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: November 29, 2021  
New York, New York

/s/ Danielle Giffuni  
Danielle Giffuni

# Exhibit A

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**From:** Giffuni, Danielle  
**Sent:** Wednesday, November 24, 2021 4:44 PM  
**To:** Daniel Hogan  
**Cc:** Currie, Kelly; Charles, Andrea; Aviad, Nimi; Halstead, Ellen; Gabrielle Durstein  
**Subject:** RE: In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Eisenberg, Rothweiler Deposition Request  
**Attachments:** BSA Subpoena - Assetto-Sherry (Eisenberg).pdf; BSA Subpoena - Eisenberg (Eisenberg).pdf; BSA Subpoena - Schwartz (Eisenberg).pdf

Dan,

Thank you for accepting service of the subpoenas. Attached please find subpoenas for the depositions of Rita Assetto-Sherry, Stewart Eisenberg and Joshua Schwartz. We reserve all rights as well.

Best,  
Danielle

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**From:** Daniel Hogan <dan@dkhogan.com>  
**Sent:** Wednesday, November 24, 2021 2:49 PM  
**To:** Giffuni, Danielle <DGiffuni@crowell.com>  
**Cc:** Currie, Kelly <KCurrie@crowell.com>; Charles, Andrea <ACharles@crowell.com>; Aviad, Nimi <NAviad@crowell.com>; Halstead, Ellen <EHalstead@crowell.com>; Gabrielle Durstein <gdurstein@dkhogan.com>  
**Subject:** RE: In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Eisenberg, Rothweiler Deposition Request

**External Email**

Danielle:

We will consent to accept service of the subpoena, but we reserve all rights to oppose the subpoena and to quash it. We will agree to meet and confer, but until the Court rules on the pending opposed motion to compel responses to the document subpoena previously served on Eisenberg Rothweiler, we consider the new subpoena to be inappropriate and we will not make any witnesses available. To be clear, we do not agree to the proposed depositions or to the proposed schedule.

Daniel K. Hogan, Esquire  
Hogan ♦ McDaniel  
Attorneys-at-Law  
1311 Delaware Avenue  
Wilmington, DE 19806  
Direct Dial: 302.656.7597  
Main Dial: 302.656.7540  
Email: [dkhogan@dkhogan.com](mailto:dkhogan@dkhogan.com)

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**From:** Giffuni, Danielle <DGiffuni@crowell.com>  
**Sent:** Tuesday, November 23, 2021 9:37 PM

**To:** Daniel Hogan <[dan@dkhogan.com](mailto:dan@dkhogan.com)>

**Cc:** Currie, Kelly <[KCurrie@crowell.com](mailto:KCurrie@crowell.com)>; Charles, Andrea <[ACCharles@crowell.com](mailto:ACCharles@crowell.com)>; Aviad, Nimi <[NAviad@crowell.com](mailto:NAviad@crowell.com)>; Halstead, Ellen <[EHalstead@crowell.com](mailto:EHalstead@crowell.com)>; Gabrielle Durstein <[gdurstein@dkhogan.com](mailto:gdurstein@dkhogan.com)>

**Subject:** In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Eisenberg, Rothweiler Deposition Request

Dan,

On behalf of Zurich Insurers, we intend to issue subpoenas to depose the following Eisenberg, Rothweiler attorneys:

- Rita Assetto-Sherry
- Stewart J. Eisenberg
- Joshua B. Schwartz

We are willing to discuss holding off on noticing other parties if we can agree on dates for the depositions. We would like to depose all three attorneys on Tuesday, November 30th at 9 a.m., 1 p.m., and 4 p.m. ET, respectively. Please let us know by Wednesday, November 24<sup>th</sup> at 1 p.m. ET whether you will accept service on behalf of your clients and whether this date is acceptable.

