IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1] Debtors.	Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered)

OPENING BRIEF OF FORMER SLATER CLIENTS REGARDING THEIR MOTION FOR AN ORDER ALLOWING SUBSTITUTION OF ATTORNEYS AND DENYING FEES TO SLATER, SLATER AND SCHULMAN

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Claimants,[2] who are former clients of Slater, Slater and Schulman (the "**Slater Firm**") have previously filed a motion requesting the issuance of an Order allowing (1) substitution of attorneys, (2) termination of existing contingency fee legal services agreements with the Slater Firm, and (3) denial or reduction of attorney's fees to be paid to the Slater Firm (the "**Motion**") [D.I. 13181]. Following the filing of the Motion, the filing of responses from the Slater Firm and the trustee appointed to supervise the resolution of claims and distributions to abuse claimants (the "**Trustee**") under the terms of a certain trust ("**Settlement Trust**" or "**Trust**") established for that purpose, and after a status conference, the Court requested that the parties submit briefing regarding this Court's jurisdiction to enter the requested relief. Claimants respectfully submit this brief in response thereto.

INTRODUCTION

1. Claimants are fourteen former clients of the Slater Firm. All are also tort claimants in the above-captioned Boy Scouts of America ("**BSA**") bankruptcy case, having suffered abuse as children or teenagers. Claimants are among the thousands of abuse victims who made the unfortunate choice of selecting the Slater Firm as their counsel in this matter. Between June 2024 and September 2025, the Slater Firm repeatedly misled its clients about why their payments from the Trust were delayed because the Slater Firm did not want to publicly acknowledge its own misconduct and process failures. That delay has since been compounded by the Trust's requirement that all claims submitted by the Slater Firm be subjected to an additional third-party verification process.

2. These compounded delays are entirely the result of the Slater Firm's ***admitted*** misconduct and have generated material hardships to Claimants, which they cannot avoid by

[2] Claimants are: D.S., D.S., C.W., D.B., A.S., T.P., J.I., R.M., P.J., R.V., J.M., R.D., J.A, and E.J..

simply engaging other counsel. To make things worse, the Slater Firm continues to seek to enforce its liens and contingency fee agreements against Claimants, insisting that it is entitled to 40% of their award despite the Slater Firm's misconduct. The Slater Firm's misconduct and deception has resulted in irreparable injury to Claimants, undermined the credibility of the bankruptcy system, and has wide-ranging impacts on the BSA debtors' estate. This Court has jurisdiction and the power to ensure that justice is done. If any case calls for that authority to be deployed, it is this one. Third Circuit law is unambiguous that federal courts have inherent authority to review attorney's fee contracts as part of their power to regulate the conduct of attorneys who appear before them. Importantly, courts around the country, including in this Circuit, have routinely exercised this authority in mass tort cases, including to limit contingency fees due under fee agreements. By way of example, the U.S. Bankruptcy Court for the Eastern District of Virginia, as well as the Fourth Circuit, relied on this inherent authority in regulating attorney contingency fees in the A.H. Robins bankruptcy. This case fits well within that mold.

FACTUAL AND PROCEDURAL BACKGROUND

3. BSA filed for bankruptcy relief on February 18, 2020 after "it became apparent that BSA could not continue to defend individual abuse claims on a cases-by-case basis and would need to declare bankruptcy." *In re Boy Scouts of Am.*, 137 F.4th 126, 143 (3d Cir. 2025), *cert. denied sub nom. Lujan Claimants v. Boy Scouts of Am.*, No. 25-490, 2026 WL 79599 (Jan. 12, 2026).

4. As of the bar date of November 16, 2020, 82,209 unique and timely proofs of claims ("**POCs**") were filed with the Court, which estimated their total value at between \$2.4 and \$3.6 billion. *Id.* Subsequent negotiations yielded a plan ("**Plan**") that established the aforementioned Trust—a "Settlement Trust funded with approximately \$2.48 billion in noncontingent assets contributed by BSA and various nondebtors." *Id.* at 143–44.

5. This Court ultimately confirmed the Plan on September 8, 2022, and the Plan went effective on April 19, 2023. *Id.* at 146. The Third Circuit ultimately affirmed the Confirmation Order last May, and the Supreme Court thereafter denied certiorari review. *Id.* at 170.

