SQUIRE PATTON BOGGS (US) LLP
Mark D. Sheridan
Jason King
382 Springfield Avenue
Summit, New Jersey 07901
Telephone: (973) 848-5681

O'MELVENY & MYERS LLP
Tancred Schiavoni, Esq.
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000

Counsel for Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DISTRICT OF NEW JERSEY

In re: THE DIOCESE OF CAMDEN, NEW JERSEY, Debtor.	Chapter 11 Case No. 20-21257 (JNP)

CENTURY COMPANY'S OBJECTION TO SOLICITATION, TABULATION, AND VOTING PROCEDURES PROPOSED BY THE DEBTOR

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INTRODUCTION

The Bankruptcy Code strictly limits those who may vote on a plan. Only the holder of a claim or interest that is "allowed" may vote.[1] To have an allowed claim, a creditor must either (i) have a claim that is listed in the debtor's schedules as undisputed, liquidated, and non-contingent, (ii) file a proof of claim that is not objected to, or (iii) if an objection is filed to the proof of claim, obtain a court order under Rule 3018 temporarily allowing the claim for voting purposes.[2] If a creditor does have an allowed claim that is entitled to vote, his or her vote may only be cast by the creditor or an authorized agent.[3] And a person who purports to represent more than one creditor must file a detailed statement that, among other things, "shall include" a copy of the instrument empowering the representative to act on the creditor's behalf.[4]

Under the solicitation procedures proposed by the Debtor, abuse claimants would be sent copies of the solicitation packet, but they are not required to cast ballots on their own behalf; rather, lawyers who purport to be authorized to cast the claimants' votes may cast votes for them. The procedures do not require these lawyers to submit any evidence of such authorization to the Court or to comply with the mandatory disclosure requirements of Rule 2019. The proposed procedures are entirely silent as to what steps such lawyers would need to take in order to cast a valid vote on behalf of claimants.

What is more, the Debtor proposes to begin solicitation no later than March 31, 2021—***three months*** before the bar date runs. As of this date, only three abuse claims have been filed. The Debtor fails to even address, let alone explain, how it will determine the universe of claimants

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1 *See* 11 U.S.C. § 1126(a).

2 *See* 11 U .S.C. § 502(a), 1126(a) and Fed. R. Bankr. P. 3002(a), 3003(c)(2), and 3018(a).

3 *See* Fed. R. Bankr. P. 3018(c).

4 *See* Fed. R. Bankr. P. 2019(a).

three months before the bar date has run or how it will identify "all holders of claims" in order to distribute the solicitation materials. The Debtor's expedited schedule only serves to prejudice all parties by tainting the soliciting process. It should be denied.

The abuses that would result if the Court were to adopt the procedures proposed by the Debtor can be easily avoided—by rejecting the proposed procedures, which violate the Bankruptcy Code and Federal Rules of Bankruptcy in such astonishing fashion, and instead insisting that solicitation and voting in this case be undertaken in accordance with the requirements of the law.

Finally, the Debtor's proposal suggests that the "Confirmation Objection Deadline" be 7 days before the confirmation hearing, has no dates for fact or expert discovery and has no date for replies to be filed before the confirmation hearing.[5] Such a schedule would not give the objecting parties any opportunity to prepare to discuss the Debtor's points at the confirmation hearing. Nor does the schedule allow adequate time for the Court to consider objections.

THE PROPOSED PROCEDURES

On December 31, 2020, the Debtor filed its Disclosure Statement [ECF No. 305] and on February 16, 2021, the Debtor filed its motion seeking, *inter alia*, approval of proposed solicitation, voting, and tabulation procedures (the "Motion").[6] [ECF No. 415] The Motion seeks to establish rules for solicitation and voting that are at variance with the requirements of the Bankruptcy Code and Federal Rules of Bankruptcy.

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[5] *Id.*

[6] The "Motion" means the Diocese's Motion for entry of an order (a) approving disclosure statement; (b) establishing plan solicitation, voting, and tabulation procedures; (c) scheduling a confirmation hearing and deadline for filing objections to plan confirmation; and (d) granting related relief. [ECF. No. 415.]

