

1 Blaise S. Curet (SBN 124983)  
SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC  
2 2001 Addison Street, Suite 110  
Berkeley, CA 94704  
3 Telephone: (415) 352-6200  
Facsimile: (415) 352-6224  
4 Email: bcuret@spcclaw.com

5 Robin D. Craig (SBN 130935)  
LAW OFFICE OF ROBIN CRAIG  
6 6114 La Salle Avenue, No. 517  
Oakland, CA 94611  
7 Telephone: (510) 549-3330  
8 Email: rcd@rcraiglaw.com

Harris B. Winsberg (admitted *pro hac vice*)  
Matthew M. Weiss (admitted *pro hac vice*)  
Matthew G. Roberts (admitted *pro hac vice*)  
PARKER, HUDSON, RAINER & DOBBS LLP  
303 Peachtree St NE, Suite 3600  
Atlanta, Georgia 30308  
Telephone: (404) 523-5300  
Facsimile: (404) 522-8409  
Email: hwinsberg@phrd.com  
mweiss@phrd.com  
mroberts@phrd.com

Todd C. Jacobs (admitted *pro hac vice*)  
John E. Bucheit (admitted *pro hac vice*)  
PARKER, HUDSON, RAINER & DOBBS LLP  
Two N. Riverside Plaza, Suite 1850  
Chicago, Illinois 60606  
Telephone: (312) 477-3305  
Email: tjacobs@phrd.com  
jbucheit@phrd.com

*Attorneys for Westport Insurance Corporation f/k/a Employers Reinsurance Corporation*

12  
13 **IN THE UNITED STATES BANKRUPTCY COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **OAKLAND DIVISION**

15 In re:  
16 THE ROMAN CATHOLIC BISHOP OF  
OAKLAND, a California corporation sole,  
17  
18 Debtor.

Bankruptcy Case No. 23-40523 WJL  
Chapter 11

**CERTAIN INSURERS' OBJECTIONS  
TO  
(I) THE DISCLOSURE STATEMENT  
FOR THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS'  
PLAN OF REORGANIZATION, AND  
(II) THE DISCLOSURE STATEMENT  
IN SUPPORT OF DEBTOR'S  
MODIFIED FOURTH AMENDED  
PLAN OF REORGANIZATION**

Hearing

Date: April 10, 2026  
Time: 8:00 a.m. Pacific Time  
Place: U.S. Bankruptcy Court  
1300 Clay Street, Courtroom 220  
Oakland, California 94612

27 Westport Insurance Corporation f/k/a Employers Reinsurance Corporation ("Westport"),  
28 Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies

1 (“LMI”),<sup>1</sup> Continental Casualty Company (“Continental”), and Travelers Casualty and Surety  
2 Company f/k/a Aetna Casualty & Surety Company (“Travelers”, and collectively with Westport,  
3 LMI and Continental, the “Certain Insurers”) by and through their undersigned counsel, hereby  
4 file their objection (the “Objection”) to the (i) *Disclosure Statement for the Official Committee of*  
5 *Unsecured Creditors’ Plan of Reorganization* (Doc. No. 2753) (the “Committee Disclosure  
6 Statement”), filed by the Official Committee of Unsecured Creditors (the “Committee”), and (ii)  
7 *Disclosure Statement in Support of Debtor’s Modified Fourth Amended Plan of Reorganization*  
8 (Doc. No. 2759) (the “Debtor Disclosure Statement”), filed by The Roman Catholic Bishop of  
9 Oakland (the “Debtor”). Capitalized terms used but not defined herein have the meanings ascribed  
10 to such terms in the Committee’s Plan.

11 **I. PRELIMINARY STATEMENT**

12 The Committee Disclosure Statement contains inadequate details and is misleading to  
13 creditors in at least two respects. First, the Committee dedicates portions of its executive summary  
14 expressing its negative view of the Debtor’s entry into a settlement term sheet with insurers,  
15 including Westport, LMI, and Continental, for an aggregate of \$44.3 million. (*See* Doc. No. 2521.)  
16 In support of its view, the Committee claims that these proposed settlements “undervalue the  
17 carriers’ exposure,” pointing to the recent settlements of two individual cases approved by the  
18 bankruptcy court in the Diocese of San Francisco case. *See* Order Granting Debtor’s Motion to  
19 Compromise and Settlement Agreement with John SF-1 Doe and John Doe SF-1013, *In re The*  
20 *Roman Catholic Archbishop of San Francisco*, Case No. 23-30564, (Bankr. N.D. Cal. Mar. 27,  
21 2026), ECF 1672 at Ex. A (the “SF Settlement”). The Committee’s description of the SF  
22 Settlement, however, is inaccurate and irrelevant. The Committee fails to disclose that Westport  
23 and Travelers (and another insurer in that case) are asserting reimbursement claims against the San  
24

---

25 <sup>1</sup> LMI are Certain Underwriters at Lloyd’s, London, subscribing severally and not jointly to Slip  
26 Nos. CU 1001 and K 60034 issued to the Roman Catholic Bishop of San Francisco, and Nos. K  
27 78318 and CU 3061 issued to the Roman Catholic Bishop of Oakland; Catalina Worthing  
28 Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Co. Ltd.); the Ocean Marine  
Insurance Company Limited (as Part VII transferee of the World Auxiliary Insurance Corporation  
Limited); River Thames Insurance Company Limited; Dominion Insurance Company Limited;  
Companhia de Seguros Fidelidade-Mundial f/k/a Fidelidade Insurance Company of Lisbon; and  
R&Q Gamma Company Limited (as Part VII transferee of Anglo French Ltd.).

1 Franciso Diocese for paying claims that Westport and Travelers (and another insurer) believe are  
2 not covered under the policies under *Blue Ridge Ins. Co. v. Jacobsen*, 25 Cal.4th 489 (2001), and  
3 its progeny (“Blue Ridge Claims”). See SF Settlement at p. 3 (“subject to Archdiocese’s  
4 [i]nsurers’ contention (disputed by the Archdiocese) that they have reserved the right to seek and  
5 obtain reimbursement from the Archdiocese of amounts paid by the Archdiocese’s [i]nsurers, or  
6 any of them, toward the Settlement Payments, including through coverage litigation.”). And the  
7 Committee fails to disclose that the two individual cases settled in the San Francisco Diocese case  
8 were about to start trial when that diocese petitioned for bankruptcy relief, unlike the vast majority  
9 of the cases the Committee here incorrectly seeks to compare them with. The Committee’s views  
10 on the Debtor’s insurance settlements are also irrelevant because the Debtor unilaterally elected,  
11 on March 27, to drop the insurance settlement term sheet.

12 Second, the Committee claims that “the Committee Plan – unlike the Diocese Plan, which  
13 the Insurers support – is insurance neutral,” arguing that the “Survivors’ Trust Distribution Plan  
14 has no impact on post-confirmation litigation against the Non-Settling Insurers.”(Doc. No. 2753,  
15 p. 18.) This is incorrect in several respects. To start, the Certain Insurers do not support the  
16 Debtor’s Plan in its current form given the changes that Plan reflects. (See Doc. No. 2760-2, Ex.  
17 2.) Worse, the Committee’s Plan leaves open the possibility that the Survivors’ Trust will attempt  
18 to seek coverage from insurers for Abuse Claims that will be valued solely by the Committee’s  
19 hand-picked Abuse Claims Reviewer and Survivors’ Trustee under the Committee’s yet-to-be-  
20 filed Survivors’ Trust Distribution Plan. And according to the Committee, this proposed review  
21 process will not mirror the tort system. To the contrary, the Committee touts the “efficiency” of  
22 the (undisclosed) review process, claiming it will be conducted by an “independent evaluator;”  
23 that it will be conducted in “a fair and efficient way;” and that “evidentiary reviews” of the Abuse  
24 Claims that would cause Abuse Claimants to “spend time preparing documents, testimony and  
25 expert reports,” such as they would have to prepare in the tort system, will not be conducted. (Doc.  
26 No. 2753, p. 10.) Of course, the Certain Insurers are adversely affected by a plan that purports to  
27 maintain their coverage defenses but “nonetheless allow[s] claims at amounts far above their actual  
28 value and out of line with the claimants’ injuries or the payment of claims for which little to no

1 proof of injury is required.” *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 281 (2024)  
2 (citation omitted).

3 The Debtor Disclosure Statement, in turn, is misleading to creditors as the Debtor claims  
4 that “[t]he provisions in the Modified Fourth Amended Plan relating to Non-Settling Insurers have  
5 not changed materially from the Third Amended Plan.” (Doc. No. 2759, p. 26.) This is plainly  
6 incorrect. As reflected in Exhibit 2 of the Debtor’s *Notice of Filing of Redlines of the Debtor’s*  
7 *Modified Amended Plan of Reorganization and Disclosure Statement in Support Thereof* (Doc.  
8 No. 2760), the Debtor made significant and material changes to the Third Amended Plan,  
9 including, but not limited to, the provisions relating to insurers’ ability to object to Abuse Claims,  
10 the terms of the Insurance Assignment, how Abuse Claims are valued or allowed, the selection  
11 process for Abuse Claimants to become Litigation Claimants, how the Litigation Claims are  
12 defended in the tort system, the treatment of the Coverage Action, and the timing (or now the  
13 delay) of the Debtor’s discharge. For the same reason, the Debtor’s statement that “[t]he Modified  
14 Fourth Amended Plan – chiefly, but not exclusively, Article VIII thereof – reflects, in the Debtor’s  
15 view, the agreed-upon term sheet with the Insurers reached in November 2024” is inaccurate.  
16 (Doc. No. 2759, p. 5.) Thus, the Debtor’s statements should be stricken or amended to reflect the  
17 Certain Insurers’ Objection.

18 Finally, both the Committee Disclosure Statement and the Debtor Disclosure Statement  
19 describe plans that contain proposed findings of fact and conclusions of law that are not relevant  
20 to Section 1129 and do not serve a proper (or any) bankruptcy purpose. Specifically, Section 12.12  
21 in both plans provides that (as follows, the “Plan Settlement Finding”): “the provisions of the Plan  
22 shall constitute a good faith compromise and settlement of all Claims and controversies resolved  
23 pursuant to the Plan . . .” and the “Bankruptcy Court’s findings will constitute its determination  
24 that such compromises and settlements are in the best interest of the Debtor, the Estate, Abuse  
25 Claimants (including Unknown Abuse Claims), Holders of other Claims, and other parties in  
26 interest, and are fair, equitable and within the range of reasonableness.” While a plan can contain  
27 a settlement for court approval (such as the proposed CCCEB Settlement), the Plan itself is not a  
28 settlement. See *In re Boy Scouts of America*, 642 B.R. 504, 626 (Bankr. D. Del. 2022) (“*BSA*”)

1 (“But a Plan is not a settlement. It gets solicited. And if the vote fails, debtors can cram down  
2 treatment.”). Thus, the Plan Settlement Finding should be stricken from both Plans. For these  
3 reasons and as more fully set forth below, the Court should sustain the Certain Insurers’ Objection  
4 and deny approval of both Disclosure Statements.

## 5 **II. FACTUAL BACKGROUND**

6 On May 8, 2023, the Debtor filed a voluntary petition for chapter 11 bankruptcy relief  
7 under the Bankruptcy Code. (Doc. No. 1.) On May 23, 2023, the United States Trustee appointed  
8 the Committee. (Doc. No. 58.)

9 On February 20, 2026, the Debtor filed its *Notice of Filing of Debtor’s Fourth Amended*  
10 *Plan of Reorganization* (Doc. No. 2654). The Debtor filed its *Modified Fourth Amended Plan of*  
11 *Reorganization Dated March 27, 2026* on March 29, 2026 (Doc. No. 2758), along with its  
12 Disclosure Statement (Doc. No. 2759).

13 On March 27, 2026, the Committee filed its *Plan of Reorganization, Dated March 27, 2026*  
14 (Doc. No. 2752) and the Committee Disclosure Statement (Doc. No. 2753).

15 On April 6, 2026, the Court entered the confirmation scheduling order.<sup>2</sup> (Doc. No. 2790.)  
16 Under the scheduling order, the hearing on approval of the disclosure statements will take place  
17 on April 10, 2026, with objections due on April 7, 2026. (*Id.* at 3).

## 18 **III. ARGUMENT AND CITATION TO LEGAL AUTHORITY**

### 19 **A. Legal Standard**

20 Section 1125(b) of the Bankruptcy Code provides that a plan of reorganization can only be  
21 submitted to a class vote after court approval of a disclosure statement following notice and a

---

22  
23 <sup>2</sup> While the Court entered its Memorandum Regarding Debtor’s Notice Regarding Submission of  
24 Proposed Submission of Proposed Confirmation Scheduling Order (Doc No. 2791) regarding the  
25 fact discovery deadline as it pertains to the Plan Supplement Materials, the Certain Insurers  
26 respectfully submit that as a matter of due process and fundamental fairness, the Certain Insurers  
27 should have the opportunity to take discovery with respect to the Debtor’s and the Committee’s  
28 Plan Supplements (including with respect to the Survivors’ Trust Distribution Plans) and any  
proposed findings contained in the Debtor’s and the Committee’s proposed plan confirmation  
orders. *See In re Prime Capital Ventures, LLC*, 2025 Bankr. LEXIS 779, at \*17-19 (Bankr.  
N.D.N.Y. Mar. 28, 2025) (declining to make a finding that the debtor operated a Ponzi scheme in  
the confirmation order because the plan and disclosure statement failed to provide parties with  
proper notice that such a finding would be sought in the confirmation order and that the proposed  
finding was unnecessary for plan confirmation).

1 hearing. 11 U.S.C. § 1125(b). Court approval of a disclosure statement requires a finding that it  
2 “contain[s] adequate information” about the proposed plan. *Id.* A disclosure statement’s adequacy  
3 depends on whether it contains sufficiently detailed information “that would enable . . . a  
4 hypothetical investor of the relevant class to make an informed judgment about the plan.” 11  
5 U.S.C. § 1125(a)(1). Courts subjectively determine a disclosure statement’s adequacy on a case-  
6 by-case basis. *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003).

7 Ultimately, a disclosure statement should provide sufficient detail to “give all creditors a  
8 source of information which allows them to make an informed choice regarding the approval or  
9 rejection of a plan.” *In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996). Because  
10 creditors, the court, and other interested parties rely on the disclosure statement, fulsome disclosure  
11 of all pertinent information is paramount. *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848  
12 F.2d 414, 417 (3d Cir. 1988) (the importance of “sufficient data to satisfy the Code standard of  
13 ‘adequate information’” cannot be overstated). Competing views about “the best course for the  
14 estate . . . should be set out [in a disclosure statement] in a balanced and measured way” with the  
15 ultimate goal “to inform creditors, not to inflame them.” *In re Yellow Corp.*, No. 23-11069, 2025  
16 WL 2639151, at \*2 (Bankr. D. Del. Sept. 12, 2025). The Committee Disclosure Statement and  
17 the Debtor Disclosure Statement fall short of the mark, either failing to provide sufficient adequate  
18 information in a balanced and accurate way or including provisions that are patently  
19 unconfirmable. Therefore, neither disclosure statement should be approved.

20 **B. The Committee’s Discussion of the SF Settlement is Misleading**

21 Articles II and V.B(ii) of the Committee Disclosure Statement provide an overview of the  
22 Debtor’s plan and proposed treatment of claims and potential insurance exposure. (Doc. No. 2753,  
23 pp. 4-5 & 22-23). There, the Committee purports to describe the SF Settlement and wrongly  
24 implies that the SF Settlement should be used as a benchmark for the Abuse Claims in this case.  
25 But the Committee neglects to mention that Westport and Travelers (and another insurer in that  
26 case) are asserting Blue Ridge Claims against the San Francisco Diocese for paying claims that  
27 Westport and Travelers (and another insurer) believe are not covered under the relevant policies.  
28 And Westport and Travelers have a pending coverage action in the District Court where they will

1 pursue these claims. *See Westport Insurance Corp. v. The Roman Catholic Archbishop of San*  
2 *Francisco*, Case No. 25-cv-09314 (N.D. Cal.).