6. A significant subset of the 82,000 POCs were filed by the Slater Firm. Specifically, the Slater Firm, working with claim aggregators, ultimately filed over 14,600 claims, and it had few, if any, quality controls in place to ensure the validity of these claims. In exchange for preparing their clients' POCs, the Slater Firm entered into "contingency fee agreements" with each claimant, under which it would be entitled to receive 40% of their clients' total claim value as attorney's fees. Ultimately, the Slater Firm has asserted liens against distributions from the Trust to secure the payment of this fee. *See* Dkt. 13217 at 11, Ex. B.

7. In June 2024, the Trustee advised the Slater Firm that the Trust would cease processing any of the claims filed by the Slater Firm due to the significant numbers of irregularities associated with those claims. Dkt. 13103. The Trust then proceeded to conduct an investigation of these "irregularities." *Id.* Notwithstanding this obviously material turn of events, over the course of the ensuing fifteen months, the Slater Firm not only failed promptly to advise its clients of this delay in processing their claims, but affirmatively misled clients about why their claims were being delayed.

8. In September 2025, the Trustee filed a "Notice of Issues with Trust Claims Submissions by Slater Slater Schulman LLP." Dkt. 13103. That Notice stated: "[t]he Trust has confirmed, and the Slater Firm now agrees, that there are procedural and factual problems in some of the Slater Firm's claim submissions to the Trust." *Id.*

9. The Notice went on to state:

> **<u>As a result of the Trust's initial investigation, the Trust and the Slater Firm hired, at the Slater Firm's expense,</u>** an independent third party (the

> "Neutral") to (i) review documents the Trust asked the Slater Firm to produce, (ii) identify documents that may be relevant to the Trust's claim determination process, and (iii) facilitate production of those documents to the Trust in a manner that would preserve any applicable attorney-client and/or work product privileges and protections.
>
> When the Slater Firm recently acknowledged that there are problems in some of its claim submissions to the Trust, the Trust and the Slater Firm further agreed that the Neutral would vet all undetermined claims submitted by the Slater Firm to the Trust before those claims could proceed to the Trust's claims determination team for its detailed review and determination.
>
> The Neutral's vetting process will include a review of internal documents and communications that the Slater Firm produced in response to the Trust's document production request as relevant to each undetermined claim submitted by the Slater Firm to the Trust. The Neutral will also have access to all documents submitted to the Trust by the Slater Firm on behalf of each such Claimant.

Id. (emphases added).

10. Notably, this additional third-party verification procedure applies to **<u>all</u>** claims submitted by the Slater Firm, even to clients who chose to fire the Slater Firm and hire other lawyers or proceed *pro se*. In other words, no cleansing act, by any claimant, no matter how limited the Slater Firm's involvement was or how legitimate and verifiable the claim, would suffice to avoid the delay associated with the third-party verification process.

11. On or about September 9, 2025, the Slater Firm sent a Notice informing Claimants—who were then its clients—that the Settlement Trust had ceased processing claims and notified them about the negotiated resolution. *See* Ex. A to Dkt. 13181. The Notice stated that the Slater Firm took full responsibility for these issues and explained that Slater would be cutting its contingency fees unilaterally by 10% of the actual dollar value (*e.g.,* from 40% to 36%). *Id.*

12. Subsequently, Claimants retained new counsel and filed the underlying Motion for relief, seeking, among other things, the denial or reduction of attorney's fees to the Slater Firm. *Id.* The Trustee and the Slater Firm filed responses to the Motion. In her response, the Trustee

clarified that she "takes no position on the merits of the Motion or the dispute between Claimants and the Slater Firm." Dkt. 13220.

13. The Slater Firm, in its response, raised a number of objections, claiming, among other things, that the Court lacks jurisdiction to issue the relief requested in the Motion, and that the Motion was otherwise procedurally improper or deficient. *See* Dkt. 13217.

14. In their Reply, Claimants noted that the Court "retains jurisdiction over the *res* of the Trust and the distribution of trust assets," and further reiterated that this Court should "adjudicate the Motion and embrace, not turn from, its commitment to ensure the integrity of the distribution process so that survivors receive their maximum distributive share." Dkt. 13241. Claimants further noted that this Court unambiguously has authority to issue sanctions against the Slater Firm under section 105 of the Bankruptcy Code. *See* 11 U.S.C. § 105.