The Proposed Terms Governing Voting

The Court signed the order setting a bar date of June 30, 2021 on February 11, 2021 (the "Bar Date Order"). [ECF No. 409.] The Bar Date Order also requires the Debtor to issue several publication notices beginning "as soon as practicable" and running until June 7, 2021. *See id.* ¶ 19. Yet, the Debtor's Motion proposes a solicitation date of "[n]o later than March 31, 2021," a voting deadline of May 5, 2021, and a confirmation hearing set for May 12, 2021—all before the bar date runs. *See* Motion at 4. With the voting deadline before the bar date of June 30, 2021, it will be impossible for the Debtor to send solicitation packages to or to solicit votes from all eligible claimants.

The proposed procedures virtually ensure that no abuse claimants will actually receive Disclosure Statements or cast ballots. Without explanation of how the Debtor will determine the claimants' identity under these circumstances, the current claimants' lawyers will completely control voting on the Plan, with no evidence required of the input or involvement by the claimants themselves.

The Impact of the Bar Date Order on Solicitation

The Bar Date Order includes a provision that precludes access to proofs of claim alleging injury in periods where no policies were issued or a particular insurer did not issue any policy. [ECF No. 409 at 10.] The Debtor has refused to provide access to these proofs of claim.[7] Under 1126(a), a contingent creditor is entitled to vote only if he or she files a proof of claim and no objection is filed to the claim. However, even for the proofs of claim that are filed, Century and the other insurers will be barred from objecting to the vast majority because they are denied access to them.

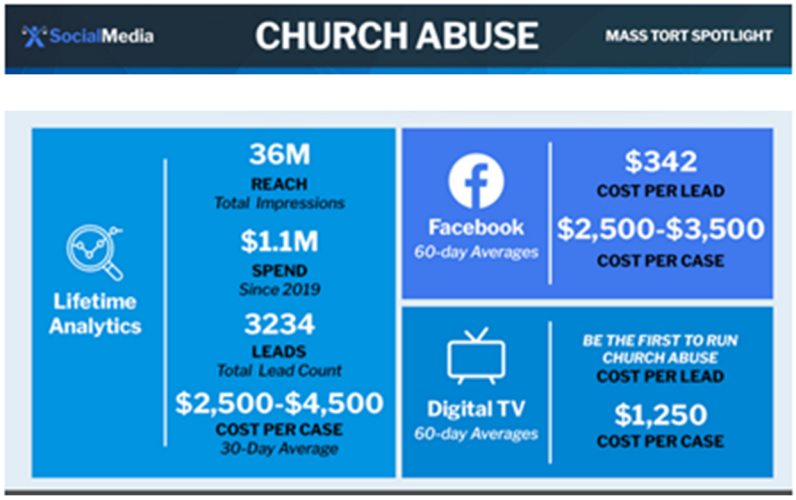
[7] *See* Declaration of Tancred V. Schiavoni ("Schiavoni Decl.") Ex. 4.

Claims Generated by For Profit Claim Aggregators

The proliferation of church and other sexual abuse bankruptcy cases has drawn the attention of for-profit claim aggregators. The companies run advertising and social media campaigns that drive traffic to call centers where hourly workers operating out of boiler rooms generate easy to complete proof of claim forms. The claims are generated on a for profit basis by businesses.

The website for Verus Claims Services LLC ("Verus") describes its procedures in sex-abuse filings: "Verus will be handling the complete process of the Proof of Claim form, as well as the actual submission to the administrator of the Chapter 11 Proof of Claim process."[8] The website adds that Verus even will "[u]pload POC form for submission."[9]

We attach below a price list from one aggregator for claims against churches that was published in February:[10]



8 Declaration of Tancred V. Schiavoni ("Schiavoni Decl.") Ex. 1.

9 Schiavoni Decl. Ex. 2.

10 This image is a portion of an advertisement for a webinar conference held by "Mass Torts Made Perfect," which distributed on February 16, 2021. Schiavoni Decl. Ex. 3.

To be clear, this is not how the Bankruptcy Code is intended to work. Rule 9011 requires that proofs of claim be signed under oath by the claimant or by an attorney who has actually vetted the claim before filing. Claims generated and filed by non-lawyers open up solicitation to all kinds of abuses.