3 The Committee also fails to mention that the two individual cases settled in the San  
4 Franciso Diocese case were about to start trial when that diocese petitioned for bankruptcy relief,  
5 unlike the vast majority of the cases underlying the Abuse Claims here. This alone means the  
6 Committee’s attempt to draw a comparison between the two must fail. Nor does the Committee  
7 explain why it highlights the SF Settlement dealing with two claims cherry-picked by the  
8 committee in that case yet fails to mention (let alone discuss) the global settlements that insurers  
9 reached in the *Diocese of Rockville Centre, Diocese of Rochester, Diocese of Syracuse* and *Diocese*  
10 *of Camden* (subject to documentation and court approval) cases. Finally, the Committee’s views  
11 on the Debtor’s insurance settlements are irrelevant because the Debtor unilaterally elected on  
12 March 27 to abandon the insurance settlements.

13 **C. The Plans Are Not Insurance Neutral**

14 In Article IV.B(iii) of the Committee Disclosure Statement, the Committee asserts that “the  
15 Committee Plan – unlike the Diocese Plan, which the Insurers support – is insurance neutral,”  
16 arguing that the “Survivors’ Trust Distribution Plan has no impact on post-confirmation litigation  
17 against the Non-Settling Insurers.” (Doc. No. 2753, p. 18.) The Committee’s statements are  
18 inaccurate for at least two reasons. First, the Certain Insurers do not support the Debtor’s Plan, as  
19 the Committee wrongly claims. The Debtor has elected to not move forward with the insurance  
20 settlement term sheet. And the Debtor made material revisions – now reflected in the current Plan  
21 (*see* Doc. Nos. 2654 & 2758) – which impair the Certain Insurers’ rights, including without  
22 limitation revisions made to Sections 5.2 (Claim Objections), 8.1 (Insurance Assignment), 8.2  
23 (Insurance Coverage for Abuse Claims), 8.3 (Preservation of Rights of Non-Settling Insurers), 8.7  
24 (Reductions in Non-Settling Insurers’ Liability), 8.9 (The Coverage Action), 9.2 (Appointment  
25 and Powers of the Survivors’ Trustee), 9.7 (Right to Elect and Receive an Immediate Payment),  
26 9.8 (Method of Determination of Abuse Claims and Rights of Abuse Claimants to Choose to  
27 Pursue Litigation), and 13.3 (Discharge of Claims). For the same reason, the Debtor’s claim in its  
28 Disclosure Statement that “[t]he provisions in the Modified Fourth Amended Plan relating to Non-

1 Settling Insurers have not changed materially from the Third Amended Plan” is wrong. (Doc. No.  
2 2759; Article I.A(v))

3           Moreover, the Committee’s Plan leaves open the possibility that the Survivors’ Trust will  
4 attempt to seek coverage from insurers for Abuse Claims valued solely by the Committee’s hand-  
5 picked Abuse Claims Reviewer and Survivors’ Trustee under the Committee’s yet-to-be-filed  
6 Survivors’ Trust Distribution Plan. This is because Section 8.2.1 only prevents an Abuse Claimant  
7 (not the Survivors’ Trust) from seeking coverage absent election of the Litigation Option.  
8 Committee Plan, § 8.2.1 (“An ***Abuse Claimant*** may only litigate coverage of such Holder’s Abuse  
9 Claim under the Non-Settling Insurer’s Abuse Insurance Policy(ies) by electing the ***Litigation***  
10 ***Option.***”) (emphasis supplied). In other words, Section 8.2.1 does not appear to prohibit the  
11 Survivors’ Trust from seeking coverage for Abuse Claims that are not Litigation Claims (*e.g.*,  
12 distribution only claims). Of course, while the Committee claims that distribution only claims will  
13 be evaluated by “an independent claim reviewer” (Doc. No. 2753, at Art. III.7(ii)), the identity of  
14 the Committee’s handpicked Abuse Claims Reviewer will not be disclosed until the day before the  
15 end of fact discovery, effectively preventing the Certain Insurers from testing the Committee’s  
16 “independence” claim. And the same is true with respect to the procedures under the Survivors’  
17 Trust Distribution Plan, which also will not be filed until one day before the end of fact discovery.<sup>3</sup>  
18 What the Committee does disclose is that this process to determine the monetary value of  
19 Survivors’ Trust distributions will be conducted by its hand-picked professionals in a manner that  
20 will not require Abuse Claimants to have to spend time “preparing documents, testimony, and  
21 expert reports.” (*Id.* at Art. IV.B(iii).) Thus, the Certain Insurers are at risk of being presented for  
22 payment of “claims at amounts far above their actual value and out of line with the claimants’  
23 injuries or the payment of claims for which little to no proof of injury is required.” *Truck Ins.*  
24 *Exch.*, 602 U.S. at 281.

25           Furthermore, the Committee’s Plan provides that the Committee’s handpicked Survivors’  
26 Trustee can enter into a stipulated judgment with an Abuse Claimant to the extent a “Non-Settling

27 \_\_\_\_\_  
28 <sup>3</sup> The Committee Disclosure Statement incorrectly states that the Survivors’ Trust Distribution  
Plan “is attached as an exhibit to the Committee Plan.” (Doc. No. 2753, p. 9.)

1 Insurer has refused to defend an Abuse Claim.” Committee Plan, § 9.6.1 (“To the extent a Non-  
2 Settling Insurer has refused to defend an Abuse Claim, the Reorganized Debtor and/or Released  
3 Party (or the Survivors’ Trust or Survivors’ Trustee as assignee of the Insurance Actions and  
4 Insurance Recoveries) may enter into stipulated judgments with the Holder of an Abuse Claim or  
5 the Survivors’ Trust, or, alternatively, the Abuse Claimant shall be entitled to seek a default  
6 judgment against the Debtor or Released Party as a nominal party only; provided that nothing  
7 herein affects such Non-Settling Insurer’s rights or obligations under applicable Law.”). This  
8 provision serves no bankruptcy purpose and it is unnecessary to confirm a chapter 11 plan.  
9 Notably, at least two bankruptcy courts have declined to confirm plans that contained stipulated  
10 judgments because they do not foster a result consistent with the Bankruptcy Code’s objectives  
11 under Section 1129(a)(3). *See, e.g., In re Diocese of Camden*, 653 B.R. 309, 349-56 (Bankr. D.N.J.  
12 2023) (declining to confirm the plan of reorganization because, among other reasons, stipulations  
13 of judgment provided under the TDPs did not foster a result consistent with the Bankruptcy Code’s  
14 objectives under Section 1129(a)(3)); *Diocese of Rochester v. Continental Ins. Co. (In re Diocese*  
15 *of Rochester)*, 2023 Bankr. LEXIS 1114, at \* 7 (Bankr. W.D.N.Y. Apr. 25, 2023); *In re Diocese*  
16 *of Rochester*, 2024 Bankr. LEXIS 385, at \*6 (Bankr. W.D.N.Y. Feb. 16, 2024) (“the Court will  
17 not approve a Disclosure Statement or Plan that includes ‘Stipulated Judgments’ – or a similar  
18 term designed to do the same thing . . . .”). This is hardly insurance neutral, as the Committee  
19 incorrectly claims.

20 Finally, the Debtor Disclosure Statement and the Committee Disclosure Statement both  
21 contain the improper Plan Settlement Finding. This, too, is unnecessary to confirm a chapter 11  
22 plan. *See BSA*, 642 B.R. at 626. It may also lead to post-confirmation mischief. In the Boy Scouts  
23 bankruptcy, for example – despite the Bankruptcy Court, the District Court and the Third Circuit  
24  
25  
26  
27  
28

1 all finding that the insurers' rights and defense were preserved<sup>4</sup> (based in part on the  
2 representations made by various parties in that case including estate fiduciaries) – the Settlement  
3 Trustee in post-confirmation coverage litigation now claims that the Bankruptcy Court actually  
4 did the opposite when it confirmed that plan, arguing that the Bankruptcy Court there found that  
5 the insurers have no ability to challenge the amount of the awards under the trust distribution  
6 procedures in that case. *See* Trustee's Brief, Case No. 3:23-cv-01592-S, Doc. No. 601 at 1 (N.D.  
7 Tex. Jan. 16, 2026), attached hereto as Exhibit A; and Trustee's Reply Brief, Case No. 3:23-cv-  
8 01592-S, Doc. No. 607 (N.D. Tex. Jan. 23, 2026), attached hereto as Exhibit B. A similar attempt  
9 was made by the § 524(g) trust in the Fuller-Austin coverage litigation. *Fuller-Austin Insulation*  
10 *Co. v. Highlands Ins. Co.*, 135 Cal.App.4th 958, 970-975, 990 (2006). For these reasons, the Court  
11 should not approve either Disclosure Statement with this unnecessary provision that almost  
12 certainly will be used by the Survivors' Trust or Abuse Claimants in coverage litigation in an  
13 improper attempt to get a leg up on the insurers.

#### 14 CONCLUSION

15 WHEREFORE, for all the foregoing reasons, the Certain Insurers respectfully request that  
16 the Court sustain their Objection to the Committee Disclosure Statement and the Debtor Disclosure  
17 Statement. The Certain Insurers reserve the right to file any and all objections to the Committee's  
18 Plan and the Debtor's Plan, and the failure of the Certain Insurers to assert an objection to either  
19 plan in this Objection is not a waiver of any such objection. All of the Certain Insurers' plan  
20 confirmation objections to the Committee's Plan and the Debtor's Plan are preserved.

21  
22  
23 <sup>4</sup> In *BSA*, the bankruptcy court explicitly held that “the allowed amount of a claim does not  
24 necessarily correlate to what an insurer is ‘obligated to pay’ or what a ‘loss’ is under its insurance  
25 policy ....” *BSA*, 642 B.R. at 632. On appeal, the district court reinforced this point, stating that  
26 it found “no support for the contention that the [p]lan requires [i]nsurers to pay future inflated  
27 awards,” and that if the insurers were “correct in predicting that awards will be inflated, they will  
28 be able to defend against coverage to the same extent they would have been able to defend against  
coverage for a settlement made without a trust.” *In re Boy Scouts of Am. and Del. BSA, LLC*, 650  
B.R. 87, 180 (D. Del. 2023). The Third Circuit affirmed, holding that the debtor could not transfer  
its insurance policies to the trust “with greater or fewer rights or obligations than it possessed  
outside of bankruptcy,” and that the plan “[e]ft the [insurers’] rights and defenses intact.” *In re*  
*Boy Scouts of America*, 137 F.4th 126, 164-65 (3d Cir. 2025).

1 Respectfully submitted: April 7, 2026

2 By: /s/ Harris B. Winsberg

3 **PARKER, HUDSON, RAINER & DOBBS LLP**

4 Harris B. Winsberg (admitted *pro hac vice*)  
5 Matthew M. Weiss (admitted *pro hac vice*)  
6 Matthew G. Roberts (admitted *pro hac vice*)  
7 Brian C. Aton (SBN 339266)  
8 303 Peachtree Street NE, Suite 3600  
9 Atlanta, GA 30308  
10 Telephone: (404) 523-5300  
11 Facsimile: (404) 522-8409  
12 Email: hwinsberg@phrd.com  
13 mweiss@phrd.com  
14 mroberts@phrd.com  
15 baton@phrd.com

16 -and-

17 Todd C. Jacobs (admitted *pro hac vice*)  
18 John E. Bucheit (admitted *pro hac vice*)  
19 Two N. Riverside Plaza, Suite 1850  
20 Chicago, Illinois 60606  
21 Telephone: (312) 477-3305  
22 Email: tjacobs@phrd.com  
23 jbucheit@phrd.com

24 **SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC**

25 Blaise S. Curet (SBN 124983)  
26 2001 Addison Street, Suite 110  
27 Berkeley, CA 94704  
28 Telephone: (415) 352-6200  
Email: bcuret@spcclaw.com

**LAW OFFICE OF ROBIN CRAIG**

Robin D. Craig (SBN 130935)  
6114 La Salle Ave., No. 517  
Oakland, CA 94611  
Telephone: (510) 549-3310  
Email: rdc@rcraiglaw.com

*Attorneys for Westport Insurance Corporation, formerly  
known as Employers Reinsurance Corporation*

By: /s/ Jeff D. Kahane

**SKARZYNSKI MARICK & BLACK, LLP**

Russell W. Roten (SBN 170571)  
Jeff D. Kahane (SBN 223329)  
Timothy W. Evanston (SBN 319342)

-11-

1 Isabelle Cho (SBN 360275)  
2 333 South Grand Avenue, Suite 3550  
3 Los Angeles, California 90017  
4 Telephone: (213) 721-0650  
5 rroten@skarzynski.com  
6 jkahane@skarzynski.com  
7 tevanston@skarzynski.com  
8 icho@skarzynski.com

9 -and-

10 **CLYDE & CO US, LLP**

11 Catalina J. Sugayan  
12 Yongli Yang (*pro hac vice*)  
13 30 S Wacker Drive, Suite 2600  
14 Chicago, IL 60606  
15 Telephone: (312) 635-7000  
16 Catalina.Sugayan@clydeco.us  
17 Yongli.Yang@clydeco.us

18 *Attorneys Certain Underwriters at Lloyd's, London, and*  
19 *Certain London Market Insurers*

20 By: /s/ Lauren Macksound

21 **DENTONS US LLP**

22 Lauren Macksound (admitted *pro hac vice*)  
23 1211 Avenue of the Americas, 25th Floor  
24 New York, NY 10020  
25 (212) 768-6700 (telephone)  
26 Lauren.macksound@dentons.com

27 Andrew D. Telles Wyatt (SBN 316740)  
28 4675 MacArthur Court, Suite 1250  
Newport Beach, CA 92660  
(949) 732-3700  
Andrew.wyatt@dentons.com

*Attorneys for Travelers Casualty & Surety Company f/k/a*  
*Aetna Casualty & Surety Company*

By: /s/ Miranda H. Turner

**PLEVIN & TURNER LLP**

Mark D. Plevin (SBN 146278)  
580 California Street, 12th Floor  
San Francisco, CA 94104  
(202) 580-6640 (telephone)  
mplevin@plevinturner.com

Miranda H. Turner (admitted *pro hac vice*)  
Jordan A. Hess (admitted *pro hac vice*)  
1701 Pennsylvania Ave., N.W., 2d Floor  
Washington, D.C. 20006

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(202) 580-6640 (telephone)  
mturner@plevinturner.com  
jhess@plevinturner.com

*Attorneys for Continental Casualty Company*

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

THE HONORABLE BARBARA J. HOUSER  
(RET.), IN HER CAPACITY AS TRUSTEE OF  
THE BSA SETTLEMENT TRUST,

Plaintiff,

v.

Case No. 3:23-cv-01592-S

ALLIANZ GLOBAL RISKS US INSURANCE  
COMPANY; *et al.*,

Defendants.

**PLAINTIFF'S BRIEF REGARDING THE EFFECT OF THE SETTLEMENT  
TRUSTEE'S ALLOWED CLAIM AMOUNT ON INSURED ABUSE CLAIMS ON THE  
NON-SETTLING INSURANCE COMPANIES' CONTRACTUAL OBLIGATIONS**

Jeffrey M. Tillotson  
TILLOTSON JOHNSON & PATTON  
1201 Main St., Suite 1300  
Dallas, TX 75202  
Telephone: (214) 382-3041

Kami E. Quinn (admitted *pro hac vice*)  
W. Hunter Winstead (admitted *pro hac vice*)  
Emily P. Grim (admitted *pro hac vice*)  
Charles K. Cooper (admitted *pro hac vice*)  
Michael B. Rush (admitted *pro hac vice*)  
Brittney M. Welch (admitted *pro hac vice*)

**GILBERT LLP**  
700 Pennsylvania Avenue, SE  
Suite 400  
Washington, DC 20003  
Telephone: (202) 772-2200  
Facsimile: (202) 772-3333

*Attorneys for the Honorable Barbara J. Houser  
(Ret.), in her capacity as Trustee of the BSA  
Settlement Trust*

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES.....	ii
INTRODUCTION .....	1
ARGUMENT.....	3
I.    The Insurance Policies Issued to BSA and Local Councils. ....	3
II.   The Determination of Abuse Claims Under the TDP.....	5
III.  The TDP Establish the Allowed Claim Amounts for Abuse Claims and Those Values Are Not Subject to Further Challenge by the Insurers. ....	9
IV.  The Plan Preserves the Insurers’ Ability to Participate in Determining Allowed Claim Amounts and Assert Coverage Defenses Under Their Policies. ....	10
V.   The Insurers’ Objections to the Allowed Claim Values Have Been Rejected.....	14
CONCLUSION.....	16

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>In re Boy Scouts of Am.</i> , 137 F.4th 126 (3d. Cir. 2025) .....	9
<i>In re Boy Scouts of Am.</i> , 772 F. Supp. 3d 496 (D. Del. 2025).....	8
<i>In re Boy Scouts of Am. and Del. BSA</i> , 642 B.R. 504 (Bankr. D. Del. 2022) .....	8, 13, 14
<i>In re Boy Scouts of America, et al.</i> , No. 20-10343, 650 B.R. 87, 178 (D. Del. Mar. 28, 2023).....	15
<i>Kravitz v. Samson Energy Co., LLC (In re Samson Res. Corp.)</i> , 590 B.R. 643 (Bankr. D. Del. 2018).....	8
<i>In re Vencor, Inc.</i> , 284 B.R. 79 (Bankr. D. Del. 2002).....	8
<b>Statutes</b>	
11 U.S.C. § 1127(b) .....	8
11 U.S.C. § 1141(a) .....	8, 13

## INTRODUCTION

The Court’s December 19, 2025 Order, Dkt. No. 593 (the “Order”) directed the parties to file briefing addressing the following question:

What effect(s), if any, does the Settlement Trustee’s Allowed Claim Amount on Insured Abuse Claims have on the Non-Settling Insurance Companies’ contractual obligation to pay under insurance policies issued to the Boy Scouts of America or Local Councils?