15. Following these submissions, the Court held a status conference on November 13, 2025, in which it requested further briefing on the jurisdictional issues. This Court then approved a briefing schedule, which was subsequently amended. Dkts. 13323, 13360. Subsequent to approval of the briefing schedule, Claimants engaged Dechert LLP to assist Claimants with briefing the jurisdictional issues before this Court. *See* Dkts. 13438-40.

STATUTORY AND JURISDICTIONAL BACKGROUND

16. As the Supreme Court has explained, bankruptcy courts "are courts of equity and 'appl[y] the principles and rules of equity jurisprudence.'" *Young v. United States*, 535 U.S. 43, 50 (2002) (quoting *Pepper v. Litton,* 308 U.S. 295, 304 (1939)). And like any other federal court, bankruptcy courts have a "virtually unflagging" responsibility to exercise the jurisdiction conferred upon them. *Colorado River Water Conserv. Dist. v. U.S.*, 424 U.S. 800, 817 (1976).

17. Jurisdiction over bankruptcy cases is vested initially in the district courts, 28 U.S.C. § 1334, and delegated to the bankruptcy courts, *id*. § 157(a). Under section 157(b), bankruptcy

courts may hear and determine "all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11…." *Id.* § 157(b). Core proceedings include "matters involving the administration of the estate," "allowance or disallowance of claims against the estate," "determinations of the validity, extent, or priority of liens," "confirmation of plans," and "other proceedings involving the liquidation of the assets of the estate or the adjustment of the debtor-creditor relationship…." *Id*. The bankruptcy court also has jurisdiction over "a proceeding that is not a core proceeding but that is otherwise related to a case under title 11…." *Id.* § 157(c).

18. A matter is "related to" a bankruptcy case if it impacts the handling or administration of the case. *See Celotex v. Edwards*, 514 U.S. 300, 308 (1995) ("We agree with the views expressed…in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), that 'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate,"' *id*., at 994"). In addressing issues involving the estate and distributions from the estate, the bankruptcy court's jurisdiction is fundamentally *in rem*, and thus exclusive of other courts. *See, e.g.,* 28 U.S.C. § 1334(e) (vesting the district courts with "exclusive jurisdiction" over the estate); *id*. § 157(a) (delegating bankruptcy jurisdiction); *Tenn. Student Assistance Corp. v. Hood,* 541 U.S. 440, 447-48 (2004); *Straton v. New*, 283 U.S. 318, 321 (1931) (the jurisdiction of the bankruptcy court "is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition"); *Gross v. Irving Tr. Co.*, 289 U.S. 342, 344-45 (1933); *U.S. Fid. & Guar. Co. v. Bray*, 225 U.S. 205, 217 (1912); *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 306-07 (1911); *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 192 (1902); *Shawhan v. Wherritt*, 48 U.S. 627 (7 How. 627), 643 (1849).

19. Bankruptcy courts likewise have ancillary jurisdiction and authority under section 105(a), which is patterned after the All Writs Act, 28 U.S.C. § 1651(a). *See* H. REP. NO. 95-595,

95th Cong., 1st Sess. 316 (1977) (section 105(a) is patterned after the All Writs Act).[3] Like section 1651(a), section 105(a) directs that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); *see Celotex*, 514 U.S. at 303 (discussing the bankruptcy court's "equitable powers" under section 105(a)); *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 335 (2d Cir. 1985) ("When a federal court has jurisdiction over its case in chief, as did the district court here, the All-Writs Act grants it ancillary jurisdiction to issue writs 'necessary or appropriate in aid of' that jurisdiction."); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).[4]

20. In the exercise of its equitable jurisdiction and authority, the bankruptcy court may decide a discrete dispute and grant complete relief even though its judgment includes the resolution of issues that might also be decided by a court of law. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 399 (1946) ("where, as here, the equitable jurisdiction of the court has properly been invoked…, the court has the power to decide all relevant matters in dispute and to award complete relief even though the decree includes that which might be conferred by a court of law."); *Alexander v. Hillman*, 296 U.S. 222, 241-42 (1935) (rejecting the argument that "while invoking the court's jurisdiction to establish their right [of recovery], they [respondents] may deny its power to require them to account" for what they owe, and instead applying the principle that "having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief.").