The Aggregator Campaign Now Ongoing in New Jersey

An aggressive mass media campaign is now underway in New Jersey. A New Jersey Law Journal article, "Lawyers Are Starving Right Now: Amid Downturn, Seller Offers Clients for Sale," describes aggregators "offering to connect [the attorneys] to potential plaintiffs," despite the fact that "[p]rofessional responsibility experts say the practice is unethical and potentially illegal."[11] The article describes one New Jersey attorney who has received 28 emails from the aggregator "Consumer Awareness Group" since 2017.[12] The attorney "says the emails suggest the senders are selling cases, although it's unclear what the solicitations mean when they say they are offering 'retained' clients."[13] The attorney further explained that "New Jersey ethics rules prohibit lawyers from paying per case or paying for a referral. . . . If the former is indeed the case here, it seems problematic and fundamentally troubling that a clergy sex abuse victim could be 'sold' to a lawyer for $2,500."[14]

* * *

The Debtor's Motion fails to explain what, if any, procedures will be in place to ensure the vote will not be compromised by these for profit claim aggregators and the entities behind them.

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[11] *See* Charles Toutant, *Lawyers Are Starving Right Now: Amid Downturn, Seller Offers Clients for Sale*, New Jersey Law Journal (Jan. 17, 2021, available at https://www.law.com/njlawjournal/2021/02/17/ lawyers-are-starving-right-now-amid-downturn-seller-offers-clients-for-sale/ (last accessed March 10, 2021) (Schiavoni Decl. Ex. 5).

[12] *Id*.

[13] *Id*.

[14] *Id*.

ARGUMENT

I. THE DEBTOR'S PROPOSED SCHEDULE FOR CONFIRMATION DEPRIVES CLAIMANTS OF SUBSTANTIVE RIGHTS.

Despite the bar date set for June 30, 2021, the Debtor proposes a solicitation date of "[n]o later than March 31, 2021," a voting deadline of May 5, 2021, and a confirmation hearing set for May 12, 2021. *See* Motion ¶ 11. Under the Federal Rules of Bankruptcy, all creditors must receive at least 28 days' notice of the deadline for filing objections to confirmation and the confirmation hearing. Fed. R. Bankr. 2002. In this case, as of the date of this filing, only three abuse claimants have filed a proof of claim. This fact is unsurprising, given that the claimants have now been told that they have until June 30, 2021 to file their proofs of claim. Because of this, the full universe of creditors cannot be known until after the bar date runs—more than six weeks ***after*** the Debtor's confirmation hearing and nearly two months after parties in interest must file objections.

The Debtor's proposed schedule deprives nearly all abuse claimants of their rights under the Federal Rules by setting a confirmation hearing and date for filing objections before all creditors are even required to file their claims. Such a proposal is clearly contrary to law and must be rejected.

II. THE PROPOSED SOLICITATION PROCEDURES DO NOT COMPLY WITH THE BANKRUPTCY CODE AND RULES.

An effective and fair solicitation and voting process is essential in all Chapter 11 cases. In mass tort bankruptcies such as this one, courts have recognized that especially careful scrutiny is needed. For example, in *Congoleum*, a mass tort bankruptcy case from this District, the Third Circuit emphasized that "efficiency" in mass tort bankruptcy cases "must not be obtained at the price of diminishing the integrity of the process."[15] For this reason, the Court of Appeals said,

[15] *Century Indem. Co. v. Congoleum Corp. (In re Congoleum Corp.),* 426 F.3d 675, 693 (3d Cir. 2005).

"the level of court supervision must be of a high order."[16] This particularly includes the process of voting. *See In re Dune Deck Owners Corp*., 175 B.R. 839, 845 (Bankr. S.D.N.Y. 1995) (when there is reason to question certain votes, "the Court must inquire into [such votes] in order to preserve the integrity of the Chapter 11 process"). When subjected to careful scrutiny under the Bankruptcy Code and Rules, it is clear that the voting and solicitation procedures proposed by the Debtor do not comply with existing requirements.