In short, an Allowed Claim Amount determined by the Trust in accordance with the Trust Distribution Procedures (“TDP”)<sup>1</sup> establishes the liability owed to an Abuse Claimant by the Trust. These amounts are binding on the Trust, as well as the Non-Settling Insurers. As a result, while the Non-Settling Insurers may contest coverage based on the terms of their policies or other legal grounds, they cannot challenge the value of the Allowed Claim Amounts. That issue is resolved by the TDP because, under BSA’s confirmed plan of reorganization (the “Plan”),<sup>2</sup> the TDP is the sole way by which Abuse Claims are determined and valued.

As set out below, the Non-Settling Insurance Companies<sup>3</sup> issued general liability insurance policies, that, with some variation in policy language, require the insurers to pay for losses that the insured is “legally obligated to pay,” including judgments and settlements, that arise from claims alleging an “occurrence” that results in “bodily injury” or “personal injury” during the relevant policy period. *See* Ex. 3, 1977-1978 National Union Fire Ins. Co. Policy No. BE 121 82 55 at 8. Settling Insurers and certain of the Non-Settling Insurers who are parties in this litigation paid, collectively, hundreds of millions of dollars to defend and settle claims alleging sexual abuse asserted against the Boy Scouts of America, Inc. (“BSA”) and/or its Local Councils prior to the

---

<sup>1</sup> Trust Distribution Procedures (“TDP”), *In re Boy Scouts of Am. And Del. BSA*, No. 20-10343 (Bankr. D. Del. 2022) [Dkt. No. 10296, Exhibit A]. A copy of the TDP is attached as Ex. 1.

<sup>2</sup> Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) for Boy Scouts of Am. and Del. BSA, LLC (“Plan”), *In re Boy Scouts of Am. And Del. BSA*, No. 20-10343 (Bankr. D. Del. 2022) [Dkt. No. 10296]. A copy of the Plan is attached as Ex. 2.

<sup>3</sup> Capitalized terms not otherwise defined herein have their meanings set forth in the Plan.

filing of the BSA bankruptcy case.<sup>4</sup> The terms of the Non-Settling Insurers' general liability insurance policies remain the same as they were when these claims were paid, and they continue to cover these same liabilities arising from Abuse Claims.

The only difference between the pre-BSA bankruptcy regime whereby BSA and Local Council insurers paid for Abuse Claims and the current post-BSA bankruptcy posture is the procedural mechanisms whereby the values of Abuse Claims are established. The Settlement Trustee is implementing processes, including the Claims Matrix and the Independent Review Option, established by the Plan to determine the values of Abuse Claims. The Bankruptcy Court found, and relied on the fact in confirming the Plan, that these procedures were designed to take into account and apply the same values and factors that BSA and its insurers took into account in settling claims pre-petition.

Despite the Non-Settling Insurers' opposition to BSA's Plan at every turn, the Plan—including the TDP, pursuant to which BSA Abuse Claims are determined under the Claims Matrix and the Independent Review Option—was confirmed by the United States Bankruptcy Court for the District of Delaware. The Plan was then affirmed on appeal, despite continued opposition from the Non-Settling Insurers, first by the United States District Court for the District of Delaware and subsequently by the United States Court of Appeals for the Third Circuit. Finally, on January 12, 2026, the United States Supreme Court denied a Petition for Writ of Certiorari filed by a small group of dissenting sexual abuse Survivors.

The Plan, including the TDP, is binding on the Trust and all holders of Abuse Claims and provides the only means by which Abuse Claims, which have been channeled to the Trust, can be determined and valued. The Allowed Claim Amounts determined by the Trust establish the

---

<sup>4</sup> In addition, the Settling Insurers committed to pay over \$1.6 billion for Abuse Claims through settlements reached during BSA's bankruptcy case.

amount the Trust is “legally obligated to pay” for Abuse Claims, just as a judgment or settlement in the tort system did prior to BSA’s bankruptcy filing. The Trust then tenders Allowed Claim Amounts to the Non-Settling Insurers for payment in accordance with the terms of their respective insurance policies. Pursuant to the terms of the Plan, the insurers retain the ability to challenge coverage for Abuse Claims based on the terms of their policies and applicable law. The Plan also provides avenues whereby Non-Settling Insurers can participate in the determination of Allowed Claim Amounts, which the insurers have actively exercised. However, the Plan, does not permit the Non-Settling Insurers to challenge Allowed Claims Amounts that the Settlement Trustee determines in accordance with the TDP. Those Allowed Claim Amounts fully and finally establish the amount of the liability for each Abuse Claim.

### **ARGUMENT**

#### **I. The Insurance Policies Issued to BSA and Local Councils.**

The insurance policies purchased by BSA and its Local Councils whose rights have been assigned to the Trust are commercial general liability policies that provide coverage for claims asserted against the insureds by third parties. Though the wording varies from policy to policy, an illustrative example can be found in the policy issued by Allianz Insurance Company for the period January 1, 1980 to January 1, 1981 (Allianz Policy No. UMB 599346). This policy’s insuring agreement states:

COVERAGE. The Company hereby agrees, subject to the limitations, terms and conditions hereinafter mentioned, to indemnify the Insured for all sums which the Insured shall be obligated to pay by the reason of the liability

- A. imposed upon the Insured by law, or
  - B. assumed under contract or agreement by the Named Insured,
- for damages on account of
- A. Personal Injuries

B. Property Damage

C. Advertising Liability,

caused by or arising out of each occurrence anywhere.

See Ex. 4, Allianz Policy No. UMB 599346, Insuring Agreements at Page 1.

This Allianz policy includes the following definitions:

- V. BODILY INJURY. Means bodily injury, sickness or disease, including death and care and loss of services resulting therefrom sustained by any person.
- VII. DAMAGES. The term “Damages” includes damages for death and for care and loss of services resulting from personal injury and damages for loss of use of property resulting from property damage.
- IX. OCCURRENCE. The term “Occurrence” means an accident, including injurious exposure to conditions, which results during the policy period, in personal injury, property damage or advertising liability neither expected nor intended from the standpoint of the Insured.
- X. PERSONAL INJURY. (1) Means bodily injury, shock, mental injury or mental anguish; (2) false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, malicious prosecution or humiliation; except that maliciously inflicted by, at the direction of, or with the consent of the Insured ....

*Id.*, Definitions at Page 5.

Under this particular policy, Allianz paid \$1.75 million to settle one sexual abuse claims asserted against BSA and/or its Local Councils prior to its bankruptcy filing. See Ex. 5, Allianz Global Risks US Insurance Company’s Motion to Lift Stay, *National Surety Corporation v. The Honorable Barbara J. Houser (Ret.) in her Capacity as Trustee of the BSA Settlement Trust, et al.*, No. 17 CH 14975 (July 22, 2025).

In sum, the Insurance Policies assigned to the Trust under the Plan promise in their affirmative grants of coverage to indemnify the insured for, or to pay on the insured’s behalf, all damages and defense costs that the insured becomes legally obligated to pay:

- a. because of personal injury caused by an occurrence during the policy period;
- b. on account of personal injuries caused by or arising out of an occurrence;
- c. by reason of bodily injury which occurs after the retroactive date and before the end of the policy period and is caused by an occurrence; or
- d. pursuant to similar wording.

The risk undertaken and insured by the Non-Settling Insurers under the general liability insurance policies purchased by BSA and its Local Councils remains the same following the assignment of BSA's insurance rights to the Trust under the Plan. The liabilities that implicate the insurers' policies likewise remain the same, having been incurred based on pre-petition incidents; *i.e.*, the sexual abuse of tens thousands of individuals who participated in Scouting with BSA going back decades. The grant of coverage afforded by the insurers' policies remains unchanged, and the Non-Settling Insurers remain obligated to pay for liabilities arising out of Abuse Claims under those policies. *See* Plan at Art. X.M.

## **II. The Determination of Abuse Claims Under the TDP.**

The procedures by which Abuse Claims are determined and valued, however, have been changed by the confirmed Plan, consistent with the Debtors' obligations under the Bankruptcy Code. Under the Plan, all Direct Abuse Claims that historically could have been pursued through litigation against BSA and/or its Local Councils in state and federal courts throughout the country are enjoined and channeled to the Settlement Trust. *See* Ex. 1, TDP at Art. IV.B.; *see also* TDP at Art. X.F.

The TDP and Trust Agreement both state unequivocally that the TDP provides the sole and exclusive mechanism for valuing and resolving Abuse Claims. *See* Ex. 6, BSA Settlement Trust

Agreement Section 1.2 (“For the avoidance of doubt, all Abuse Claims asserted against the Debtors in the Chapter 11 Cases shall be resolved exclusively in accordance with the TDP.”)<sup>5</sup>; TDP at Art. I.D (“These TDP and any procedures designated in these TDP, including the Individual Review Option, shall be the sole and exclusive methods by which an Abuse Claimant may seek allowance and distribution on an Abuse Claim that is subject to the Channeling Injunction with respect to the Protected Parties.”).

Claimants who did not elect to receive an Expedited Distribution<sup>6</sup> may choose between two other claims processing options. One of those options is the “Matrix” claims process. Under the Matrix process, Abuse Claims are evaluated and placed in one of six possible tiers—depending on the severity of the Abuse. Each level in turn has separate base values and maximum values. The criteria for evaluating Matrix claims and their valuation ranges are set forth in the TDP. *See* TDP at Art. VIII.

The other claims processing alternative is the Independent Review Option (the “IRO”). The IRO allows holders of Abuse Claims to have a “Neutral”—designated in the TDP as a retired judge with tort experience—evaluate their claims through a process that is designed to replicate what a jury might award outside the Settlement Trust process. *See* TDP at Art. XIII.

In order to pursue the “Matrix” option, holders of Direct Abuse Claims may submit a Trust Claim Submission to the Settlement Trust for evaluation. This submission includes (1) submitting a completed questionnaire signed under oath; (2) producing all documents related to the Abuse Claim and a signed agreement to produce further documents or information upon request of the

---

<sup>5</sup> Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) for Boy Scouts of Am. and Del. BSA, LLC (“BSA Settlement Trust Agreement”), *In re Boy Scouts of Am. And Del. BSA*, No. 20-10343 (Bankr. D. Del. 2022) [Dkt. No. 10296, Exhibit B]. A copy of the BSA Settlement Trust Agreement is attached as Ex. 6.

<sup>6</sup> Under the terms of the Plan, Expedited Distributions are not recoverable from Insurers.

Settlement Trustee; and (3) consenting to a Trustee Interview and a written or oral examination, if needed. The Settlement Trustee then considers all information received and evaluates, pursuant to the factors set forth in the TDP, the credibility and validity of each Abuse Claim and makes an approval or allowance determination. For each Allowed Abuse Claim, the Settlement Trustee assigns a base value dependent on the tier of abuse and which is established by the TDP. The Trust then analyzes the individual Claim to determine whether specific aggravating factors (that increase the Base Matrix Value of the claim) or mitigating factors (that decrease the Base Matrix Value of the claim) in the TDP apply. This process is consistent with BSA's pre-petition settlement practices. *See* TDP at Art. VIII ("The Abuse Types, Scaling Factors, Base Matrix Values, and Maximum Matrix Values that are set forth in the Claims Matrix have all been selected and derived with the intention of achieving a fair and reasonable Abuse Claim valuation range in light of the best available information, considering the settlement, verdict and or/judgments that Abuse Claimants would receive in the tort system against the Protected Parties absent the bankruptcy.")<sup>7</sup>

To the extent the holder of an Abuse Claim disagrees with the Allowed Claim Amount determined by the Trust, they may seek reconsideration under Article VII.G of the TDP. To the extent the holder of an Abuse Claim disagrees with the Settlement Trustee's decision on reconsideration, they may litigate their Abuse Claim *de novo* in any court of competent jurisdiction, subject to the procedures set forth in Article XII of the TDP, and their Allowed Claim Amount shall be equal to the settlement or final judgment amount obtained in the tort system, less any payments actually received and retained by the Abuse Claimant.

---

<sup>7</sup> One example of an aggravating factor is referred to as the "Abuser Profile" under which the Trust will assign an upward scaling factor in circumstances where the abuser was accused by other alleged victims of abuse. *See* TDP at Art. VIII.C.ii. One example of a mitigating factor is referred to as "Familial Relationship" under which the Trust will reduce the Allowed Claim Amount in situations where the perpetrator also had a familial relationship with the Claimant. *See* TDP at Art. VIII.D.i.a.

Article XIII of the TDP sets forth the process for resolving IRO claims. It provides that “an independent, neutral third party . . . [will] make a settlement recommendation (the “Settlement Recommendation”) to the Settlement Trustee seeking to replicate to the extent possible the amount a reasonable jury might award[.]” TDP at Art. XIII.A. If the Settlement Trustee accepts the Settlement Recommendation, the recommendation becomes the Allowed Claim Amount. Article XIII further provides that,

“[i]f the Settlement Trustee declines to follow the Neutral’s recommendation as to the Allowed Claim Amount for an Independent Review Claim (a “Recommendation Rejection”), within forty-five (45) days after the holder being served notice of the Recommendation Rejection, the holder of such Direct Abuse Claim may commence a lawsuit in any court of competent jurisdiction against the Settlement Trust to obtain the Allowed Claim Amount of the Direct Abuse Claim.”

*Id.* Under the TDP, all neutrals are to be selected from a panel of retired judges with tort experience maintained by the Settlement Trust. *See* TDP at Art. XIII.A.

The TDP were designed to emulate BSA’s pre-bankruptcy claims handling practices and historical claim resolution process. Prior to the commencement of their bankruptcy cases, in resolving claims, BSA and their defense counsel weighed many factors, including the severity of the alleged Abuse, the negative publicity from the claim, BSA’s negligence, the likelihood of prevailing on applicable defenses (including those based on statute of limitations), the likelihood of success on the overall claim under the applicable law, and the potential cost in litigating the claim, among other factors. It was established in the bankruptcy proceedings that BSA and its Local Councils often settled Abuse Claims, albeit for reduced compensation, even where they believed they had strong defenses or were otherwise likely to succeed in litigation. *See, e.g., In re Boy Scouts of Am. and Del. BSA*, 642 B.R. 504, 658 (Bankr. D. Del. 2022) (“[T]he uncontroverted testimony of Mr. Griggs [BSA’s defense counsel] is that prepetition BSA was not often successful in asserting statute of limitations defenses even in states where the defense was viable, and that

even when BSA prevailed on a statute of limitations defense it still might subsequently settle the claim.”).

**III. The TDP Establish the Allowed Claim Amounts for Abuse Claims and Those Values Are Not Subject to Further Challenge by the Insurers.**

A confirmed plan of reorganization binds all parties in interest. *In re Boy Scouts of Am.*, 772 F. Supp. 3d 496, 512 (D. Del. 2025) (citing 11 U.S.C. §§ 1127(b), 1141(a); *Kravitz v. Samson Energy Co., LLC (In re Samson Res. Corp.)*, 590 B.R. 643, 649 (Bankr. D. Del. 2018); *In re Vencor, Inc.*, 284 B.R. 79, 85 (Bankr. D. Del. 2002)). The TDP and Trust Agreement pursuant to which Allowed Claim Amounts are determined and established for Abuse Claims are both integral components of the Plan. *In re Boy Scouts of Am.*, 137 F.4th 126, 144 (3d. Cir. 2025) (“In addition to establishing the Settlement Trust, the Plan sets forth the Trust Distribution Procedures that govern distribution of trust assets to individual claimants.”).