Best,  
Danielle

Danielle Giffuni  
[dgiffuni@crowell.com](mailto:dgiffuni@crowell.com)  
Direct 1.212.895.4239 | Fax: 1.212.223.4134

Crowell & Moring LLP | [www.crowell.com](http://www.crowell.com)  
590 Madison Avenue, 20th Floor  
New York, NY 10022

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC,

Debtor

(Complete if issued in an adversary proceeding)

Case No. 20-10343 (LSS)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Rita Assetto-Sherry, Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., 1634 Spruce Street, Philadelphia, PA 19103

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (1650 Market Street, Suite 3600, Philadelphia, PA 19103) and DATE AND TIME (November 30, 2021 at 9:00 am (Eastern Time))

The deposition will be recorded by this method: Stenographic, audiographic and videotaped means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/24/2021

CLERK OF COURT

OR

/s/ Kelly T. Currie

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Zurich Insurers, who issues or requests this subpoena, are: Kelly T. Currie, Crowell & Moring LLP, 590 Madison Avenue, 19th Fl., New York, NY 10022, (212) 223-4000, kcurrie@crowell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC,

Debtor

(Complete if issued in an adversary proceeding)

Case No. 20-10343 (LSS)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Stewart Eisenberg, Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., 1634 Spruce Street, Philadelphia, PA 19103

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (1650 Market Street, Suite 3600, Philadelphia, PA 19103) and DATE AND TIME (November 30, 2021 at 1:00 pm (Eastern Time))

The deposition will be recorded by this method: Stenographic, audiographic and videotaped means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/24/2021

CLERK OF COURT

OR

/s/ Kelly T. Currie

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Zurich Insurers, who issues or requests this subpoena, are: Kelly T. Currie, Crowell & Moring, LLP, 590 Madison Avenue, 19th Fl., New York, NY 10022, (212) 223-4000, kcurrie@crowell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

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(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

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(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC,

Debtor

Case No. 20-10343 (LSS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Joshua B. Schwartz, Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., 1634 Spruce Street, Philadelphia PA 19103

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (1650 Market Street, Suite 3600, Philadelphia, 19103) and DATE AND TIME (November 30, 2021 at 4:00 pm (Eastern Time))

The deposition will be recorded by this method: Stenographic, audiographic and videotaped means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/24/2021

CLERK OF COURT

OR

/s/ Kelly T. Currie

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Zurich Insurers, who issues or requests this subpoena, are: Kelly T. Currie, Crowell & Moring LLP, 590 Madison Avenue, 19th Fl., New York, NY 10022, (212) 223-4000, kcurrie@crowell.com

Notice to the person who issues or requests this subpoena

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**PROOF OF SERVICE**

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I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

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- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

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- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
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- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
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- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

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(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# Exhibit B

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**From:** Giffuni, Danielle  
**Sent:** Wednesday, November 24, 2021 4:44 PM  
**To:** Alberto, Justin  
**Cc:** Trentin, Michael; Van Aalten, Seth; Klauder, Michael C.; Currie, Kelly; Aviad, Nimi; Charles, Andrea; Halstead, Ellen  
**Subject:** RE: In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Slater Deposition Request  
**Attachments:** BSA Subpoena - Schulman (Slater).pdf; BSA Subpoena - Werner (Slater).pdf

Justin,

Thank you for accepting service of the subpoenas. Attached please find subpoenas for the depositions of Michael Werner and Jonathan Schulman. We reserve all rights as well.

Best,  
Danielle

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**From:** Alberto, Justin <JAlberto@coleschotz.com>  
**Sent:** Wednesday, November 24, 2021 2:25 PM  
**To:** Giffuni, Danielle <DGiffuni@crowell.com>  
**Cc:** Trentin, Michael <MTrentin@coleschotz.com>; Van Aalten, Seth <SVanAalten@coleschotz.com>; Klauder, Michael C. <MKlauder@coleschotz.com>; Currie, Kelly <KCurrie@crowell.com>; Aviad, Nimi <NAviad@crowell.com>; Charles, Andrea <ACharles@crowell.com>; Halstead, Ellen <EHalstead@crowell.com>  
**Subject:** RE: In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Slater Deposition Request [IWOV-CSDOCS.FID2363725]

External Email

Danielle, we are in receipt of your email last evening. As you are aware, the Court has yet to issue a ruling on the relevancy of the discovery the insurers seek. We will accept service of the subpoena, but will not agree to produce our client for deposition pending the Court's ruling and suggest a meet and confer thereafter. All rights reserved.