A. Abuse Claimants Who Have Not Filed Proofs Of Claims May Not Be Permitted To Vote.

Under the proposed solicitation procedures, the Debtor will solicit votes from "all Holders of Claims entitled to vote on the Plan," but does not require a claimant to have filed a proof of claim before he or she is entitled to vote. Motion ¶ 19. The Motion, however, does not explain how it will identify the universe of claimants or what means it will use to parse through any votes it receives from a claimant who has not yet filed a proof of claim. Under the procedures, the Court would have no role in determining if the person in fact has at least a colorable claim against the estate, and other parties in interest would have no ability to challenge the person's assertion of a claim entitling the person to vote.

These proposed procedures violate the Bankruptcy Code and Rules. Section 1126(a) explicitly provides that only "allowed" claims are permitted to vote on a plan of reorganization.[17] Unless a claim has been scheduled as undisputed, liquidated and non-contingent, a creditor must file a proof of claim in order for its claim to be "deemed allowed."[18] A creditor whose claim is

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[16] *Id*.

[17] *See* 11 U.S.C. § 1126(a) ("The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan").

[18] *See* 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3002(a) ("an unsecured creditor . . . must file a proof of claim . . . to be allowed").

not scheduled and who has not filed a timely proof of claim is not entitled to vote according to Bankruptcy Rule 3003(c)(2).[19]

Where a claimant has filed a proof of claim but a party in interest has objected to it, the claimant is not permitted to vote on the plan unless the Bankruptcy Court issues an order "temporarily allowing" the claim for voting purposes under Bankruptcy Rule 3018.[20] Such orders may be entered only "after notice and hearing."[21]

Thus, a creditor is entitled to vote only if: (i) his or her claim is scheduled as undisputed, liquidated, and non-contingent; (ii) he or she files a proof of claim, and no objection is filed to the claim; or (iii) his or her proof of claim is temporarily allowed to vote by court order. Under no other circumstances is a party entitled to vote on a debtor's plan. The overwhelming majority of abuse claimants do not at this point meet any of the requirements necessary for voting on the Plan. Under the Bankruptcy Code and Rules, therefore, they may not vote.[22] There is no provision in the Bankruptcy Code that sets forth any different rules for voting by alleged holders of abuse

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[19] *See* Fed. R. Bankr. P. 3003(c)(2) (any creditor whose claim is not scheduled at all or is scheduled as disputed, contingent, or unliquidated "shall file a proof of claim" by the bar date, and "any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting . . ."). *See also* Gibson, "Judicial Management of Mass Tort Bankruptcy Cases" at 131 (Fed. Jud. Ctr. 2005) ("Allowing voting by holders of unliquidated tort claims who have not filed proofs of claim, therefore, is contrary to the Bankruptcy Code and Rules").

[20] *See* Fed. R. Bankr. P. 3018(a) ("Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan"). *See also* Gibson, "Judicial Management of Mass Tort Bankruptcy Cases" at 131 (Fed. Jud. Ctr. 2005) (Powers K) ("Although Rule 3018(a) authorizes the bankruptcy court to temporarily allow a claim for voting purposes, that rule deals with the situation in which an objection is made to a filed claim").

[21] *See* Fed. R. Bankr. P. 3018(a).

[22] *See also* Gibson, "Judicial Management of Mass Tort Bankruptcy Cases" at 131 (Fed. Jud. Ctr. 2005) ("Although 'creative voting scheme[s]' . . . have been implemented in some mass tort bankruptcy cases, compliance with the Bankruptcy Code and Rules requires imposition of a bar date and the filing of proofs of claim before voting on a plan is undertaken").

claims, and thus, the procedures proposed by the Debtor would enfranchise persons who have no legal right to vote under the Code and Rules.

Ignoring these applicable legal standards, the Debtor nevertheless proposes that all "Holders of Claims" be permitted to vote—regardless of whether they have yet to file a proof of claim. The Debtor further proposes that in the absence of a proof of claim, the claimant will be entitled to vote the amount of such claim as determined by "agreement with the Diocese fixing the allowed amount of such claim for voting purposes." Motion ¶ 33. But this unchallengeable two-way agreement, which the Debtor intends to substitute for the requirement that claimants first file proofs of claim to which other parties in interest can object, does not comply with the requirements of the Code and Rules.