The TDP and Trust Agreement both state unequivocally that the TDP provides the sole and exclusive mechanism for valuing and resolving Abuse Claims. *See* BSA Settlement Trust Agreement Section 1.2 (“For the avoidance of doubt, all Abuse Claims asserted against the Debtors in the Chapter 11 Cases shall be resolved exclusively in accordance with the TDP.”); TDP at Art. I.D (“These TDP and any procedures designated in these TDP, including the Individual Review Option, shall be the sole and exclusive methods by which an Abuse Claimant may seek allowance and distribution on an Abuse Claim that is subject to the Channeling Injunction with respect to the Protected Parties.”). The Settlement Trustee, as a named party to the Trust Agreement, is bound to follow the claim valuation procedures set forth in the TDP, and is liable in her capacity as Settlement Trustee to pay the amounts awarded thereunder. *See* BSA Settlement Trust Agreement Section 2.1(d)(ii) (stating that the Settlement Trustee shall have the power to “adopt procedures to allow valid Abuse Claims (“Allowed Abuse Claims”), and determine an

allowed liability amount for each Allowed Abuse Claim...in accordance with the TDP”); *id.* at Section 4.1 (“The Trust shall fairly and reasonably compensate Allowed Abuse Claims and shall pay up to the full value of such claims, solely in accordance with the Trust Documents, including the TDP...”).

The Plan and Confirmation Order provide expressly that “[t]he allowed amount of any Direct Abuse Claim shall be the amount therefor as determined under the Trust Distribution Procedures. Such allowed amount shall be legally enforceable against the Settlement Trust.” Dkt. No. 10316 (“Confirmation Order”)<sup>8</sup>, at Art. II.I.4.

Neither the Settlement Trustee, nor the insurers, are permitted by the Plan to value Allowed Claim Amounts in a manner other than those provided for by the TDP and Trust Agreement. Under the terms of the TDP and the Trust Agreement, once the Allowed Claim Amount is established for an Abuse Claim, it becomes binding and not subject to further adjustment.

#### **IV. The Plan Preserves the Insurers’ Ability to Participate in Determining Allowed Claim Amounts and Assert Coverage Defenses Under Their Policies.**

Although the Plan and Trust Documents do not afford the insurers a right to challenge the Allowed Claim Amounts established for Abuse Claims in accordance with the TDP, these documents, and the processes the Trust has implemented to administer the Abuse Claims, do permit the insurers to participate in the determination of Allowed Claim Amounts. Furthermore, the insurers retain their ability to assert coverage defenses that may be available under their policies and applicable law. Confirmation Order, Article at II.I.4 (“[N]othing herein determines whether

---

<sup>8</sup> Supplemental Findings of Fact and Conclusions of Law and Order Confirming the Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) for Boy Scouts of America and Delaware BSA, LLC (“Confirmation Order”), *In re Boy Scouts of Am. And Del. BSA*, No. 20-10343 (Bankr. D. Del. 2022) [Dkt. No. 10316], Ex. 7.

or not any insurer is obligated to pay the amount determined under the Trust Distribution Procedures for an allowed Direct Abuse Claim.”).

The Settlement Trust provides notice to the insurers at three significant stages of the evaluation of a Matrix claim pursuant to the TDP. “Responsible Insurer Notice #1” notifies insurers of new Matrix claims as they are submitted to the Settlement Trust.<sup>9</sup> “Responsible Insurer Notice #2” is issued once the Settlement Trust determines that certain claims are potentially covered by an insurer’s policy(ies). *Id.* Here, the Settlement Trust sends a notice of all such claims to all potentially “Responsible Insurers,” which triggers a 21-day period for insurers to provide input on the Settlement Trust’s calculation of a proposed award for those claims. Responsible Insurers that have executed a confidentiality agreement with the Settlement Trust have access to the claim file for each claim for which they are potentially responsible. The claim files are maintained electronically in a virtual portal to which the Insurers can access relevant claim information.

Lastly, once the Settlement Trust has prepared a proposed award letter for a claim determined to be potentially covered by an insurer’s policy(ies), the Settlement Trust provides the insurer with “Responsible Insurer Notice #3.” *Id.* This notice includes a draft calculation for the proposed award, including a breakdown of the applicable mitigating and aggravating factors and the corresponding values assigned by the Trust. The Responsible Insurers have 7 days to object to this proposed award.

Insurers likewise are afforded an opportunity to participate in the determination of Allowed Claim Amounts for IRO Claims. Claimants electing the IRO must pay an initial \$10,000 administrative fee to the Settlement Trust or request a fee waiver. Within seven (7) days of paying

---

<sup>9</sup> Plaintiff’s Supplemental Brief Addressing the Third Circuit’s Opinion in *In re Boy Scouts of America*, Declaration of the Honorable Barbara J. Houser (Ret.) No. 23-01592 (N.D. Tex. June, 2 2025) [Dkt. No. 438].

this fee or receiving a waiver, the Claimant must file a complaint (the “IRO Complaint”). Within twenty-eight (28) days of the filing of the IRO Complaint, the Settlement Trust, acting through its Claims Administrator, provides written notice to the applicable “Responsible Insurers” that issued policies to BSA or Local Councils based upon the allegations set forth in the IRO Complaint. The Claims Administrator for the IRO (Hon. Michael J. Reagan (Ret.)) then selects a Neutral to preside over the IRO process, who must be a retired judge with tort experience and who is then retained by the Trust pursuant to a written agreement signed by the Settlement Trustee and the Neutral. Responsible Insurers are provided notice of the Neutral’s name and, along with other participating parties, afforded an opportunity to challenge the appointment of the Neutral.

Responsible Insurers may elect to participate in the IRO process by filing notice of an intent to participate, an answer to the IRO Complaint, or some other responsive pleading to the IRO Complaint. To date, insurers have elected to participate in all IRO proceedings. Responsible Insurers and other parties are afforded the opportunity to participate in discovery in connection with an IRO Claim and have the right to request a sworn interview of the Claimant (up to six hours), a mental health examination, or supplemental signed and dated interrogatory responses from the Claimant.

After the close of discovery in the IRO process, an IRO Claimant has the option of proceeding with a hearing or may submit his Claim for consideration by the Neutral based solely on the written record. The Claimant may, alternatively, elect to switch to the Matrix claims determination process. If the IRO Claimant elects to proceed to have his claim determined through the IRO process, he then pays a second \$10,000 administrative fee or may request a fee waiver. Whether a Claimant proceeds with an IRO Hearing or submits his Claim to the Neutral for consideration based on the written record, the Responsible Insurers may file a brief responding to

issues raised in a brief submitted by the Claimant. Defenses asserted by Responsible Insurers are considered in the Neutral's ultimate recommendation regarding settlement (the "Settlement Recommendation"). The Claimant bears the burden of proof to establish his claims. Responsible Insurers bear the burden of proof to establish their defenses.

For Claims that proceed to an IRO hearing, Responsible Insurers may call witnesses, designate deposition transcript excerpts, introduce exhibits, make evidentiary objections, cross-examine witnesses, and make arguments. For Claims that proceed based on the written record, Responsible Insurers are afforded the opportunity to make evidentiary objections and submit written arguments.

To date, Responsible Insurers have participated in the resolution of all IRO Claims, irrespective of whether the Claim was evaluated by the Neutral based on the written record or the Neutral held an IRO hearing.<sup>10</sup>

In addition, the TDP afford other protections to insurers who purport to have rights to mitigate their obligations by setting off or recouping payments either from other insurers or from the Trust. For example, under the Plan any alleged insurers' rights of setoff and recoupment (to the extent permitted under applicable law) are preserved to allow the insurers to assert any deductible obligation against the Trust, subject to defenses.

The Plan also preserves the ability of the insurers to contest their obligations to pay Abuse Claims based on a coverage defense. *See* (Plan at Art. IX.A.3.j., X.M). If the facts of a particular Abuse Claim asserted against BSA and/or the Trust trigger an exclusion or other policy defense, the defense is preserved. If such defense succeeds, the insurer(s) are not required to pay that particular Abuse Claim. *Id.*

---

<sup>10</sup> While not all Settlement Recommendations have been received to date, hearings have been held and concluded or cases have been submitted on the written record for all but one IRO claim.

The insurers are not permitted under the Plan to attack the Allowed Claim Amount for an Abuse Claim determined in accordance with the terms of the TDP and the Trust Agreement. Nor are the insurers entitled to re-litigate their objections to the TDP themselves, which were already adjudicated during the bankruptcy proceedings. *See* TDP at Art. X.C.; *see also* 642 B.R. 504, 630–631 (Bankr. D. Del. 2022) (“Section 1141 of the Code provides for the effect of confirmation of a plan. With exceptions not relevant here, § 1141(a) provides: ‘ . . . the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.’ And as the Coalition notes, there is abundant common law on the doctrine of *res judicata* and collateral estoppel as it applies to orders confirming plans. Any order entered in these cases will be final when it is entered. It will have the effect it has.”).

#### **V. The Insurers’ Objections to the Allowed Claim Values Have Been Rejected.**

Most of the insurer parties in this case objected to the TDP criteria for valuing Direct Abuse Claims during BSA’s Plan confirmation process and subsequent appeals, arguing, among other things, that the TDP would lead to inflated claim values.<sup>11</sup> Among other arguments, the objecting insurers contended that the Base Matrix Values of the TDP did not reflect tort system settlement values based on their preferred interpretation of the expert testimony offered by BSA’s expert on claims valuation.<sup>12</sup> The insurers have already begun to recycle these failed arguments in this case, as evidenced by certain of their unfounded allegations regarding inflated Abuse Claim values

---

<sup>11</sup> *See* Certain Insurers’ Objection to Confirmation of Debtors’ Chapter 11 Plan, *In re Boy Scouts of Am. and Del. BSA*, No. 20-10343 (LSS) (Bankr. D. Del. Feb. 4, 2022), [Dkt. No. 8695] at ¶¶ 176–79.

<sup>12</sup> *Id.* at ¶¶ 37–38; 65–69.

included in their pending motions to dismiss. *See* Memorandum in Support of Undersigned Defendants’ Partial Motion to Dismiss the Amended Complaint, ECF 543 at 11.

The Bankruptcy Court overruled the insurers’ objections, finding that nothing in the record suggested the TDP were not proposed in good faith or would increase the insurers’ quantum of liability.<sup>13</sup> In so doing, the Court concluded that BSA’s claim valuation expert did not testify to the expected value of any individual claim, and that the actual liquidated value of the Abuse Claims would be determined by the Settlement Trustee “on a claim-by-claim basis” under the TDP. *Id.* at 651. The District Court affirmed.<sup>14</sup> The insurers did not appeal this issue to the Third Circuit. The notion that any aggregate quantum of liability for Abuse Claims has been fixed for the Trust by any expert opinion offered in the Bankruptcy Case is simply not true.

On the contrary, the Bankruptcy Court recognized expressly that (1) the reports of experts offered by BSA were only their “best estimates” of the aggregate value of the Direct Abuse Claims and the coverage available to pay those Direct Abuse Claims, and (2) the Court was accepting them “for purposes of confirmation” only. *Id.* at 558–60. The Court further emphasized, “Notwithstanding [BSA’s expert’s] valuation . . . only a claim-by-claim analysis performed by the Settlement Trustee as contemplated by the TDP will establish the actual amount of any individual Direct Abuse Claim or the aggregate amount of Direct Abuse Claims.” *Id.* at 557.

The Confirmation Order reiterated that the aggregate value of the Direct Abuse Claims would be decided by the Trust. Art. II.J.1 of the Confirmation Order states that, “[t]he Court’s determination of the likely aggregate valuation of Direct Abuse Claims for purposes of Confirmation does not establish: (a) the actual amount of any individual Direct Abuse Claim; or

---

<sup>13</sup> 642 B.R. at 658 (“In the abstract, I cannot find based on the record before the court that this result means the Plan was not proposed in good faith. Nor can I conclude based on the record before the court, that the payment, or even existence of this claim, increases the quantum of liability for any primary insurer much less any excess insurer.”).

<sup>14</sup> *In re Boy Scouts of America, et al.*, No. 20-10343, 650 B.R. 87, 178 (D. Del. Mar. 28, 2023); *see id.* at 118.

(b) the actual aggregate amount of Direct Abuse Claims.” The Confirmation Order further provides at Art. II.J.2 that, “[t]he allowed amount of Direct Abuse Claims, either individually or in the aggregate, will be determined pursuant to the Trust Distribution Procedures.”

The allowed amount of Direct Abuse Claims, either individually or in the aggregate, is required to be determined pursuant to the TDP. Confirmation Order, Article II.J. An adjudication in the tort system of BSA’s liabilities for Abuse Claims is not only impermissible under the Plan, but also under the Bankruptcy Code, which requires that the BSA’s assets, including proceeds from its insurance policies, be distributed equitably to similarly situated classes of creditors, such as Abuse Claimants, and not on an *ad hoc* basis as thousands of claims are resolved through civil litigation. The insurers’ attempts to revive their bankruptcy case objections to the Plan and TDP, which were rejected, in this action in an effort to minimize their exposure for Abuse Claims are unfounded.

### **CONCLUSION**

For the reasons discussed above, the Allowed Claim Amounts for Abuse Claims determined by the Trust pursuant to either the Matrix or Independent Review Option establish the liability owed to an Abuse Claimant by the Trust. These liquidated values for Abuse Claims are binding on the Trust as well as the Non-Settling Insurers, who are foreclosed by the terms of the Plan from contesting their coverage obligations for Abuse Claims based upon the value of Allowed Claim Amounts determined in accordance with the TDP. The insurers remain free to participate in the determination of the Abuse Claims through the procedures set forth in the TDP, as they have to date. The insurers also remain able to assert defenses to coverage for Abuse Claims under the terms of their policies. But they are not permitted under the Plan to refuse to pay Abuse Claims because they disagree with the Allowed Claim Value for a particular Abuse Claim determined in accordance with the TDP.

There will be many issues to address in this case, and the Trust is eager to proceed with doing so. But re-litigating, claim-by-claim, the individual Allowed Claim Amounts for tens of thousands of Abuse Claims determined by the Trust in accordance with the Plan and TDP is neither required nor permitted by BSA's confirmed Plan.

Dated: January 16, 2026

Respectfully submitted,

*/s/Jeffrey M. Tillotson*

Jeffrey M. Tillotson

Texas Bar No. 20039200

[jtillotson@tillotsonlaw.com](mailto:jtillotson@tillotsonlaw.com)

**TILLOTSON JOHNSON & PATTON**

1201 Main St., Suite 1300

Dallas, TX 75202

Telephone: (214) 382-3041

- AND -

Kami E. Quinn (admitted *pro hac vice*)

W. Hunter Winstead (admitted *pro hac vice*)

Emily P. Grim (admitted *pro hac vice*)

Charles K. Cooper (admitted *pro hac vice*)

Michael B. Rush (admitted *pro hac vice*)

Brittney M. Welch (admitted *pro hac vice*)

**GILBERT LLP**

700 Pennsylvania Avenue, SE

Suite 400

Washington, DC 20003

Telephone: (202) 772-2200

Facsimile: (202) 772-3333

*Attorneys for the Honorable Barbara J. Houser  
(Ret.), in her capacity as Trustee of the BSA  
Settlement Trust*

**CERTIFICATE OF SERVICE**

This is to certify that on this 16th day of January 2026, a true and correct copy of the foregoing document was served on Plaintiff's counsel of record by electronic transmission, pursuant to the Texas Rules of Civil Procedure.

/s/ Jeffrey M. Tillotson  
Jeffrey M. Tillotson

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

THE HONORABLE BARBARA J. HOUSER  
(RET.), IN HER CAPACITY AS TRUSTEE OF  
THE BSA SETTLEMENT TRUST,

Plaintiff,

v.

Case No. 3:23-cv-01592-S

ALLIANZ GLOBAL RISKS US INSURANCE  
COMPANY; *et al.*,

Defendants.