Best,  
Justin



**Justin R. Alberto**

**Member**

500 Delaware Avenue | Ste 1410 | Wilmington, DE | 19801  
Direct 302.651.2006 | Firm 302.652.3131 | Fax 302.574.2106 | Cell 203.512.4390 | jalberto@coleschotz.com  
New Jersey | New York | Delaware | Maryland | Texas | Florida  
[vCard](#) | [bio](#) | [website](#)

Legal Practice Assistant: Rachel Deely | 302.652.3131 x 2502 | rdeely@coleschotz.com

[Click here](#) to visit our Covid-19 Resource Center for important legal updates.

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**From:** Giffuni, Danielle <[DGiffuni@crowell.com](mailto:DGiffuni@crowell.com)>  
**Sent:** Tuesday, November 23, 2021 9:37 PM  
**To:** Alberto, Justin <[JAlberto@coleschotz.com](mailto:JAlberto@coleschotz.com)>  
**Cc:** Trentin, Michael <[MTrentin@coleschotz.com](mailto:MTrentin@coleschotz.com)>; Van Aalten, Seth <[SVanAalten@coleschotz.com](mailto:SVanAalten@coleschotz.com)>; Klauder, Michael C. <[MKlauder@coleschotz.com](mailto:MKlauder@coleschotz.com)>; Currie, Kelly <[KCurrie@crowell.com](mailto:KCurrie@crowell.com)>; Aviad, Nimi <[NAviad@crowell.com](mailto:NAviad@crowell.com)>; Charles, Andrea <[ACharles@crowell.com](mailto:ACharles@crowell.com)>; Halstead, Ellen <[EHalstead@crowell.com](mailto:EHalstead@crowell.com)>  
**Subject:** In re: Boy Scouts of America and Delaware BSA, LLC, No. 20-10343 (LSS) - Slater Deposition Request

**[EXTERNAL EMAIL]**

Justin,

On behalf of Zurich Insurers, we intend to issue subpoenas to depose the following Slater Slater Schulman attorneys for depositions:

- Michael S. Werner
- Jonathan E. Schulman

We are willing to discuss holding off on noticing other parties if we can agree on dates for the depositions. We would like to depose both attorneys on Wednesday, December 1<sup>st</sup> at 9 a.m. and 1 p.m. ET, respectively. Please let us know by Wednesday, November 24<sup>th</sup> at 1 p.m. ET whether you will accept service of the subpoenas on behalf of your clients and whether this date is acceptable.

Best,  
Danielle

Danielle Giffuni  
[dgiffuni@crowell.com](mailto:dgiffuni@crowell.com)  
Direct 1.212.895.4239 | Fax: 1.212.223.4134

Crowell & Moring LLP | [www.crowell.com](http://www.crowell.com)  
590 Madison Avenue, 20th Floor  
New York, NY 10022

\* \* \* \* \*

This e-mail message from Cole Schotz P.C. is private and may contain privileged information. If you are not the intended recipient, please do not read, copy or use it or disclose it to others. If you have received this message in error, please notify the sender immediately by replying to this message and then delete it from your system.

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC,

Debtor

Case No. 20-10343 (LSS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Jonathan Schulman, Slater, Slater, Schulman LLP, 488 Madison Avenue, 20th Floor, New York, NY 10022

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (Crowell & Moring LLP, 590 Madison Avenue, 20th Floor, New York, NY 10022) and DATE AND TIME (December 1, 2021 at 1:00 pm (Eastern Time))

The deposition will be recorded by this method: Stenographic, audiographic and videotaped means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/24/2021

CLERK OF COURT

OR

/s/ Kelly T. Currie

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Zurich Insurers, who issues or requests this subpoena, are: Kelly T. Currie, Crowell & Moring LLP, 590 Madison Avenue, 19th Fl., New York, NY 10022, (212) 223-4000, kcurrie@crowell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Boy Scouts of America and Delaware BSA, LLC,

Debtor

(Complete if issued in an adversary proceeding)

Case No. 20-10343 (LSS)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Michael Werner, Slater Slater Schulman LLP, 488 Madison Avenue, 20th Floor, New York, New York 10022

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (Crowell & Moring LLP, 590 Madison Avenue, 20th Floor, New York, New York 10022) and DATE AND TIME (December 1, 2021 at 9:00 am (Eastern Time))

The deposition will be recorded by this method: Stenographic, audiographic and videotaped means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/24/2021

CLERK OF COURT

OR

/s/ Kelly T. Currie

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Zurich Insurers, who issues or requests this subpoena, are: Kelly T. Currie, Crowell & Moring LLP, 590 Madison Avenue, 19th Fl., New York, NY 10022, (212) 223-4000, kcurrie@crowell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

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on *(date)* \_\_\_\_\_ .