As explained above, the Bankruptcy Code and Federal Rules limit the scope of eligible voters to those claimants who have filed proofs of claim. Because the Debtor's procedures proposed in the Motion would allow an untold number of potential claimants who have not filed proofs of claim to vote on the Plan, the Motion to approve the procedures as written must be denied.

B. Deceased Abuse Claimants May Not Be Permitted To Vote.

Whatever procedure the Debtor employs to value claims for purposes of voting must exclude from the vote deceased persons lacking evidence to prove their claims. Simply stated, such persons do not have viable claims under state law.[23] They should therefore not be permitted to vote on the Plan in this case.

[23] In light of the nature of the tort claim at issue, the burden of proof to establish the elements of the claim and damages cannot be met if the claimant is dead. *See* also New Jersey's Survivor's Act, N.J. Stat. § 2A:15-3 ("Every action brought under this chapter shall be commenced within two years after the death of the decedent.").

Such persons cannot be treated as holders of "claims" under Section 101(5), but instead must be regarded, at most, as holders of non-voting "demands" under Section 524(g)(5).[24] The Bankruptcy Code only permits holders of allowed claims to vote; holders of "demands" cannot do so. It is a general principle of bankruptcy law that state law governs the validity and amount of a claim.[25] As the Third Circuit stated in *Combustion Engineering*, "a claim will not be allowable if it 'is unenforceable against the debtor" under "applicable non-bankruptcy law."[26] A claim against the bankruptcy estate, therefore, will not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the vote on the Plan, and the Debtor's proposed procedures cannot be reconciled with the requirements of the Bankruptcy Code and Rules.

C. Claimants Who Cannot Demonstrate A Colorable Claim Against Debtor May Not Be Permitted To Vote; Self-Certification Of A Claimant's Alleged Entitlement To Vote Is Not Sufficient.

Under the proposed balloting procedures, any holder of a claim against the Debtor would be allowed to vote in an amount determined by a proof of claim or as determined by "agreement with the Diocese fixing the allowed amount of such claim for voting purposes."[27] In addition to

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[24] *See, e.g.,* William P. Shelley and Jacob C. Cohn, *Unraveling the Gordian Knot of Asymptomatic Claimants: Statutory, Precedential and Policy Reasons Why Unimpaired Abuse Claimants Cannot Recover in Bankruptcy*, Mealey's Asbestos Bankr. Rep. Vol. 3, #10 (2004) (Schiavoni Decl. Ex. 6); Mark D. Taylor and Scott L. Alberino, *Who Is Authorized to Vote on a Plan of Reorganization?: Issue Pending in the USG Bankruptcy Case Could Alter the Asbestos Bankruptcy Landscape*, Mealey's Asbestos Bankr. Rep. Vol. 2, #6 (Jan. 2003) (Schiavoni Decl. Ex. 7).

[25] *See Official Comm. of Asbestos Claimants v. Asbestos Prop. Damage Comm. (In re Fed.-Mogul Glob. Inc.),* 330 B.R. 133, 155 (D. Del. 2005) citing *Raleigh v. M. Dept. of Revenue*, 530 U.S. 15, 20 (2000), and *Bittner v. Borne Chemical Co*., 691 F.2d 134, 135 (3d Cir. 1982) (applying same principle to estimation proceedings under § 502(c)).

[26] *In re Combustion Eng'g, Inc*., 391 F.3d 190, 208-09 (3d Cir. 2004).

[27] Motion ¶ 33 ("The Diocese proposes that—solely for the purpose of voting on the Plan and not for the purpose of allowance of, or distribution on account of, a claim, and without prejudice to the Diocese's rights in any other context—each holder of a claim entitled to vote on the Plan be entitled to vote the amount of such claim as provided: (a) in a timely filed proof of claim (a "Proof of Claim") or, if no Proof of Claim was filed, the amount of such Claim as provided in, the Diocese's Schedules of Assets and Liabilities (as amended, the "Schedules"), or (b) an agreement with the Diocese fixing the allowed amount of such claim for voting purposes.").

allowing the claimants to vote, the proposed ballot the Debtor seeks to use allows anyone to claim to be a claimant's authorized agent to cast a vote on the claimant's behalf.[28] The Debtor's proposed procedures requires no showing that counsel is authorized to casts votes on the claimant's behalf, and does not require that any counsel must comply with Rule 2019 before signing the ballots.