**PLAINTIFF'S OMNIBUS RESPONSE TO DEFENDANTS' BRIEFING REGARDING  
THE EFFECT OF THE SETTLEMENT TRUSTEE'S ALLOWED CLAIM AMOUNT  
FOR INSURED ABUSE CLAIMS ON THE NON-SETTLING INSURANCE  
COMPANIES' CONTRACTUAL OBLIGATIONS**

Jeffrey M. Tillotson  
**TILLOTSON JOHNSON & PATTON**  
1201 Main St., Suite 1300  
Dallas, TX 75202  
Telephone: (214) 382-3041

Kami E. Quinn (admitted *pro hac vice*)  
W. Hunter Winstead (admitted *pro hac vice*)  
Emily P. Grim (admitted *pro hac vice*)  
Charles K. Cooper (admitted *pro hac vice*)  
Michael B. Rush (admitted *pro hac vice*)  
Brittney M. Welch (admitted *pro hac vice*)

**GILBERT LLP**  
700 Pennsylvania Avenue, SE  
Suite 400  
Washington, DC 20003  
Telephone: (202) 772-2200  
Facsimile: (202) 772-3333

*Attorneys for the Honorable Barbara J. Houser  
(Ret.), in her capacity as Trustee of the BSA  
Settlement Trust*

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES.....	ii
INTRODUCTION .....	1
ARGUMENT.....	4
I.    The Adversarial Negotiation of the TDP and BSA’s Plan.....	4
II.   The Bankruptcy Court Rejected the Insurers’ Objections to the TDP and Principles of <i>Res Judicata</i> and Collateral Estoppel Preclude Them from Relitigating Those Objections in This Litigation.....	7
III.  The Authorities Relied Upon by the Defendant Insurers Are Inapplicable.....	12
IV.  The Trustee’s Incentive to Appropriately Determine and Value Abuse Claims.....	19
V.   “ <i>No Action</i> ” Clauses in Certain of the Defendant-Insurers’ Policies Are Irrelevant to the Court’s Question.....	24
A.  CNA’s Arguments Regarding “ <i>No Action</i> ” Clauses Should Be Rejected. ....	24
B.  CNA’s Arguments Concerning the “ <i>No Action</i> ” Clauses Is Outside the Limited Scope of Briefing Requested by the Court. ....	25
C.  Resolution of the Applicability of “ <i>No Action</i> ” Clauses Depends on Factual Issues and Is Therefore Premature.....	25
VI.  An Alternative Approach to Abuse Claims Valuation Is Neither Permitted by the Bankruptcy Code Nor Practical. ....	28
CONCLUSION.....	30

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 .....	7
<i>Ellis v. Amex Life Ins. Co.</i> , 211 F.3d 935 (5th Cir. 2000) .....	8
<i>Eureka Fed. Sav. &amp; Loan Ass’n v. Am. Cas. Co. of Reading, Pa.</i> , 873 F.2d 229 (9th Cir. 1989) .....	26
<i>Evanston Ins. Co. v. ATOFINA Petrochemicals, Inc.</i> , 256 S.W.3d 660 (Tex. 2008) .....	18, 19
<i>First Nat’l Indem. Co. v. Mercado</i> , 511 S.W.2d 354 (Tex. Civ. App. 1974) .....	27
<i>Great Am. Ins. Co. v. Hamel</i> , 525 S.W.3d 655 (Tex. 2017) .....	passim
<i>Hernandez v. Gulf Grp. Lloyds</i> , 875 S.W.2d 691 (Tex. 1994) .....	18, 19
<i>Ideal Mut. Ins. Co. v. Myers</i> , 789 F.2d 1196 (5th Cir. 1986) .....	27
<i>In re Ark–La–Tex Timber Co.</i> , 482 F.3d 319 (5th Cir. 2007) .....	8
<i>In re Babcock &amp; Wilcox Co.</i> , No. 00-10992, 2004 WL 4945985 (Bankr. E.D. La. Nov. 9, 2004), <i>vacated on other grounds</i> , 2005 WL 4982364 (E.D. La. Dec. 28, 2005) .....	30
<i>In re Boy Scouts of Am.</i> , No. 20-10343 (LSS), 2022 WL 20541782 (Bankr. D. Del. Sept. 8, 2022)21	
<i>In re Boy Scouts of America</i> , 137 F.4th 126 (3d. Cir. 2025) .....	23
<i>In re Boy Scouts of America</i> , 642 B.R. 504 (Bankr. D. Del. 2022) .....	5, 7

*In re Fed.-Mogul Glob., Inc.*,  
684 F.3d at 380 n.38..... 28, 30

*In re Findley*,  
993 F.2d 7 (1993)..... 7

*In re Illinois National Insurance Company*,  
685 S.W.3d 826 (Tex. 2024) ..... passim

*In re Jason Pharms., Inc.*,  
224 B.R. 315 (Bankr. D. Md. 1998)..... 29

*In re Joint Eastern & Southern Dist. Asbestos Litig.*,  
982 F.2d 721 (2d Cir. 1992)..... 7

*In re K.D. Co.*,  
254 B.R. 480 (10th Cir. BAP 2000)..... 8

*In re Petition of the Bd. of Dirs. of Hopewell Int’l Ins.*,  
281 B.R. 200 (Bankr. S.D.N.Y. 2002)..... 29

*In re Sandia Resorts, Inc.*,  
557 B.R. 217 (D.N.M. 2016) ..... 12

*Lewis v. Mfrs. Nat’l Bank of Detroit*,  
364 U.S. 603 (1961)..... 29

*National Union Fire Ins. Co. of Pittsburg, PA v. Boy Scouts of Am. (In re Boy Scouts of Am.)*,  
650 B.R. 87 (D. Del. 2023)..... 4

*National Union Fire Insurance Co. of Pittsburgh v. Porter Hayden Co.*,  
No. CIV CCB-03-3408, 2012 WL 734176 (D. Md. Mar. 6, 2012)..... 29

*Nutmeg Ins. Co. v. Employers Ins. Co. of Wausau*,  
No. Civ. A. 3:04-CV-1762B, 2006 WL 453235 (N.D. Tex. Feb. 24, 2006) ..... 27

*Owens-Corning Fiberglas Corp. v. Allstate Ins. Co.*,  
660 N.E.2d 755 (Ohio Ct. C.P. 1993) ..... 26

*Simon v. Maryland Casualty Co.*,  
353 F.2d 608 (5th Cir. 1965)..... 26

*State Farm Fire & Cas. Co. v. Gandy*,  
925 S.W.2d 696 (Tex. 1996) ..... passim

*Stipulation Between the Settlement Trust and Liberty Mutual Ins. Co.*,  
Case No. 20-10343 (LSS), D.I. 13331 (Bankr. D. Del. Dec. 17, 2025) ..... 23

*Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.*,  
602 U.S. 268 (2024)..... 28

*United States v. Shanbaum*,  
10 F.3d 305 (5th Cir. 1994)..... 8

**Other Authorities**

7A Couch on Insurance, § 105.7 (3d. ed.) ..... 27

8 Appleman, *Insurance Law and Practice* § 4851, at 256, 259, § 4854, at 264, 268..... 26

<https://www.scoutingsettlementtrust.com/s/article/16-2-How-much-money-will-be-in-my-initial-distribution> (last accessed on Jan. 23, 2026)..... 3

## INTRODUCTION

The Defendant Insurers’<sup>1</sup> various submissions in response to the Court’s December 19, 2025 Order, Dkt. No. 593 (the “Order”) share a common thread—a desire to re-litigate the same concerns and defenses to coverage under their policies that they asserted in opposing the Plan;<sup>2</sup> to ignore the Allowed Claim Amounts the Settlement Trustee is determining, with the insurers’ involvement, in accordance with the TDP; and to re-value, at amounts to their liking and that minimize their obligations, the over 58,000 Abuse Claims that have been submitted to the Settlement Trust for determination under the Matrix and IRO processes.

In doing so, the Defendant Insurers argue, as they did during BSA’s bankruptcy case, that the Matrix and IRO processes under the Plan used to determine Allowed Claim Amounts are insufficient to determine the values of Abuse Claims and lead to inflated claim values. However, the Defendant Insurers litigated these positions at length in BSA’s bankruptcy case, including at a contested confirmation hearing, following years of hard-fought negotiations between BSA, its insurers, and Abuse Claimants to establish the claims criteria, values, and processes memorialized in the TDP. The Bankruptcy Court rejected the Defendant Insurers’ positions. Confirmation of the Plan was affirmed by the United States District Court for the District of Delaware and upheld on appeal to the United States Court of Appeals for the Third Circuit. Most recently, the United States Supreme Court denied a petition for writ of certiorari. As the TDP resulted from a fully litigated process in which the Defendant Insurers participated (or had their interests represented

---

<sup>1</sup> As used herein, Defendant Insurers refers to the Defendants in this litigation. References to “Certain Insurers” refer to the group of BSA insurers who participated in the BSA Bankruptcy Case and litigated various objections to confirmation of the Plan.

<sup>2</sup> All capitalized terms used herein shall have the same meaning as defined in the Trust’s January 16, 2026 Brief on this issue.

by other participating insurers), principles of *res judicata* or collateral estoppel bar the Defendant Insurers from attempting to relitigate it here.

As an initial matter, the Texas authorities relied upon by the Defendant Insurers are inapplicable and involve materially different factual contexts where the defendants and plaintiffs agreed to settle a claim (not in the mass tort context), fixed a liability based on available insurance, rather than the value of a claim, and limited the plaintiff's recourse to insurance.<sup>3</sup> As discussed further below, that is not what is happening with Abuse Claims, whereby the Settlement Trust is determining, on a claim-by-claim basis, individual claim values in accordance with the TDP and those determinations are not tied to specific insurance limits or policies.

Nevertheless, the Defendant Insurers contend that, under Texas law, the Allowed Claim Amounts determined through the TDP were not the result of a fully "adversarial" process and/or that the Settlement Trustee lacks a "meaningful incentive" to establish Allowed Claim Amounts that accurately reflect the insured's liability. Neither of these assertions are correct. The Allowed Claim Amounts are a function of a TDP that: (1) was initially drafted by BSA from a template provided by a BSA insurer; (2) negotiated through an adversarial process that lasted years; and (3) challenged unsuccessfully by BSA's insurers through years of litigation. In other words, the TDP was established, tested, and validated by an adversarial process over the objections of BSA's insurers.

The Settlement Trust is subject to the TDP—it is mandatory—and the Settlement Trust has faithfully implemented it by determining Abuse Claims in accordance with its criteria, values, and

---

<sup>3</sup> The Allianz Insurers filed a joinder in which they refuse to concede that Texas law "will govern all issues that may later arise in this action" while apparently conceding that Texas law applies on this issue. ECF No. 600 at 2. As no party, including the Allianz Insurers, has suggested that some other law applies here, the Court should disregard the Allianz Insurers' argument. The Settlement Trustee continues to oppose the Allianz Insurers' motion to dismiss and notes that the Allianz Insurers' raising of this issue and the choice of law issue are irrelevant to the question posed by the Court in its December Order.

processes. In doing so, the Settlement Trustee, in her capacity as a fiduciary for all Abuse Claimants with allowable Claims, has allowed and valued claims that satisfy the criteria in the TDP, while disallowing and challenging Abuse Claims that do not. In her role, the Settlement Trustee is adverse to Abuse Claimants who present claims that do not satisfy the criteria for allowance under the TDP; who assert, without support, that their Abuse Claims are entitled to greater value or treatment than that allowed by the Settlement Trustee; or who seek to opt out of the TDP and pursue the determination of their Abuse Claims in the tort system. In these instances, the Settlement Trustee is disallowing Abuse Claims where required by the TDP; litigating disputes with Abuse Claimants over claim treatment and values in the Bankruptcy Court; and facilitating the defense of Abuse Claims that opt into the tort system. The Settlement Trustee does so because she has an obligation under the Plan, including the Settlement Trust Agreement and TDP, to determine Allowed Claim Amounts fairly and in accordance with the terms of those documents. This “meaningful incentive” drives the Settlement Trustee’s actions in determining and valuing Abuse Claims.

Moreover, the Settlement Trust does not have the resources to pay Abuse Claims their full Allowed Claim Amounts. Notwithstanding the evidence and argument presented by BSA to the Bankruptcy Court during the confirmation of the Plan, at present, the Settlement Trustee’s Initial Distribution to holders of Allowed Claims is 1.5% of the total Allowed Claim Amounts.<sup>4</sup> Particularly in this context, the Settlement Trustee simply cannot allow and pay Abuse Claims at inflated values—any value given to an Abuse Claim that does not satisfy the criteria of the TDP or is valued excessively would deplete the Settlement Trust’s limited assets available to pay Abuse Claims that satisfy the TDP criteria and are appropriately valued. Moreover, certain of the

---

<sup>4</sup> See <https://www.scoutingsettlementtrust.com/s/article/16-2-How-much-money-will-be-in-my-initial-distribution> (last accessed on Jan. 23, 2026).

Defendant Insurers secured in their appeal to the Third Circuit a Plan revision that permits insurers to recoup from the Trust, under certain circumstances, amounts they contend they are entitled to be reimbursed for Abuse Claim payments under alleged rights of subrogation or contribution. The notion that the Settlement Trustee does not have a “meaningful incentive” to value Abuse Claims appropriately under the TDP is simply not true. This context is distinct, in several material aspects, from the authorities relied upon by the Defendant Insurers, where, unlike in this case, underlying claims were valued and settled based primarily on the amount of available insurance.

The layers upon layers of adversarial processes between the Abuse Claimants, the Defendant Insurers and first BSA, and now the Settlement Trustee, to (i) establish TDP’s claim valuation procedures, and (ii) determine the Allowed Claim Amount for each Abuse Claim pursuant to those procedures, as well as the “meaningful incentive” the Settlement Trustee has to determine Allowed Claim Amounts as required by the TDP render the Texas authorities relied upon by the Defendant Insurers inapplicable. Moreover, determination of alternative values for Abuse Claims, as proposed by the Defendant Insurers, is impermissible under both the Plan and the Bankruptcy Code. The Allowed Claim Amounts for the Abuse Claims have been determined through multiple adversarial processes and are binding for the reasons articulated in the Settlement Trustee’s January 16, 2026 brief, Dkt. No. 601.

## ARGUMENT

### **I. The Adversarial Negotiation of the TDP and BSA’s Plan.**

As the District Court observed on appeal, BSA’s chapter 11 case sought to provide “an equitable, streamlined, and certain process by which abuse survivors may obtain compensation for Abuse while preserving trust assets such as insurance policies.” *National Union Fire Ins. Co. of Pittsburg, PA v. Boy Scouts of Am. (In re Boy Scouts of Am.)*, 650 B.R. 87, 110 (D. Del. 2023) (“D. Del. Op.”). To aid in that objective, the district court observed that “[f]or nearly two years, BSA

engaged in near-continuous mediation with every major creditor constituency in the chapter 11 cases, including the Certain Insurers.” *Id.*

In rejecting the Certain Insurers’ argument that the negotiation of the TDP was collusive, the Bankruptcy Court summarized the factual record regarding the drafting of the TDP. That record evidenced that the negotiation of the TDP was an adversarial process with input from various parties. *See In re Boy Scouts of America*, 642 B.R. 504, 646–48 (Bankr. D. Del. 2022) (“Bankr. Ct. Op.”); *see also* Azer Dep. 22:15–21, 32:24–33:16, Dec. 20, 2021 (describing that Debtors “specifically rejected” the “Initial Terms for Trust Distribution Procedures” sent by the Coalition professionals on February 2, 2021, and developed their own initial proposed terms with input from their insurer, Hartford), attached as Ex. A (“Azer Dep.”). That record made clear that BSA had a meaningful incentive to ensure that the TDP Award process would be reasonable and rationally connected to its pre-petition settlement and defense practices for Abuse Claims in order to defeat the Certain Insurers’ objection that the Plan and TDP were not proposed in good faith—good faith being a necessary finding under Section 1129(a)(3) of the Bankruptcy Code to confirm BSA’s Plan. *See* Bankr. Ct. Op. at 646 (describing Certain Insurers’ argument that the Plan and TDP were not proposed in good faith as principally based upon “the lack of ‘insurance neutrality’ and the Base Matrix values”). In the absence of a finding by the Bankruptcy Court that the Plan was proposed in good faith, it would not have been confirmed and BSA would have continued to face exposure for the Abuse Claims. In this context, BSA simply could not affix unjustified criteria or inflated claim values to the TDP for determining Abuse Claims without risking that its Plan fail at confirmation. BSA had every incentive in the development of the Plan to establish a TDP with reasonable and defensible terms.