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\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
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My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
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(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

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...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

In re:

BOY SCOUTS OF AMERICA AND  
DELAWARE BSA, LLC,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

**CERTIFICATE OF SERVICE**

I, Robert D. Cecil, Jr., Esquire, hereby certify that on November 29, 2021, I caused a copy of *Zurich Insurers' Response to Motion to Quash Subpoenas Served on Slater Slater Schulman LLP and Eisenberg Rothweiler Winkler Eisenberg & Jeck, P.C.*, to be filed through the Court's Case Management/Electronic Case File ("CM/ECF") and served on all parties who have electronically entered a notice of appearance through the notice of filing generated by the Court's CM/ECF System. I further certify that I have served via email the foregoing document upon the following parties listed on Exhibit A attached hereto.

Dated: November 29, 2021  
Wilmington, Delaware

By: /s/ Robert D. Cecil, Jr.  
Robert D. Cecil, Jr. (No. 5317)  
TYBOUT, REDFEARN & PELL  
501 Carr Road, Suite 300  
Wilmington, Delaware 19809  
Phone: (302) 658-6901  
E-mail: [rcecil@trplaw.com](mailto:rcecil@trplaw.com)

<sup>1</sup> The Debtors in the chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

**EXHIBIT A**

**BSA**

Jessica C. Lauria	jessica.lauria@whitecase.com
Michael C Andolina	mandolina@whitecase.com
Matthew Linder	mlinder@whitecase.com
Laura E. Baccash	laura.baccash@whitecase.com
Blair M. Warner	blair.warner@whitecase.com
Samuel Hershey	sam.hershey@whitecase.com
Glenn Kurtz	gkurtz@whitecase.com
Robert Tiedemann	rtiedemann@whitecase.com
Andrew Hammond	ahammond@whitecase.com
Jennifer Thomas	Jennifer.thomas@whitecase.com
Derek Abbott	DAbbott@morrisnichols.com
Andrew Remming	aremming@morrisnichols.com
Paige Topper	ptopper@morrisnichols.com
Tori Remington	tremington@morrisnichols.com
Ernest Martin	Ernest.Martin@haynesboone.com
Adrian Azer	Adrian.Azer@haynesboone.com

**U.S. Trustee**

David L. Buchbinder	david.l.buchbinder@usdoj.gov
Hanna Mufson McCollum	hannah.mccollum@usdoj.gov

**Tort Claimants' Committee**

James Stang	jstang@pszjlaw.com
Rob Orgel	rorgel@pszjlaw.com
John A. Morris	jmorris@pszjlaw.com
John W. Lucas	jllucas@pszjlaw.com
Linda Cantor	lcantor@pszjlaw.com
James O'Neill	joneill@pszjlaw.com
Debra Grassgreen	dgrassgreen@pszjlaw.com
Ken Brown	kbrown@pszjlaw.com
Malhar S. Pagay	mpagay@pszjlaw.com

**Ad Hoc Committee of Local Councils**

Richard G. Mason	RGMason@WLRK.com
Douglas K. Mayer	DKMayer@WLRK.com
Joseph C. Celentino	JCCelentino@WLRK.com
Mitchell Levy	MSLevy@wlrk.com

**Creditors' Committee**

Thomas Moers Mayer	TMayer@kramerlevin.com
Rachael Ringer	rringer@kramerlevin.com
Jennifer Sharret	jsharret@kramerlev.com

Megan Wasson  
Natan Hammerman  
Mark Eckar  
Kurt Gwynne

mwasson@kramerlevin.com  
nhamerman@kramerlevin.com  
meckard@reedsmith.com  
kgwynne@reedsmith.com