The lack of any such procedure entirely excludes the Court and other parties in interest from the process of evaluating a claimant's assertion that he or she has a claim and is therefore entitled to vote. The Bankruptcy Code and Rules do not allow claimants (or their counsel) to make this determination on their own, without scrutiny from the Court, and without any opportunity for other parties in interest to object to the claim. Instead, under § 502(a), any party in interest may object to a proof of claim. Such an objection initiates a judicial process in which the Court will determine, on the basis of evidence and argument, whether the person should be permitted to vote and, if so, in what amount.[29]

The procedures proposed by Debtor dispense with any such judicial scrutiny by permitting claimants, their lawyers, and the Debtor essentially to self-adjudicate the validity of claims and self-determine their entitlement to vote.[30]

The necessity of judicial scrutiny in this context is underscored by revelations of what has gone wrong in other mass tort cases where ballots signed by counsel were used in this District. For example, in the *Burns & Roe* bankruptcy it was discovered that literally hundreds of tort claimants submitted ballots even though (i) they had settled their claims with the debtor pre-

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[28] *See* Exhibit C, Ballot For Accepting or Rejecting the Diocese's Plan Of Reorganization, at 3.

[29] *See* 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3007, 3018. Similarly, if the debtor has scheduled a particular creditor's claim as undisputed and liquidated, any other party in interest who disagrees with the debtor's scheduling of a claim and who may be liable with the debtor for the claim may file a proof of claim on the claimant's behalf and then object to it. *See* 11 U.S.C. § 501(b), (c); 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3005(a).

[30] *See* Motion ¶ 33.

petition, and had been paid, or (ii) they had dismissed their claims pre-petition, with prejudice, pursuant to a stipulation that they had no evidence of exposure to asbestos for which Burns & Roe might have legal responsibility.[31]

The procedures proposed in the Motion cannot be reconciled with requirements of the Code and Rules—particularly Rule 3018, which confers on the Court, not the claimants themselves or their lawyers, the authority to determine which claims are valid for voting purposes. The Court should not approve a set of procedures that essentially permit an abuse claimant (or his/her counsel) to self-determine—without judicial oversight or involvement— the validity of a claim for voting purposes. Before an abuse claimant can be permitted to vote, therefore, he or she must file a proof of claim, parties in interest must have the chance to object to the proof of claim, the Court must issue an appropriate order under Rule 3018 temporarily allowing the claim, and all ballots must be supported by adequate proof of the claim being voted.

D. There Is No Reason To Permit Counsel To Control The Vote To The Exclusion Of Claimants On Whose Behalf They Are Purportedly Acting.

To ensure that abuse claimants' individual interests are properly protected and reflected in any vote, the Debtor should be required to send a solicitation package to each abuse claimant, and the signatures of authorized agents on the ballots should not be permitted. That way, each

[31] *See In re Burns and Roe Enters., Inc*., No. 00-41610 (RG) (Bankr. D.N.J. Dec. 7, 2006), Dkt. No. 1884 at ¶ 2, Certification of Deirdre Woulfe Pacheco, Esq. (acknowledging that up to 547 clients of her law firm whose claims against debtor had been settled or dismissed with prejudice pre-petition had nevertheless submitted ballots voting on the debtor's plan); Declaration of Arthur Luxenberg, Dkt. No. 1913, *In re Burns and Roe Enters., Inc*., No. 00-41610 (RG) (Bankr. D.N.J. Jan. 8, 2007) (acknowledging, after a court-directed review of his firm's records, that additional ballots had been erroneously cast by clients of his firm who had dismissed their suits against debtor pre-petition); Certification of Jake W. Harrell, Dkt. No. 1880, Exh. 1 at 15 and 16, *In re Burns and Roe Enters.*, Inc., No. 00-41610 (RG) (Bankr. D.N.J. Dec. 5, 2006) (attaching a stipulation, signed by a claimant who submitted a ballot voting on the Burns & Roe plan, in which the claimant had dismissed her claim against debtor pre-petition, with prejudice, based on an acknowledgement that, *inter alia*, the claimant had "no evidence of identification of products containing asbestos manufactured, distributed, used, or sold by defendant BURNS AND ROE ENTERPRISES, INC. to which the Plaintiffs were exposed").

individual abuse claimant can cast his or her own vote, based on his or her individual assessment of the Plan and alternatives thereto following review of a disclosure statement providing adequate information.