And BSA did so, with input from both insurers and Abuse Claimants. As described by Bruce Griggs, national defense counsel for BSA, in his declaration in support of confirmation of the Plan, the TDP was developed based on information he and others provided regarding BSA's pre-bankruptcy defense and settlement practices and the TDP were consistent with those practices.<sup>5</sup> The Bankruptcy Court's decision described the development of the TDP, and noted that the starting point for BSA's drafting was a draft trust distribution procedure document furnished by Hartford, one of BSA's insurers who provided primary and excess insurance coverage to BSA; had paid to resolve Abuse Claims prior to BSA's Bankruptcy Case; and who ultimately settled its remaining obligations for Abuse Claims during the Bankruptcy Case for an additional payment of \$787 million. Bankr. Ct. Op. at 537. Counsel for BSA testified during the confirmation hearing that he kept components of Hartford's draft TDP, including the "expedited distribution" and other mechanisms, including a "point system" for valuing claims. Azer Dep. at 258:12-259:2. Counsel for BSA also received proposals both from Abuse Claimant constituencies and the Certain Insurers during the Bankruptcy Case for modifying the TDP, some of which were incorporated, others of which were rejected following prolonged negotiations. *See, e.g.*, D. Del. Op. at 183 ("The evidence demonstrates that BSA protected the interests of Certain Insurers, even though they were not settling.").

The TDP ultimately included in the Plan and approved by the Bankruptcy Court was the product of prolonged and hard-fought negotiations between BSA, its insurers, and the Abuse Claimant constituencies. Each of these parties were adverse to each other during these negotiations—including the several Abuse Claimant constituencies (the Coalition (an informal committee of abuse claimants), TCC (the official committee of tort claimants appointed by the

---

<sup>5</sup> *See* Ex. C. Mr. Griggs declaration was filed in the Bankruptcy Case at Dkt. 9273.

Bankruptcy Court), and Future Claimants' Representative (appointed by the Bankruptcy Court to represent the interests of future abuse claimants). Where a recovery is to be allocated among claimants of different sub-classes—including with respect to present claimants and future claims, injuries of differing severity, and otherwise—these claimants are adverse to each other with respect to the allocation of such recovery to each sub-class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (describing that where “differences among members of a class are such that subclasses must be established,” there is “adversity among [the] subgroups” (quoting *In re Joint Eastern & Southern Dist. Asbestos Litig.*, 982 F.2d 721, 742–43 (2d Cir. 1992), *modified on reh'g sub nom. In re Findley*, 993 F.2d 7 (1993))). The record in the Bankruptcy Case makes clear that the negotiation of the Plan itself, including the TDP, was an adversarial process between self-interested parties, including BSA, Abuse Claimants, and BSA's insurers.

## **II. The Bankruptcy Court Rejected the Insurers' Objections to the TDP and Principles of *Res Judicata* and Collateral Estoppel Preclude Them from Relitigating Those Objections in This Litigation.**

The establishment of the TDP was also adversarial because the Defendant Insurers litigated—and lost—multiple objections relating to the TDP's criteria, processes, and values. Insurer objections to the Plan and TDP were litigated in the Bankruptcy Case in a three-week evidentiary hearing with testimony from twenty-six live witnesses, six witnesses who testified by video, and over one thousand exhibits. *In re Boy Scouts of America*, 650 B.R. 87, 112-13 (D. Del. 2023) (“D. Del. Op.”). Those insurers' objections were rejected, and the Plan was confirmed by the Bankruptcy Court, and then affirmed by higher courts twice.

*Res judicata* and collateral estoppel bar re-litigation of the insurers' objections to the Plan and TDP in this litigation.<sup>6</sup> See, e.g., *In re BSA*, 642 B.R. 504, 630–31 (Bankr. D. Del. 2022) (“Bankr. Ct. Op.”) (“[T]here is abundant common law on the doctrine of *res judicata* and collateral estoppel as it applies to orders confirming plans. Any order entered in these cases will be final when it is entered. It will have the effect it has.” (internal footnote omitted)); *In re K.D. Co.*, 254 B.R. 480, 490 (10th Cir. BAP 2000) (a confirmed plan and confirmation order “are binding on the parties under § 1141 and principles of *res judicata*, regardless of whether [creditor] agreed with their provisions.”). The very purpose of *res judicata* is to “insure[] the finality of judgments and thereby conserve[] judicial resources,” *United States v. Shanbaum*, 10 F.3d 305, 310 (5th Cir. 1994), and that purpose is well-served by application of *res judicata* in this instance.

Among other arguments, the Certain Insurers objected to the Plan on the basis that the TDP reflected “a collusive bargain between Debtors and the plaintiff constituencies to inflate Debtors’ claim exposure at the Certain Insurers’ expense,” and argued that “the most visible illustration of this collusion is the lack of ‘insurance neutrality’ and the Base Matrix values.” Bankr. Ct. Op. at 646. The Bankruptcy Court allowed the Certain Insurers to take discovery in regard to these objections. *Id.* The Defendant Insurers argued that the results of such discovery were “damning,” but the Bankruptcy Court rejected that assertion unequivocally, stating to the contrary: “Based on this record, I cannot find that the Debtors colluded with the Coalition or other plaintiff representatives to intentionally deprive insurers of their rights.” *Id.* at 647.

---

<sup>6</sup> “The preclusive effect of a prior federal court judgment is controlled by federal *res judicata* rules.” *Ellis v. Amex Life Ins. Co.*, 211 F.3d 935, 937 (5th Cir. 2000). Federal *res judicata* rules require that four elements must be met for a claim to be barred: “(1) the parties must be identical in the two actions; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same claim or cause of action must be involved in both cases.” *In re Ark-La-Tex Timber Co.*, 482 F.3d 319, 330 (5th Cir. 2007). None of these elements are reasonably in dispute.

The District Court observed that one of the Certain Insurers' core arguments was that the Plan was unconfirmable under Section 1129(a)(3) because it "was likely to inflate the number and value of claims regardless of merit and seeks to hamstring insurers' ability to defend themselves." D. Del. Op. at 174. The District Court overruled this objection and found that "the Bankruptcy Court's determination was based on its consideration of the totality of the circumstances and an overwhelming volume of evidence that was largely uncontroverted," including "BSA's intention to reorganize through 'a global resolution that balanced the competing interests of . . . Insurance Companies, and abuse survivors.'" *Id.* at 176 (citation omitted).

Certain Insurers had ample chance to contest the base and maximum claim values set forth in the TDP and retained a valuation expert to assist them in doing so. But, for whatever reason, the Certain Insurers chose not to adduce testimony from their claims valuation expert in opposing approval of the TDP at confirmation. *Id.* at 650–51. The Bankruptcy Court found that the Certain Insurers had access to the reports underlying BSA's expert's testimony well in advance of such testimony, did not raise any argument with respect to such testimony during the confirmation proceedings, had retained their own expert to opine on the values in the TDP, and "chose not to use their expert during the confirmation hearing to support their argument that the TDP produce over-inflated values." *Id.* Against this backdrop, the Bankruptcy Court acknowledged that "the Certain Insurers argue that in subsequent coverage litigation they will be estopped from arguing that the Base Matrix Values are inflated," but noted that, "Certain Insurers could have chosen to put on their expert to challenge the Base Matrix Value or otherwise clear up any confusion, but they did not." *Id.* at 651; *see also* D. Del. Op. at 178 ("Certain Insurers' primary challenge to the Plan is based on their assertion that the Settlement Trust (through its Settlement Trustee) will award 'inflated claim values' that are 'worlds apart from BSA's prepetition claims history,' which the

Certain Insurers will be required to pay. Certain Insurers introduced no evidence to support those arguments . . . .” (internal citation omitted)). Whatever the reason for those insurers’ choice, they should not and cannot have another bite at that apple here by challenging TDP claim values and processes they litigated in a full-blown adversarial confirmation hearing but decided not to put on substantive evidence in support of their position.

Certain Insurers also objected during the BSA bankruptcy case that the Plan “‘materially alters the quantum of liability that insurers would be called upon to absorb,’ making it all but certain that non-settling insurers will be saddled with risks and liabilities far different from what the bargained for.” Bankr. Ct. Op. at 651–52. In rejecting this objection, the Bankruptcy Court again observed that the quantum of claims at issue “undoubtedly gives insurers standing to appear and be heard in these cases—and they have done so in abundance.” *Id.* at 652. One of the ways Certain Insurers litigated this issue was by presenting an expert [Professor Harrington] who said the TDP valuation process for Abuse Claims would unfairly prejudice insurers and would deprive them of certain contractual rights under their policies, but who, himself, acknowledged the impracticability of litigating each of the pending Abuse Claims in the tort system. *Id.* at 655. The Bankruptcy Court rejected each of the insurers’ expert’s conclusions, including his conclusion that “an insurer must be given the right to develop or approve trust distribution procedures designed to liquidate personal injury claims or the insurer’s contractual rights will, necessarily, be compromised,” finding that “[t]his position gives too much leverage to insurance companies.” *Id.* at 656–57.

Certain Insurers further objected to the TDP on the basis that it would allow claims that were subject to statute of limitations defenses and/or that did not establish BSA’s negligence, asserting that BSA would have had no legal obligation to pay such claims in the absence of the

Plan. *Id.* at 657. The Bankruptcy Court overruled these objections and found that the TDP’s treatment of potentially time-barred claims was consistent with BSA’s pre-petition, fully adversarial practices in settling claims. *Id.* at 658 (“[T]he uncontroverted testimony of Mr. Griggs [BSA’s defense counsel] is that prepetition BSA was not often successful in asserting statute of limitations defenses even in states where the defense was viable, and that even when BSA prevailed on a statute of limitations defense it still might subsequently settle the claim.” (citation omitted)). Similarly, the Bankruptcy Court found “there is no ‘law’ that prevents a defendant (or putative defendant) from settling with or paying a claim made by a personal injury claimant who has not proven negligence,” and understood that the Matrix claims process “include[d], but [was] not limited to, legal theories of negligence.” *Id.* The TDP, including its values, scaling factors, and processes for determining Allowed Claim Amounts have been the subject of extensive litigation and are nonetheless part of a confirmed Plan that has been upheld by three courts. The Defendant Insurers’ complaints regarding the TDP and its processes for determining Allowed Claim Amounts have been heard, litigated, and rejected. They are bound by that outcome.

The Defendant Insurers nevertheless contend that the Bankruptcy Court’s refusal to enter certain findings proposed by BSA and Abuse Claimants relating to insurance coverage issues means that the confirmation record has no bearing on their obligations, that they are not bound by the Allowed Claim Amounts, and that the Settlement Trustee cannot assert *res judicata* or collateral estoppel based on anything determined in the BSA Bankruptcy Case. The Defendant Insurers neglect to mention in their submissions, however, that they objected to the Plan on the basis that it did not have an “insurance neutrality” provision that would have barred the preclusive effect of the plan in subsequent coverage litigation, and the Bankruptcy Court rejected this objection. *Id.* at 648 (“There is nothing that requires Debtors to negotiate a plan that is ‘insurance neutral,’ which

is not a concept in the Bankruptcy Code.”). The Bankruptcy Court simply reserved any decision about the application of *res judicata* principles in the context of this coverage action to this Court. *Id.* at 631 (“The *res judicata* or collateral estoppel effect of any Order I issue confirming the Plan is for a future court to decide in the context of specific litigation.”). Indeed, the Bankruptcy Court made clear that the absence of the findings sought by BSA and Abuse Claimants in the Plan did *not* mean that principles of *res judicata* and collateral estoppel would not apply or that a subsequent court would not make the same findings based on the confirmation record. *Id.* (“I do not see the elimination of Finding was providing the Certain Insurers with a “neutral” plan. It simply means that the Code and appropriate caselaw will govern in any subsequent proceedings.”).

The issue that the Defendant Insurers now raise—whether the TDP Awards accurately establish and reflect BSA’s liability for Abuse Claims—was specifically litigated by the Certain Insurers during the BSA bankruptcy and, to the extent they contend it was not, could have been. Thus, federal rules of *res judicata* and collateral estoppel prevent the Insurers from re-litigating those issues now. *See, e.g., In re Sandia Resorts, Inc.*, 557 B.R. 217, 223 (D.N.M. 2016) (holding that even where an individual claim award was not actually litigated during plan confirmation proceedings, “the provisions in the confirmed plan which included a process to establish [the] allowed claim are nevertheless entitled to preclusive effect.”).

### **III. The Authorities Relied Upon by the Defendant Insurers Are Inapplicable.**

The Defendant Insurers rely principally in their briefing on three Texas Supreme Court cases to support their contention that they are not bound by the Allowed Claim Amounts determined under the TDP. Specifically, the Defendant Insurers rely upon *In re Illinois National Insurance Company*, 685 S.W.3d 826 (Tex. 2024) for the proposition that a settlement between an insured an injury party is not binding upon the liability insurer if it was “rendered without a fully adversarial trial.” 685 S.W.3d at 840–41 (quoting *State Farm Fire & Cas. Co. v. Gandy*,

925 S.W.2d 696, 714 (Tex. 1996)). In determining whether a settlement resulted from a “fully adversarial trial,” “the controlling factor is whether at the time of the underlying trial or settlement, the insured bore an actual risk of liability for the damages awarded or agreed upon, or had some other meaningful incentive to ensure that the judgment or settlement accurately reflects the plaintiff’s damages and thus the defendant-insured’s covered liability loss.” *Id.* at 841 (quoting *Great Am. Ins. Co. v. Hamel*, 525 S.W.3d 655, 666 (Tex. 2017)). Without such a “meaningful incentive,” the resolution of the underlying suit becomes “a mere formality—a pass-through trial aimed not at obtaining judgment reflective of the [insured party’s] loss, but instead at obtaining a potentially inflated judgment to enforce against [the insurer].” *Id.* (second alteration in original) (citation omitted).

The contexts in the *Illinois National*, *Gandy*, and *Hamel* cases relied upon by the Defendant Insurers for the proposition that Allowed Claim Amounts determined by the Settlement Trust are not binding for purposes of insurance coverage are readily distinguishable in several respects. First, in those cases, an underlying liability was resolved by a plaintiff and defendant for a settlement amount with the defendant’s recourse limited solely to whatever insurance proceeds could be collected from the defendant’s insurer following an assignment of insurance rights to the plaintiff by the defendant. *Illinois Nat’l*, 685 S.W.3d 826 (Tex. 2024); *Gandy*, 925 S.W.2d 696 (Tex. 1996); *Hamel*, 525 S.W.3d 655 (Tex. 2017). Here, the Settlement Trust is not assigning its rights under any insurance policies to individual claimants as part of a settlement to fix their liabilities for sums certain in exchange for a release. The Settlement Trust is a successor-in-interest to BSA and holds both BSA’s insurance rights *and* its liabilities for Abuse Claims, as discussed in the Trust’s January 16, 2026 submission. There is no assignment of insurance rights to Abuse Claimants that parallels what happened in the Texas cases cited by the Defendant Insurers.

Second, the Trust’s determination of Allowed Claim Amounts is not tied to any particular insurance recovery. The starting point for the Texas Supreme Court’s analysis in these cases was the fixing of a settlement amount by the underlying plaintiff and defendant that was not tied to a party’s liability or damages, but rather to available insurance. *See In re Ill. Nat’l Ins. Co.*, 685 S.W.3d at 841 (“The settlement amount of \$220 million was directly and explicitly tied to the value of the insurance policies, not to any loss GAMCO may have suffered.”); *Gandy*, 925 S.W.2d at 698, 712 (“Without notice to State Farm, Pearce settled with Gandy by agreeing to a judgment in her favor of over \$6 million” the “entire purpose of the arrangement was to find a way to recover against State Farm.”); *Hamel*, 525 S.W.3d at 666–67 (“[T]he parties’ pretrial agreement eliminated any meaningful incentive the Builder had to contest the judgment. Specifically, before trial, the Hamels agreed not to enforce any resulting judgment against Mitchell’s personal assets. . . . Mitchell himself testified that the company had no other assets except the insurance policy.”). The Texas Supreme Court expressed concerns in these cases that the settlements reached by litigants did not reflect actual liabilities or damages but, rather, were tied to the underlying plaintiff recovering from a specific insurance asset. This is not what happened in the BSA Bankruptcy Case.