**Future Claimants' Representative**

Robert Brady  
Edwin Harron  
Sharon Zieg  
Erin Edwards  
Kenneth Enos  
Kevin Guerke  
Ashley Jacobs  
Jared Kochenash  
Sara Beth Kohut  
Rachel Jennings  
Meredith Neely  
Kami Quinn  
W. Hunter Winstead  
Emily Grim

rbrady@ycst.com  
eharron@ycst.com  
szieg@ycst.com  
eedwards@ycst.com  
kenos@ycst.com  
kguerke@ycst.com  
ajacobs@ycst.com  
jkochenash@ycst.com  
skohut@ycst.com  
jenningsr@gilbertlegal.com  
neelym@gilbertlegal.com  
quinnk@gilbertlegal.com  
winsteadh@gilbertlegal.com  
grime@gilbertlegal.com

**Coalition of Abused Scouts for Justice**

D. Cameron Moxley  
David Molton  
Tristan Axelrod  
Barbara J. Kelly  
Gerard Cicero  
Eric Goodman  
Rachel Merksy

cmoxley@brownrudnick.com  
dmolton@brownrudnick.com  
taxelrod@brownrudnick.com  
bkelly@brownrudnick.com  
gcicero@brownrudnick.com  
egoodman@brownrudnick.com  
rmersky@monlaw.com

**JPMorgan Chase Bank, N.A.**

Kristian Gluck  
John Heath  
Sarah Cornelia

kristian.gluck@nortonrosefulbright.com  
john.heath@nortonrosefulbright.com  
sarah.corneila@nortonrosefulbright.com

Steven Zelin  
John Singh  
Scott Meyerson  
Lukas Schwarzmam

zelin@pjtpartners.com  
singhj@pjtpartners.com  
meyerson@pjtpartners.com  
lukas.schwarzmam@pjtpartners.com

**The Church of Jesus Christ of Latter-day Saints, a Utah Corporation**

Jeff Bjork  
Robert Malioneck  
Deniz Irgi  
Adam Goldberg

jeff.bjork@lw.com  
Robert.malioneck@lw.com  
deniz.irgi@lw.com  
adam.goldberg@lw.com

Blake Denton	Blake.Denton@lw.com
Amy Quartarolo	Amy.Quartarolo@lw.com
Benjamin Dozier	Benjamin.Butzin-Dozier@lw.com
Sohom Datta	Sohom.Datta@lw.com
Natasha Bronn Schrier	natasha.bronnschrier@lw.com
Ryan Jones	ryan.jones@lw.com
Michael Merchant	merchant@rlf.com
Brett Haywood	haywood@rlf.com

**United Methodist Ad Hoc Committee**

Ed Rice	erice@bradley.com
Elizabeth Brusa	ebrusa@bradley.com
Jeremy Ryan	jryan@potteranderson.com
D. Ryan Slaugh	rslaugh@potteranderson.com

**Roman Catholic Ad Hoc Committee Catholic Mutual Relief Society of America**

Everett Cygal	ecygal@schiffhardin.com
Mark Fisher	mfisher@schiffhardin.com
Daniel Schufreider	dschufreider@schiffhardin.com
Jin Yan	jyan@schiffhardin.com
Jeremy Ryan	jryan@potteranderson.com

**The Episcopal Church and Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America**

Mark Salzberg	mark.salzberg@squirepb.com
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**Roman Catholic Diocese of Brooklyn, New York, Roman Catholic Archbishop of Los Angeles, a corporation sole, Roman Catholic Diocese of Dallas, a Texas nonprofit corporation, Archdiocese of Galveston-Houston, and Diocese of Austin**

Patrick A. Jackson	patrick.jackson@faegredrinker.com
Ian J. Bambrick	ian.bambrick@faegredrinker.com

**Zalkin Law Firm, P.C. and Pfau Cochran Vertetis Amala PLLC, representative group for various state court counsel**

Daniel Bussel	dbussel@ktbslaw.com
Thomas Patterson	tpatterson@ktbslaw.com
Sasha Gurvitz	sgurvitz@ktbslaw.com
Robert Pfister	rpfister@ktbslaw.com