[3] The All Writs Act directs that "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

[4] *Accord U.S. v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) ("This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate…orders it has previously issued in its exercise of jurisdiction otherwise obtained").

21. Consistent with its equitable nature, the bankruptcy process "converts the creditor's legal claim into an equitable claim to a pro rata share of the res." *Katchen v. Landy*, 382 U.S. 323, 336 (1966). In order for this process to function as Congress intended, matters involving the administration of claims, including the extent, validity, and priority of liens, necessarily fall within the purview of the bankruptcy court's broad jurisdictional and equitable authority under 28 U.S.C. § 157 and 11 U.S.C. § 105(a). Consistent with this general authority, bankruptcy courts have inherent authority to regulate contingency fee contracts and arrangements with attorneys appearing before them. *See, e.g., In re A.H. Robins Co., Inc.*, 182 B.R. 128, 135 (Bankr. E.D. Va. 1995), *aff'd sub nom. Bergstrom v. Dalkon Shield Claimants Trust (In re A.H. Robins Co., Inc.)*,86 F.3d 364 (4th Cir. 1996); *see also Dunn v. H. K. Porter Co.*, 602 F.2d 1105, 1108 (3d Cir. 1979).

ARGUMENT

I. Claimants Have Identified Themselves in a Manner Consistent with this Court's Protective Order and Provided their Identities to Counsel for the Slater Firm

22. As an initial matter, the Slater Firm's argument that the Court lacks jurisdiction because Claimants have failed to publicly identify themselves is without merit.

23. First, as Claimants' Reply in support of their underlying Motion made clear, the Slater Firm's counsel of record received their names. Second, consistent with this Court's Protective Order and the accepted practices of the Court in this case, Claimants have identified themselves by their initials in this pleading. *See supra* at 1 n.2; Dkt. 274. There is thus no merit to the contention that Claimants have failed properly to identify themselves or that any such defect would deprive the Court of jurisdiction. Jurisdiction involves the *power* of the Court to decide a dispute, not whether it *should* decide that dispute one way or the other because of some alleged procedural defects not stated anywhere in the relevant jurisdictional statutes. *See Nken*, 556 U.S.

at 433 (Court will not infer jurisdictional restriction not found in any of the relevant jurisdictional provisions).

II. <u>This Court has Inherent Authority to Deny or Reduce the Slater Firm's Fees</u>

24. As the Seventh Circuit put it more than forty years ago, "Courts have a stake in attorney's fees contracts; the fairness of the terms reflects directly on the court and its bar." *Rosquist v. Soo Line R.R.*, 692 F.2d 1107, 1111 (7th Cir. 1982). What is true then is true today, and that is especially the case under Third Circuit law, which clearly establishes that the Court has inherent authority to regulate the contingency fees of lawyers who appear before it. That inherent authority is further buttressed by this Court's prior Orders, including those confirming the Plan, which grant this Court a wide range of authority to review all distributions of Settlement Trust funds, oversee the Settlement Trust's audit proceedings, and review attorney liens.

25. In its widely cited opinion in *Dunn v. H. K. Porter Co.*, 602 F.2d 1105, 1108 (3d Cir. 1979), the Third Circuit held that "[b]ecause contingency fee agreements are of special concern to the courts and are not to be enforced on the same basis as are ordinary commercial contracts…courts have the power to monitor such contracts either through rule-making or on an Ad hoc basis." A court's inherent power to supervise members of its bar includes the power to review contingency fee arrangements, as the *Dunn* panel noted, citing opinions from multiple circuits and the American Bar Association's Canons of Professional Responsibility. *Id.* at 1108-09.