The TDP does not fix the value of any individual Abuse Claim or Abuse Claims in the aggregate. Abuse Claims are evaluated, determined, and valued using criteria and factors derived from the experience of BSA and its insurers (including Hartford, a primary insurer of BSA who provided the initial template for the TDP) in defending and settling Abuse Claims in the tort system. The TDP establishes a process and criteria whereby claims are determined and valued, not a pre-determined fixed sum certain for any individual Abuse Claim or group of Abuse Claims. As the Bankruptcy Court observed in its decision to confirm the Plan:

The Settlement Trustee assigns an Allowed Abuse Claim to one of the six tiers and applies the Scaling Factors to the Base Matrix Value to determine a Proposed Allowed Claim Amount for each Allowed Abuse Claim. While the Maximum Matrix Value is just that—the maximum that can be awarded by the Settlement Trustee in the Claims Matrix Process, the Base Matrix Value is not a minimum amount, but merely a starting point for the calculation of a Proposed Allowed Claim Amount.<sup>7</sup>

Bankr. Ct. Op. at 543–44.

Under the IRO process, claims are subject to an evidentiary proceeding presided over by a Neutral (a retired judge with tort experience), who determines and values Abuse Claims to replicate what such claims would be valued at in the tort system. Bankr. Ct. Op. at 544. And “Tort Election” claims are actually litigated in the tort system by Abuse Claimants. *Id.*

Unlike the underlying liabilities at issue in *Illinois National*, *Gandy*, and *Hamel*, the values of Abuse Claims are not pre-determined by the Plan or the TDP. Rather, the TDP provides a process, vetted and confirmed by the Bankruptcy Court over the Certain Insurers’ objections, whereby Allowed Claim Amounts are determined by the Settlement Trustee.

As discussed further below, certain Abuse Claims have been disallowed by the Settlement Trustee and valued at \$0. *See* Ex. B, Declaration of the Honorable Barbara J. Houser (Ret.) (“Houser Decl.”) at ¶¶ 5, 8–11. For the Abuse Claims that have been allowed by the Settlement Trustee, they have been tendered to potentially responsive insurers, not based on a pre-arranged

---

<sup>7</sup> Abuse Claims are only valued under the Matrix after they have first been determined to be “allowed” by the Settlement Trustee. “The Settlement Trustee evaluates all claims that were not disallowed for compliance with the General Criteria. These General Criteria are: (i) identification of alleged acts of Abuse; (ii) identification of the abuser by either name or specific information such that the Settlement Trustee can determine whether the alleged abuser was an employee, agent or volunteer of a Protected Party or associated with Scouting and the Abuse directly relates to Scouting activities; (iii) the Abuse is connected to Scouting and a Protected Party “may bear legal responsibility;” (iv) identification of the date of the Abuse directly or through other evidence; and (v) identification of the venue or location of the Abuse. If the claim submission meets the General Criteria and the materials submitted do not contain false or deceptive information, the Direct Abuse Claim is deemed an Allowed Abuse Claim. If the submitted materials do not meet the General Criteria or if they contain fraudulent and/or deceptive material, the Direct Abuse Claim is deemed a Disallowed Claim. An Allowed Abuse Claim is then run through the Claims Matrix and Scaling Factors. The Claims Matrix establishes six tiers of Abuse types and provides a Base Matrix Value and Maximum Matrix Value to each tier . . . .” Bankr. Ct. Op. at 542–43.

determination that preceded the Plan, but based on the specific facts of a particular Abuse Claim and the relevant periods of insurance such Claim implicates. Houser Decl. at 22. As the Court is aware from the motion to dismiss briefing, some of the Defendant Insurers have been billed for many Abuse Claims based on the years, limits, and attachment points of their insurance policies issued to BSA and Local Councils. Other insurers have been billed nothing, to date, for Abuse Claims by the Trust. But unlike the Texas Supreme Court cases cited by the Defendant Insurers, neither the Allowed Claim Amounts nor the billings to insurers for Abuse Claims were preordained by the TDP or the Plan. The Allowed Claim Amounts and the billings to insurers are being determined through judicially approved processes to value claims on their merits and based on the terms of the insurers' contracts—they are not based upon an agreement between Abuse Claimants and BSA or the Settlement Trust to fix a liability figure based on available insurance and then bill that pre-arranged liability figure to the insurers.

Two other common elements in the *Illinois National*, *Gandy*, and *Hamel* cases distinguish those matters from this case. First, in those cases, the settling plaintiff agreed to limit its recourse solely to the defendant's insurance assets, thereby effectively eliminating any incentive to appropriately value an underlying liability in a settlement. *See Illinois Nat'l Ins. Co.*, 685 S.W.3d at 833 (“GAMCO agreed to release all claims against Cobalt and its officers and directors once the coverage litigation was finished, covenanted not to pursue any claims against them, and agreed to ‘look solely’ to the Insurers and their policies to recover the \$220 million Settlement Amount . . . .”); *Hamel*, 525 S.W.3d at 667 (“Q: You wouldn't have cared because your assets were not at risk as of the time you entered into that agreement, is that correct? A: Yeah. I don't care.”); *Gandy*, 925 S.W. 2d at 698, 712 (“[P]earce settled with Gandy by agreeing to a judgment in her favor of over \$6 million and assigning her any claims he had against State Farm. In return,

Gandy agreed never to try to collect the judgment from Pearce. . . . Here the parties took positions that appeared contrary to their natural interests for no other reason than to obtain a judgement against State Farm.”). In this case, the TDP and Plan do not contemplate fixing Allowed Claim Amounts and tying them solely to insurance recoveries. Rather, Allowed Claim Amounts are paid from Settlement Trust Assets, which includes not only any proceeds that may ultimately be recovered under the Non-Settling Insurers’ policies (but without any specific Abuse Claims predetermined in amount or tied to a specific policy), but also substantial proceeds from other Settlement Trust Assets, including proceeds from prior insurance settlements, cash, notes, and other non-insurance assets including oil and gas revenues, real estate sales proceeds, and art auction proceeds. Unlike the cases relied upon by the Defendant Insurers, BSA’s Plan and TDP are not the result of a bilateral settlement between claimants and defendants to fix a liability amount nor structured so that the sole recovery is from the Non-Settling Insurers.

Second, the insurers in the Texas cases cited in the Defendant Insurers’ briefs were not part of the discussions or processes to determine the relevant settlement values. *Illinois Nat’l*, 685 S.W.3d at 833 (insurers denied coverage and refused to participate in negotiations to settle the underlying case, and “the Insurers did not appear, participate in, or lodge objections to the settlement or to the resulting federal-court judgment and bankruptcy plan”); *Hamel*, 525 S.W.3d at 659 (Great American declined to defend the builder and did not participate in the underlying suit); *Gandy*, 925 S.W.2d at 698 (“Without notice to State Farm, Pearce settled with Gandy by agreeing to a judgment in her favor of over \$6 million and assigning her any claims he had against State Farm.”). As discussed above, many of the Defendant Insurers in this litigation actively participated in the BSA Bankruptcy Case (or had the opportunity to do so), including by litigating objections to the Plan and TDP and those whose who did not had identical interests to those who

chose to participate. Following the Effective Date of the Plan, as described in the Trustee’s January 16, 2026 submission, the Defendant Insurers have actively participated in the determination and valuation of Abuse Claims and continue to do so. Houser Decl. at 25. Allowed Claim Amounts are not being determined without the insurers’ involvement. The authorities relied upon by the Defendant Insurers in their briefing simply do not comport with how Allowed Claim Amounts have been and are being determined in this case.

The Defendant Insurers’ briefing regarding Texas law on the impact on coverage of an underlying settlement agreement omits a key element. Under Texas law, “if an insurer wrongfully denies coverage and its insured then enters into an agreed judgment, the insurer is barred from challenging the reasonableness of the settlement amount.” *Evanston Ins. Co. v. ATOFINA Petrochemicals, Inc.*, 256 S.W.3d 660, 671 (Tex. 2008<sup>8</sup>); *Hamel*, 525 S.W.3d at 662. “The cases barring insurers’ challenges rest on principles of estoppel and waiver; what is most important in this context is notice to the insurer and an opportunity to participate in the settlement discussions.” *ATOFINA*, 256 S.W.3d at 672. Even if an insurer has not denied coverage, an insurer can use the insured’s failure to obtain consent before settling as a basis to deny coverage “only when the insurer is actually prejudiced by the insured’s settlement with the tortfeasor.” *Hernandez v. Gulf Grp. Lloyds*, 875 S.W.2d 691, 692 (Tex. 1994). Here, Defendant Insurers have received ample notice of proceedings to determine Allowed Claim Amounts and have been offered opportunities by the Trustee to participate in those proceedings. Houser Decl. at 24. Many Defendant Insurers have participated in the processes to determine Allowed Claim Amounts. Houser Decl. at 25.

---

<sup>8</sup> The Court in *ATOFINA* noted that *Gandy*’s holding was explicit and narrow, applying only to a specific set of assignments with special attributes. By its own terms, *Gandy*’s applies only to cases that present its five unique elements. *ATOFINA*, 256 S.W.3d at 673 (holding that where insured “made no assignment of its claim” but instead “sued [its insurer] directly,” “*Gandy*’s key factual predicate [wa]s missing,” and the case was “remove[d] . . . from the formal bounds of *Gandy*”).

Others have denied coverage, or otherwise failed to fulfill their coverage obligations for Abuse Claims, and refused to do so. *Id.*

In either scenario, the Defendant Insurers are bound by the Allowed Claim Amounts determined by the Trust. Insurers who deny coverage, as many in this case have done for certain Abuse Claims, cannot challenge the values ultimately determined for those claims. Carriers who have not denied coverage for Abuse Claims and have participated in their determination and valuation, but withheld their consent to such determinations and valuations, can only avoid their coverage obligations for covered claims if they can demonstrate that they have been prejudiced by the resolution of the underlying claim. In light of the positions taken by the Defendant Insurers and their involvement in the TDP processes, *ATOFINA* and *Hernandez* are the Texas authorities that have any bearing on this issue, and not *Illinois National*, *Gandy*, and *Hamel*.

#### **IV. The Trustee's Incentive to Appropriately Determine and Value Abuse Claims.**

Even if the holdings in *Illinois National*, *Gandy*, and *Hamel* were applicable here, which they are not, the Defendant Insurers' arguments fail. The crux of the authorities relied upon by the Defendant Insurers for their contentions that they are not bound by Allowed Claim Amounts for Abuse Claims is that they were not reflective of the actual liability and damages attributable to such claims because their values are determined by parties with no incentive to make sure that they do. As discussed above, that was not the case for BSA when it negotiated and litigated the TDP and Plan, which would not have been confirmed if it included unreasonable claim values and abrogated insurers' contractual rights and defenses. Nor is that true of the Trustee, who has an obligation to determine Allowed Claim Amounts in accordance with the TDP; to ensure that all Abuse Claimants are fairly treated; and to avoid diluting the recoveries available to holders of Allowed Abuse Claims under the Plan by paying non-compensable Abuse Claims or overpaying compensable Abuse Claims. The Trustee has several "meaningful incentives" to appropriately

value Abuse Claims, and it is reflected in the Trust’s dealings with Abuse Claimants, as described below.

The TDP and Settlement Trust Agreement both state that the TDP provides the sole and exclusive mechanism for valuing and resolving Abuse Claims. *See* BSA Settlement Trust Agreement, § 1.2 (“For the avoidance of doubt, all Abuse Claims asserted against the Debtors in the Chapter 11 Cases shall be resolved exclusively in accordance with the TDP.”)<sup>9</sup>; TDP at Art. I.D (“These TDP and any procedures designated in these TDP, including the Individual Review Option, shall be the sole and exclusive methods by which an Abuse Claimant may seek allowance and distribution on an Abuse Claim that is subject to the Channeling Injunction with respect to the Protected Parties.”).<sup>10</sup>

The Settlement Trustee, as a named party to the Settlement Trust Agreement, is bound to follow the claim valuation procedures set forth in the TDP and is liable in her capacity as Settlement Trustee to pay the amounts awarded thereunder. *See* BSA Settlement Trust Agreement, § 2.1(d)(ii) (stating that the Settlement Trustee shall have the power to “adopt procedures to allow valid Abuse Claims (“Allowed Abuse Claims”), and determine an allowed liability amount for each Allowed Abuse Claim . . . in accordance with the TDP”); *id.* at § 4.1 (“The Trust shall fairly and reasonably compensate Allowed Abuse Claims and shall pay up to the full value of such claims, solely in accordance with the Trust Documents, including the TDP . . .”).

The Plan and Confirmation Order provide expressly that “[t]he allowed amount of any Direct Abuse Claim shall be the amount therefor as determined under the TDP. Such allowed

---

<sup>9</sup> Third Modified Fifth Amended Chapter 11 Plan of Reorganization (With Technical Modifications) for Boy Scouts of Am. and Del. BSA, LLC, *In re Boy Scouts of Am. And Del. BSA*, No. 20-10343 (Bankr. D. Del. 2022) [Dkt. No. 10296, Ex. B] (Dkt. No. 10296, generally, the “Plan” and Exhibit B thereto, “BSA Settlement Trust Agreement”). A copy of the BSA Settlement Trust Agreement was attached as Exhibit 6 to the Settlement Trustee’s January 16, 2026 brief.

<sup>10</sup> Exhibit A to the Plan (“TDP”). A copy of the TDP was attached as Exhibit 1 to the Settlement Trustee’s January 16, 2026 Brief.

amount shall be legally enforceable against the Settlement Trust.” *In re Boy Scouts of Am.*, No. 20-10343 (LSS), 2022 WL 20541782, at \*6 (Bankr. D. Del. Sept. 8, 2022) (“Confirmation Order”).

Based on the foregoing, the Settlement Trustee is obligated to determine Allowed Claim Amounts fairly and in accordance with the TDP. The Settlement Trustee cannot, under the TDP, give value to a Matrix or IRO claim that is not fair or does not comport with the requirements of the TDP. This requires the Settlement Trustee to disallow Abuse Claims, and she has done so. As of January 22, 2026, the Settlement Trust has disallowed 1,848 Matrix claims. *See* Houser Decl. at ¶ 5. With respect to IRO Claims, as of January 22, 2026, the Settlement Trust has rejected the settlement recommendation for one IRO claim; disallowed one IRO Claim; and accepted a zero-dollar settlement recommendation for one IRO claim. *Id.* at ¶ 8–10. The Settlement Trustee’s disallowance or zero valuation of thousands of claims is not reflective of any absence of a “meaningful incentive” to properly value Abuse Claims. On the contrary, this record demonstrates that the Settlement Trustee is determining and valuing Abuse Claims in accordance with the requirements of the TDP.

In addition, the Settlement Trustee is regularly litigating disputes with holders of Abuse Claims over the value and treatment of their claims in the Bankruptcy Court. Since the Settlement Trust’s formation, it has appeared in the Bankruptcy Court to respond to various motions filed by claimants or their counsel. *Id.* at ¶ 15. Many such motions involved claimants who selected the Expedited Distribution option (which claims are not payable by insurance pursuant to the Plan) but sought, for various reasons, to change their election to the Matrix or IRO process. *Id.* at ¶ 17. The Settlement Trust successfully opposed these motions before the Bankruptcy Court and on appeal to the District Court. *Id.* at ¶ 18. Currently, several of the original movants on this issue have appealed the lower court decisions to the Third Circuit, where the Settlement Trust continues

to defend against this appeal. *Id.* The Settlement Trustee is defending against that further appeal as well.

Separately, the Settlement Trustee has been required to respond to dozens of submissions filed by *pro se* claimants. *Id.* at ¶ 19. Between May 2024 and December 2025, the Bankruptcy Court has issued approximately twenty scheduling orders containing approximately eighty submissions filed by *pro se* claimants. *Id.* These submissions seek various forms of relief, including requests to file late proof of claims or claims questionnaires, judicial review of the Trust's claims determinations, and even recusal of the Settlement Trustee. *Id.* at ¶ 20. The Settlement Trustee is actively and aggressively litigating against certain Abuse Claimants who have sought special treatment or value for their claims not permitted under the TDP.

The Settlement Trustee is also facilitating the defense of Abuse Claims that are being brought in the tort system. Under the terms of the TDP, Abuse Claimants who are dissatisfied with the Settlement Trustee's Claim Determination may seek a *de novo* determination of their Abuse Claim by filing litigation against the Settlement Trust in a court of competent jurisdiction. *Id.* at ¶ 12. As of January 22, 2026, two Claimants have initiated such litigation, and twelve other Claimants have provided formal notice to the Settlement Trust of their intent to initiate such litigation. *Id.* at ¶¶ 13–14. The Settlement Trustee has coordinated with the responsible insurers for those claims to ensure they have notice and an opportunity to participate in the Settlement Trust's defense of those claims.