**Agricultural Insurance Company**

Bruce W. McCullough	bmccullough@bodellbove.com
Bruce D. Celebrezze	bruce.celebrezze@clydeco.us
Conrad Krebs	Konrad.drebs@clydeco.us
David Christian	dchristian@dca.law

**AIG (National Union Fire Insurance Company, Lexington Insurance Company, Landmark Insurance Company, and the Insurance Company of the State of Pennsylvania)**

Susan Gummow	sgummow@fgppr.com
Tracey Jordan	tjordan@fgppr.com
Michael Rosenthal	mrosenthal@gibsondunn.com
Deirdre Richards	drichards@finemanlawfirm.com
Matthew Bouslog	mbouslog@gibsondunn.com
James Hallowell	jhallowell@gibsondunn.com
Keith Martorana	kmartorana@gibsondunn.com
Vincent Eisinger	veisinger@gibsondunn.com

**Allianz Global Risks US Insurance Company**

Ryan Smethurst	rsmethurst@mwe.com
Margaret Warner	mwarner@mwe.com
Matthew S. Sorem	msorem@nicolaidesllp.com

**American Zurich Insurance Company**

Mark Plevin	MPlevin@crowell.com
Tacie Yoon	TYoon@crowell.com
Rachel Jankowski	RJankowski@crowell.com
Robert Cecil	Rcecil@trplaw.com

**Argonaut Insurance Company and Colony Insurance Company**

Laura Archie	laura.archie@argogroupus.com
Paul Logan	plogan@postschell.com
Kathleen K. Kerns	kkerns@postschell.com
George R. Calhoun	george@ifrahlaw.com

**Arrowood Indemnity Company**

Michael Hrinewski	mhrinewski@coughlinduffy.com
Lorraine Armenti	larmenti@coughlinduffy.com

**Aspen Insurance Holdings Limited**

Clay Wilson	cwilkerson@brownsims.com
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**AXA XL**

Jonathan Mulvihill	jonathan.mulvihill@axaxl.com
Lloyd A. Gura	lgura@moundcotton.com
Pamela Minetto	pminetto@moundcotton.com

**Ategrity Specialty**

John Morgenstern	jmorgenstern@ohaganmeyer.com
Matthew Szwajkowski	mszwajkowski@ohaganmeyer.com
Carl "Chuck" Kunz, III	ckunz@morrisjames.com