If the Court nevertheless permits the use of signatures by lawyers or other persons claiming to be "authorized agents," then at a minimum each attorney submitting a ballot should be required to file with the Court specific evidence of his authority to vote on behalf of his clients. Attorneys should not be permitted to self-determine the legal sufficiency of their purported authorizations to vote on behalf of a client. Conclusory self-declared assertions of authority such as those proposed here are simply not sufficient.

The Court of Appeals in *Combustion Engineering*, commenting on the use of master ballots in that asbestos bankruptcy case, said that "[w]here the voting process is managed almost entirely by proxy, it is reasonable to require a valid power of attorney for each ballot to ensure claimants are properly informed about the plan and that their votes are valid."[32] To ensure that abuse claimants are not disenfranchised by their counsel, each claimant should be required to confirm in writing his or her authorization to permit his or her attorney to vote on the Plan.

The Court should only permit representative voting under Rule 3018(c) if the lawyer claiming authority submits an instrument establishing that he has been specifically authorized to vote on the client's behalf on this particular Plan. That was the holding of the bankruptcy court in *Congoleum*, another asbestos bankruptcy case, which stated:

> I want to emphasize, the power of attorney must be bankruptcy specific. If it merely refers to the personal injury case, it is not enough. Authority to take action on a client's behalf in a personal injury case is not sufficient to give authority to vote on that client's behalf in the bankruptcy case.[33]

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[32] *Combustion Engineering*, 391 F.3d at 245 n.66.

[33] Transcript of Hearing, Dkt. No. 1090 at 52-53, *In re Congoleum Corp*., No. 03-51524 (Bankr. D.N.J. July 26, 2004). *See also* Transcript of Hearing, Dkt. No. 1861 at 57, *In re Congoleum Corp*., No. 03-

This Court is the sole proper arbiter of the legal sufficiency of an attorney's authority to submit a ballot on behalf of a client, and there should be a record from which the Court can make such a determination. Thus, attorneys voting on behalf of clients should be required to submit bankruptcy plan-specific evidence of their authority to the Court, i.e., a copy of the authorizing instrument for each individual client. Mere exemplars, are not sufficient to permit the Court to carry out its judicial responsibilities.

The requirements of Rule 2019(a) are, on their face, mandatory, using the word "shall," rather than "may," to command compliance.[34] That is because Rule 2019 "is part of the disclosure scheme of the Bankruptcy Code and is designed to foster the goal of reorganization plans which deal fairly with creditors and which are arrived at openly."[35]

In short, as the district court in *Congoleum* opined: "There is simply no reason why Rule 2019, which seeks to ensure openness and good faith participation at a relatively early stage of a reorganization, should be construed more narrowly than the later stage provisions at issue in *Combustion Engineering*, *e.g.*, § 1126(e) and 1129(a)(3)."[36] Rule 2019 is "designed to cover

51524 (Bankr. D.N.J. Dec. 30, 2004) (holding that a "certification in the master ballots doesn't really solve the problem" and therefore "a bankruptcy specific power-of-attorney is something that must be strictly complied with here"). *See also Reid v. White Motor Corp*., 886 F.2d 1462, 1471-72 (6th Cir. 1989) (rejecting a non-complying attorneys' suggestion that he was authorized as agent for the creditors to file a class proof of claim because he was representing them in certain underlying state court litigation, and noting that consent to one piece of litigation is "not tantamount to a blanket consent to any litigation the class counsel may wish to pursue").