The Settlement Trustee's posture relative to these Abuse Claimants is plainly adverse. Her incentives in litigating these matters with Abuse Claimants are clear—to accurately value Allowed Claim Amounts and to defend the Trust's processes and valuations under the TDP against dissatisfied claimants. Contrary to the suggestions in the Defendant Insurers' submissions, the

Settlement Trust is not gratuitously awarding inflated values to meritless claims. And for good reason. The Trust's resources are limited relative to its liabilities. At present, the Settlement Trust is only able to pay 1.5% of any Allowed Claim Amount. Any dollar the Settlement Trust pays on an allegedly "inflated" Abuse Claim or to a claim that has no merit or value is a dollar the Settlement Trust cannot pay to an Allowed Abuse Claim with value. The Settlement Trust has a substantial interest in only affording Allowed Claim Amounts to meritorious claims that satisfy the criteria and requirements of the TDP. Were she not to do so, she would not be treating Abuse Claims fairly and distributing Trust assets equitably, as required by the Plan.

But this is not the Settlement Trustee's sole incentive in appropriately valuing Abuse Claims. Several of the Defendant Insurers have asserted that they have or will have their own claims against the Settlement Trust arising from any Allowed Claim Amounts they are required to pay. National Surety and Allianz, for instance, prevailed in their appeal to the Third Circuit and obtained an amendment to the Plan, in essence, to ensure that they retain the rights they would have had outside of bankruptcy to collect on their defense costs and excess liability claims, though now drawn from the Trust. *In re Boy Scouts of America*, 137 F.4th 126, 167–69 (3d. Cir. 2025). The Plan has been revised to provide that amounts the insurers may pay for Allowed Claim Amounts for which the insurers may assert a claim for contribution or subrogation, in certain circumstances, could potentially be sought by the insurers from the Trust. Plan at Art. X.G.6. Separately, policies issued by Old Republic and Liberty were subject to "fronting" arrangements, whereby Allowed Claim Amounts for Abuse Claims paid by these insurers could trigger a reciprocal payment obligation from the Settlement Trust under the terms of their policies. *See, e.g., Stipulation Between the Settlement Trust and Liberty Mutual Ins. Co.*, Case No. 20-10343 (LSS), D.I. 13331, at 2–3 ¶ 5 (Bankr. D. Del. Dec. 17, 2025). The Settlement Trust has both

obligations to the Abuse Claimants and potential exposure to the insurers for payment under subrogation, contribution, or fronting scenarios that incentivize the Settlement Trustee only to allow and seek payment for Abuse Claims where appropriate. In several ways, the Settlement Trustee's work in determining and valuing Abuse Claims is laden with the "meaningful incentives" that Texas courts found lacking in the cases relied upon by the Defendant Insurers.

**V. "No Action" Clauses in Certain of the Defendant-Insurers' Policies Are Irrelevant to the Court's Question.**

**A. CNA's Arguments Regarding "No Action" Clauses Should Be Rejected.**

Defendants American Casualty Company of Reading, Pennsylvania, Columbia Casualty Company, Continental Casualty Company, The Continental Insurance Company, and National Fire Insurance Company of Hartford (collectively, "CNA") filed a separate joinder to the Undersigned Defendants' Memorandum. *See* CNA's Separate Response to the Court's December 19, 2025 Order, Dkt. No. 599 ("CNA Joinder"). In addition to joining the Undersigned Defendants' arguments that the Allowed Claim Amounts are not binding on the insurers nor admissible in this coverage action, CNA alone argues that so-called "No Action" clauses in CNA's policies render the Allowed Claim Amounts non-binding on CNA and are not admissible in this coverage action.

CNA's arguments regarding the "No Action" clauses should be rejected for two reasons. First, CNA's presentation of its coverage arguments based on this provision contravenes the Court's instructions in its December 2025 Order (the "Order"). Second, even if the Court were to entertain CNA's arguments, the "No Action" clauses do not operate in the manner that CNA describes and do not affect CNA's obligation to provide coverage for Allowed Claims. Moreover, at a minimum, litigation of the impact of No Action clauses requires discovery that has not yet occurred in this matter.

**B. CNA’s Arguments Concerning the “No Action” Clauses Is Outside the Limited Scope of Briefing Requested by the Court.**

In its Order, the Court instructed parties to respond to a straightforward question:

What effect(s), if any, does the Settlement Trustee’s **Allowed Claim Amount on Insured Abuse Claims** have on the **Non-Settling Insurance Companies’** contractual obligations to pay under insurance policies issued to the Boy Scouts of America or Local Councils?

Order at 1. The Court’s Order further instructed parties to “not address defenses unrelated to the methodology used by the Settlement Trustee to determine the **Allowed Claim Amounts**” in their briefing. *Id.* The Parties were instructed to focus solely on the methodology used by the Settlement Trustee to determine the Allowed Claim Amounts without regard to particular defenses an insurer might raise that were unrelated to that methodology.

Ignoring that directive, CNA focuses its joinder on its contention that so-called “No Action” clauses contained (or incorporated into) its policies renders the Allowed Claim Amounts non-binding and inadmissible in this Coverage Action. CNA Joinder at 1. CNA’s argument was not joined by a single other insurer.

CNA’s arguments concerning its “No Action” clauses are outside the scope of limited briefing requested through the Order. CNA’s arguments are clearly related to a purported defense based on its policy language that is “unrelated to the methodology used by the Settlement Trustee to determine the Allowed Claim Amounts.” Accordingly, the Court should disregard CNA’s arguments at the present time.

**C. Resolution of the Applicability of “No Action” Clauses Depends on Factual Issues and Is Therefore Premature.**

While the Settlement Trust disagrees with CNA’s position that “No Action” clauses render the Trust’s determinations of Allowed Claim Amounts, made pursuant to the TDP, non-binding and inadmissible, ultimately the application of these clauses depends on factual issues for which

there is no record at this time. As discovery has not begun (outside the limited scope permitted by the Court that is unrelated to this issue), resolution of this issue is premature as many questions must be answered before the Court can determine whether the clauses apply.

First, there is a significant question as to whether, under Texas law, the “No Action” clause applies to an action brought by the Settlement Trustee, who stands in the shoes of BSA, the named insured under the policies issued by CNA. Courts have routinely stated that the focus on “No Action” clauses is to address suits brought by third parties, not the insureds. For instance, in *Simon v. Maryland Casualty Co.*, the Fifth Circuit stated that, “for most situations the No-Action Clause in a liability, as distinguished from an indemnity, policy is directed at the injured third party, not the assured.” 353 F.2d 608, 612 (5th Cir. 1965) (citing 8 Appleman, *Insurance Law and Practice* § 4851, at 256, 259, § 4854, at 264, 268 (1962)). Similarly, the Ninth Circuit concluded that “No Action” clauses do not apply universally and declined to apply the clause to an action by insureds. *Eureka Fed. Sav. & Loan Ass’n v. Am. Cas. Co. of Reading, Pa.*, 873 F.2d 229, 232–33 (9th Cir. 1989). Indeed, at least one court has referred to this view as the “majority view” among courts. *See Owens-Corning Fiberglas Corp. v. Allstate Ins. Co.*, 660 N.E.2d 755, 760–61 (Ohio Ct. C.P. 1993).

The rationale for not applying the “No Action” clause to suits brought directly by an insured relates to the purposes and functions of such clauses. In *Simon*, the Fifth Circuit noted that these clauses exist “(1) to avoid joinder of the insurer by the injured person in the action against the assured, and (2) to prevent suit against the insurer for a money judgment by the injured party or the assured until the damages have been fixed by final judgment or agreed settlement.” *Simon*, 353 F.2d at 612. The *Eureka* court noted similar purposes and added that an additional purpose was to avoid a situation where the injured party or insured brought an insurer into the underlying

litigation with possible resultant prejudice to the insurer. *Eureka*, 873 F.2d at 233; *see also* 7A Couch on Insurance, § 105.7 (3d. ed.) (stating that purpose of “No Action” clauses are to protect insurers from non-meritorious claims by third parties and to prevent situations where a jury, in a personal injury action, becomes aware that the tortfeasor is insured and issues a larger award under a “deep pockets” theory). None of these concerns exist here.

Second, courts have held that a “No Action” clause does not apply where an insurer had notice and opportunity to participate in the litigation of the underlying claim. This is especially so in situations where the insurer refused the opportunity to defend the suit or to agree to the settlement in question on the erroneous ground that it has no responsibility under the policy. *See First Nat’l Indem. Co. v. Mercado*, 511 S.W.2d 354, 358 (Tex. Civ. App. 1974); *see also Nutmeg Ins. Co. v. Employers Ins. Co. of Wausau*, No. Civ. A. 3:04-CV-1762B, 2006 WL 453235, at \*15 (N.D. Tex. Feb. 24, 2006) (finding that insurer that breached its policy could no longer require insured’s compliance with “No Action” clause). Here, at the appropriate time, the Settlement Trust will contend that CNA had notice of the underlying claims and an opportunity to agree to the Allowed Claim Amounts but has erroneously denied coverage. Accordingly, the “No Action” clauses are inapplicable to the present facts. However, the Settlement Trust recognizes that discovery is required before this issue can be fully resolved, rendering CNA’s arguments premature.

Third, courts have held that a “No Action” clause does not apply unless an insurer is actually prejudiced or deprived of a valid defense. *Ideal Mut. Ins. Co. v. Myers*, 789 F.2d 1196, 1205 (5th Cir. 1986) (applying Texas law). Whether CNA (or any other insurer that invokes a similar clause) was prejudiced by any alleged non-compliance with this clause is a factual question

that cannot be resolved until after discovery is completed (at the earliest). While the Settlement Trust asserts that CNA is not prejudiced, this issue is not ripe yet.

**VI. An Alternative Approach to Abuse Claims Valuation Is Neither Permitted by the Bankruptcy Code Nor Practical.**

The Defendant Insurers suggest in their submissions that this Court must start from scratch and work “efficiently and creatively . . . to develop a process” to value the Abuse Claims that have been and continue to be determined by the Trust. Undersigned Def’s Mem. in Response to the Court’s December 19, 2025 Order at 6, Dkt. No. 602. That was the very purpose of the TDP, with the goal of avoiding litigation for tens of thousands of claims. Accepting the Defendant Insurers’ contentions that they are not bound by the TDP and that claim values in a mass tort context must be litigated to establish the values of such claims would upend thirty years of mass-tort bankruptcy resolutions and make it effectively impossible for mass tort defendants to reorganize. *See In re Fed.-Mogul Glob., Inc.*, 684 F.3d at 380 n.38 (distinguishing between plan’s preservation of “fact-specific coverage defenses” that could have been raised “in any . . . proceeding prior to bankruptcy,” and non-preserved defenses that “rested on the legitimacy of the TDPs as a method of adjudication,” which “could invite courts to second-guess the judgment of Congress and the bankruptcy court”). That outcome is not permitted by the Bankruptcy Code, which does not permit a “race to the courthouse” among creditors to seek to collect a debtor’s available assets, including insurance proceeds, ahead of other creditors. *See Bankr. Ct. Op.* at 637 (noting that Bankruptcy Code stops any race to the courthouse).

The Defendant Insurers are not uniquely exempt from the impact of a debtor’s bankruptcy. As the Supreme Court acknowledged in *Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.*, “reorganization plans can alter and impose obligations on insurers.” 602 U.S. 268, 283 (2024). The circumstances that insurers face, and specifically the claims-resolution processes of

their insureds, may change after an insured's bankruptcy. Neither the Bankruptcy Code nor the insurers' policies permit an insurer to avoid or limit their obligations based on these changed circumstances.

First, such a windfall is precluded by section 524(e) of the Bankruptcy Code, which provides that the "discharge of a debt of the debtor does not affect the liability of any other entity . . ." 11 U.S.C. § 524(e). *See, e.g., In re Petition of the Bd. of Dirs. of Hopewell Int'l Ins.*, 281 B.R. 200, 210 (Bankr. S.D.N.Y. 2002) (section 524(e) embodies the principle of "providing the debtor with a 'fresh start' but avoiding the grant of a windfall to third parties"); *see also Lewis v. Mfrs. Nat'l Bank of Detroit*, 364 U.S. 603, 608–09 (1961) (rejecting a construction of a bankruptcy statute that "would enrich unsecured creditors at the expense of secured creditors, creating a windfall merely by reason of the happenstance of bankruptcy"); *see also National Union Fire Insurance Co. of Pittsburgh v. Porter Hayden Co.*, No. CIV CCB-03-3408, 2012 WL 734176, at \*4 (D. Md. Mar. 6, 2012) ("The notion that bankruptcy of the insured should not accrue to the benefit of the insurers is well-established. '[A] party who is derivatively liable for the indebtedness of the debtor, such as its insurer, remains so after confirmation and the debtor's discharge.'" (quoting *In re Jason Pharms., Inc.*, 224 B.R. 315, 322 (Bankr. D. Md. 1998)) (internal citation omitted).

Second, permitting insurers to effectively ignore the Allowed Claim Amounts determined by a post-bankruptcy trust in accordance with TDP would also run afoul of the promise contained in most forms of general liability policies, including those in this case, to pay covered claims "notwithstanding the bankruptcy or insolvency of the insured." *See, e.g., Ex. 4 to Trustee's January 16, 2026 Brief at 13.*

Third, even if the Defendant Insurers were otherwise correct—that Texas law or their contracts require that their insured, a debtor, value claims in a manner that is inconsistent with the equitable distribution requirements of 1123 (a)(4), or to engage in claims-liquidation processes that do not comply with the Bankruptcy Code’s primary goal of preserving assets for creditors—those provisions may be preempted by the Bankruptcy Code. *See In re Fed.-Mogul Glob., Inc.*, 684 F.3d at 378 (concluding that Bankruptcy Code may preempt policy provisions to the extent they permit “creditors and others from employing a debtor’s bankruptcy filing to diminish post-filing contractual rights”); *In re Babcock & Wilcox Co.*, No. 00-10992, 2004 WL 4945985, at \*16–17 (Bankr. E.D. La. Nov. 9, 2004), *vacated on other grounds*, 2005 WL 4982364 (E.D. La. Dec. 28, 2005) (ruling that section 1123(a)(5) of the Bankruptcy Code preempted the policies’ anti-assignment provisions “and other contractual provisions including management of claims, cooperation and consent to settlement provisions”).

The Defendant Insurers’ suggestion now that the Settlement Trust and the insurers ignore the Allowed Claim Amounts determined under the TDP and instead start over in valuing more than 58,000 claims would be an enormous waste of judicial resources, impracticable, impermissible under the Bankruptcy Code, and foreclosed by principles of *res judicata* and collateral estoppel.

### **CONCLUSION**

For the reasons discussed above and in the Trust’s January 16, 2026 brief, the Allowed Claim Amounts for Abuse Claims determined by the Settlement Trust pursuant to either the Matrix or IRO claims processes establish the liability owed to an Abuse Claimant by the Settlement Trust. These liquidated values for Abuse Claims are binding on the Settlement Trust as well as the Non-Settling Insurers, who are foreclosed from contesting their coverage obligations for Abuse Claims based upon the value of Allowed Claim Amounts determined in accordance with the TDP.

Dated: January 23, 2026

Respectfully submitted,

*/s/Jeffrey M. Tillotson*

Jeffrey M. Tillotson

Texas Bar No. 20039200

jtillotson@tillotsonlaw.com

**TILLOTSON JOHNSON & PATTON**

1201 Main St., Suite 1300

Dallas, TX 75202

Telephone: (214) 382-3041

- AND -

Kami E. Quinn (admitted *pro hac vice*)

W. Hunter Winstead (admitted *pro hac vice*)

Emily P. Grim (admitted *pro hac vice*)

Charles K. Cooper (admitted *pro hac vice*)

Michael B. Rush (admitted *pro hac vice*)

Brittney M. Welch (admitted *pro hac vice*)

**GILBERT LLP**

700 Pennsylvania Avenue, SE

Suite 400

Washington, DC 20003

Telephone: (202) 772-2200

Facsimile: (202) 772-3333

*Attorneys for the Honorable Barbara J. Houser  
(Ret.), in her capacity as Trustee of the BSA  
Settlement Trust*

**CERTIFICATE OF SERVICE**

This is to certify that on this 23rd day of January 2026, a true and correct copy of the foregoing document was served on Defendants' counsel of record by electronic transmission, pursuant to the Texas Rules of Civil Procedure.

/s/ Jeffrey M. Tillotson  
Jeffrey M. Tillotson