**Berkley Custom**

John Baay

jbaay@glllaw.com

**Berkeley Research Group**

Matthew Babcock

MBabcock@thinkbrg.com

**Clarendon America Insurance Company**

Kenya Spivey

Kenya.Spivey@enstargroup.com

Harry Lee

hlee@steptoe.com

Brett Grindrod

bgrindrod@steptoe.com

John O'Connor

joconnor@steptoe.com

Nailah Ogle

nogle@steptoe.com

Matthew Summers

SummersM@ballardspahr.com

**Century Indemnity Company**

Stamatios Stamoulis

Stamoulis@swdelaw.com

Richard Weinblatt

weinblatt@swdelaw.com

Tancred Schiavoni

tschiavoni@omm.com

Salvatore J. Cocchiaro

scocchiaro@omm.com

**CNA**

Laura McNally

lmcnally@loeb.com

Emily Stone

estone@loeb.com

General Star Indemnity

Gary P. Seligman

gseligman@wiley.law

Ashley L. Criss

acriss@wiley.law

**Hartford**

James P. Ruggeri

JRuggeri@goodwin.com

Abigail W. Williams

AWilliams@goodwin.com

Joshua D. Weinberg

JWeinberg@goodwin.com

Annette Rolain

arolain@goodwin.com

Sara Hunkler

shunkler@goodwin.com

Phil Anker

Philip.Anker@wilmerhale.com

Danielle Spinelli

Danielle.Spinelli@wilmerhale.com

Joel Millar

Joel.Millar@wilmerhale.com

Lauren Lifland

lauren.lifland@wilmerhale.com

Benjamin Loveland

Benjamin.loveland@wilmerhale.com

Erin Fay

efay@bayardlaw.com

Gregory Flasser

gflasser@bayardlaw.com

Eric Goldstein

egoldstein@goodwin.com

**Liberty Mutual**

Douglas R. Gooding

dgooding@choate.com

Jonathan Marshall

jmarshall@choate.com

Kim V. Marrkand

KMarrkand@mintz.com

**Markel**

Russell Dennis  
Jessica O'Neill  
Michael Pankow

russell.dennis@markel.com  
Jessica.oneill@markel.com  
MPankow@BHFS.com

**Maryland Casualty Company, Maryland American General Group, and American General Fire & Casualty Company**

Harry Lee  
Brett Grindod  
Nailah Ogle

HLee@steptoe.com  
bgrindod@steptoe.com  
nogle@steptoe.com

**Munich Re**

Thaddeus Weaver  
William McGrath

tweaver@dilworthlaw.com  
wmcgrath@dilworthlaw.com

**National Surety**

Todd C Jacobs  
John E. Bucheit  
David M. Caves  
Harris B. Winsberg  
David Fournier  
Marcy Smith

TJacobs@bradleyriley.com  
jbucheit@bradleyriley.com  
dcaves@bradleyriley.com  
harris.winsberg@troutman.com  
david.fournier@troutman.com  
marcy.smith@troutman.com

**Old Republic Insurance Company**

Thomas Dare  
Peg Anderson  
Adam Hachikian  
Kenneth Thomas  
Ryan Schultz  
Stephen Miller  
Carl Kunz, III

tdare@oldrepublic.com  
panderson@foxswibel.com  
ahachikian@foxswibel.com  
kthomas@foxswibel.com  
rschultz@foxswibel.com  
smiller@morrisjames.com  
ckunz@morrisjames.com

**Traders and Pacific Insurance Company, Endurance American Specialty Insurance Company, and Endurance American Insurance Company**

Joseph Ziemianski  
Marla Benedek

jziemianski@cozen.com  
mbenedek@cozen.com

**Travelers**

Scott Myers  
Louis Rizzo

SPMyers@travelers.com  
lrizzo@regerlaw.com

**Notice of Intent Parties**

**Lujan Claimants**

Delia Lujan Wolff

dslwolff@lawguam.com

**Kentucky Creditors: N.C., K.W., C.F.,B.L., A.F. and A.S.**

Raeann Warner	raeann@jcdelaw.com
Louis Schneider	lou.schneider@thomaslawoffices.com
Tad Thomas	tad@thomaslawoffices.com

**Crew Janci Claimants**

Salle Veghte	sveghte@klehr.com
Morton Branzburg	mbranzburg@klehr.com
Peter Janci	peter@crewjanci.com

**Hurley McKenna & Mertz Survivors (HMM)**

Sally Veghte	sveghte@klehr.com
Christopher Hurley	churley@hurley-law.com
Evan Smola	esmola@hurley-law.com

**Lonnie Washburn (*Pro Se*)<sup>2</sup>**

**Frank Schwindler (*Pro Se*)**

nundawao@gmail.com

**Gillispie Claimants**

Sally Veghte	sveghte@klehr.com
Joshua Gillispie	josh@greenandgillispie.com
Morton Branzburg	mbranzburg@klehr.com

**Arch Insurance Company**

Kathleen Miller	kmiller@skjlaw.com
Matthew Hamermesh	mah@hangley.com
Ronald Schiller	rschiller@hangley.com
Sharon McKee	smckee@hangley.com
Elizabeth Dolce	edolce@hangley.com

**Jane Doe**

Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Cindy L. Robinson	crobinson@robinsonmahoney.com
Douglas Mahoney	dmahoney@robinsonmahoney.com

**Slater Slater Schulman LLP**

Michael Trentin	MTrentin@coleschotz.com
Justin Alberto	JAlberto@coleschotz.com
Michael Klauder	MKlauder@coleschotz.com
Seth Van Aalten	SVanAalten@coleschotz.com
Brooke Fink	BFink@coleschotz.com

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<sup>2</sup> Contact information for the *pro se* individuals has been provided to the Participating Parties.

**Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C.**

Daniel Hogan

dan@dkhogan.com

Gabrielle Durstein

gdurstein@dkhogan.com