[34] *Nantucket Investors II v. California Federal Bank (In re Indian Palms Assocs., Ltd*.), 61 F.3d 197, 208 (3d Cir. 1995) (use of the term "shall" imposes a requirement of mandatory, as opposed to discretionary, compliance); *In re The Muralo Co*., 295 B.R. 512, 524 & n.10 (Bankr. D.N.J. 2003) (holding, in an asbestos bankruptcy case, that "Rule 2019(a) requires entities, including counsel, who would represent in a chapter 11 case more than one creditor, to file a verified statement listing those creditors" and "explaining the circumstances of their agency") (quotations and citations omitted).

[35] 9 Collier on Bankruptcy 112019.01 (15th ed. rev. 2005).

[36] Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm., 321 B.R. 147, 168 (D.N.J. 2005).

entities which, during the bankruptcy case, act in a fiduciary capacity to those they represent, but are not otherwise subject to control of the court."[37]

After the instruments mandated by Rule 2019 have been filed with the Court, then parties in interest should have the opportunity to object, if appropriate, to any purported authorizations that are believed to be insufficient. Such a process would create an adequate record from which the Court could properly determine the sufficiency of any disputed authorizations. Only by ensuring that claimants have specifically authorized their counsel to vote in a particular way on the specific plan under consideration by the Court will there be any chance that the votes on the plan actually reflect the interests and intentions of the claimants themselves.

It would be error to allow the Debtor to short-circuit compliance with Rule 2019 as the Rule imposes mandatory disclosure requirements.

III. THE PROPOSED NOTICE AND PLAN OBJECTION PROCEDURES ARE INADEQUATE AND A MORE EXTENDED CONFIRMATION SCHEDULE IS NECESSARY.

The Motion proposes that the "Confirmation Objection Deadline" be 7 days before the confirmation hearing and has no date for replies to be filed before the confirmation hearing.[38] Such a schedule would not give the objecting parties any opportunity whatsoever to prepare to discuss the Debtor's points at the confirmation hearing. Nor does the schedule allow adequate time for the Court to consider objections.

Any confirmation briefing schedule should not be skewed so heavily in favor of the Debtor, particularly in a case that is admittedly complex. Moreover, any briefing schedule should permit all parties adequate time to prepare to address the issues at confirmation. At a minimum, final

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[37] *In re CF Holding Corp./Col"s Mfg. Co*., 145 B.R. 124, 126 (Bankr. D. Conn. 1992).

[38] *See* Motion ¶ 11.

briefs in support of the Plan should be filed at least 21 days before commencement of the confirmation hearing.

The schedule must also include a period for document discovery followed by adequate time for depositions. The schedule should also allow for time after fact discovery is completed for designation of experts, submission of expert reports, and expert discovery. Thus, the Court should not adopt any confirmation schedule that does not expressly provide reasonable time for potential objectors to conduct appropriate plan discovery, both fact and expert discovery, before confirmation objections are due.

Century proposes the following schedule:

Bar Date	June 30, 2021
End of Fact Discovery	October 28, 2021
Affirmative Expert Reports Due	November 11, 2021
Responsive Expert Reports Due	November 25, 2021
Expert Depositions	November 29-December 3, 2021
Plan Confirmation Objections due	December 10, 2021
Confirmation Objection Deadline	December 17, 2021
Confirmation Reply Deadline and Deadline to File Form of Confirmation Order	December 23, 2021
Confirmation Hearing	January 3, 2022

CONCLUSION

For the reasons set forth above, Century respectfully requests that the Court deny the Motion and grant such other and further relief as is just and proper.

Dated: March 10, 2021

Respectfully Submitted,
By: */s/ Jason King*

SQUIRE PATTON BOGGS (US) LLP
Mark D. Sheridan
Jason King
382 Springfield Avenue
Summit, New Jersey 07901
Telephone: (973) 848-5681
Email: mark.sheridan@squirepb.com
jason.king@squirepb.com

O'MELVENY & MYERS LLP
Tancred Schiavoni, Esq. (*pro hac vice*)
Colleen Powers
Times Square Tower
7 Times Square
New York, New York 10036-6537
Telephone: (212) 326-2000
Email: tschiavoni@omm.com

Counsel for Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America