26. In *Dunn*, the Third Circuit clarified that courts must carefully review contingency fee agreements in aggregate litigation contexts involving a settlement fund—in that case, a Rule 23 class action. As *Dunn* held:

> When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Fed.R.Civ.P. 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes

> upon it a responsibility to protect the interests of the class members from abuse. **In such circumstances, the role of the attorneys is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. Class clients are frequently widely dispersed. Even those who have dealt directly with the class attorneys may have little direct knowledge of, or control over, the action. Many class action clients have not had prior experience in a lawyer-client relationship, and their financial stake in the action will often be too small to encourage significant involvement between lawyer and client. Effective client opposition to an excessive fee is therefore unlikely.**
>
> Obviously in this case the defendant had no obligation to contest the distribution of legal fees from the common fund, *Haas v. Pittsburgh National Bank*, 77 F.R.D. 382 (W.D.Pa. 1977), nor is the court concerned with fees taxed against the defendant pursuant to statute in order to penalize it for violating the applicable law, Prandini v. National Tea Co., 557 F.2d 1015, 1020 (3d Cir. 1970). **As a result, the only protection available to the class members in this case against the exposure to excessive fees was that afforded by the scrutiny of the district court**. **The district judge approved the final settlement and he was the ultimate protector of the claimants to the fund.**

Dunn, 602 F.2d at 1109 (emphases added). Accordingly, under *Dunn*, courts in the Third Circuit "may properly inquire into the reasonableness of an attorney's fee which, whether or not agreed to by contract, is to be satisfied through a settlement fund." *Id.* at 1110. That this dispute arises from an *in rem* bankruptcy proceeding only strengthens, rather than weakens, this Court's inherent authority to supervise the contingency fee arrangements and associated attorney's liens.

27. Several years prior to *Dunn*, the Third Circuit held that a district court had the inherent power to "establish a schedule of contingent fees for use in personal injury actions brought by seamen." *Schlesinger v. Teitelbaum*, 475 F.2d 137, 138 (3d Cir. 1973). *Schlesinger* involved the federal courts' adjudication of an admiralty case, which, like a bankruptcy case, is an *in rem* proceeding. *See Hood*, 541 U.S. at 450-51. "The *in rem* admiralty action, like the *in rem* adjudication of a bankruptcy estate, establishes title as against the whole world." *Universal*

Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.), 419 F.3d 83, 93 (2d Cir. 2005) (quotation marks and citations omitted) (Sotomayor, J.).

28. In *Schlesinger,* the Third Circuit made clear that federal courts have the inherent authority to review contingency fee agreements as part of "their supervisory power over the members of its bar," with this power being particularly acute "in cases involving persons of presumed incapacity to look after their affairs intelligently." 475 F.2d at 139. The "applicable rule," then, as *Schlesinger* put it, "is that where an attorney recovers a fund in a suit under a contract with a client providing that he shall be compensated only out of the fund he creates, the court having jurisdiction of the subject matter of the suit has power to fix the attorney's compensation and direct its payment out of the fund." *Id.* at 140 (quoting *Garrett v. McRee*, 201 F.2d 250, 253 (10th Cir. 1953)).

29. Shortly after *Schlesinger* and *Dunn*, the Supreme Court made clear that federal courts have inherent authority to review attorneys' fees generated by class action settlements under the equitable "common-fund doctrine." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). As the near-unanimous Court put it in *Boeing*: "[t]he common-fund doctrine reflects the traditional practice in courts of equity… and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees." *Id.* Invoking jurisdiction in a common fund case allows courts to prevent inequity. In *Boeing*, inequity would have resulted from some beneficiaries of the common fund freeriding on the benefit conferred upon them by the efforts of attorneys retained by some, but not all, of the beneficiaries. In this case, however, the inequity would result from the Slater Firm taking 40% of the Claimants' recovery despite its well-documented misconduct.

30. Consistent with *Boeing*, the Courts of Appeals today "uniformly agree" that district courts have *inherent* authority to modify contingent-fee agreements in the class action context, which is independent of their *statutory* authority to review attorney's fees under Rule 23(h) of the Federal Rules of Civil Procedure. *See In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1185, 1190 (10th Cir. 2023) (citing cases and holding that "the district court's inherent authority, together with both Rule 23(h) of the Federal Rules of Civil Procedure and the Settlement, empowered it to modify contingent-fee contracts.").

31. In addition, courts have applied these fundamental principles far beyond the class action and admiralty contexts. Indeed, they are recognized across the mass tort landscape. *See, e.g.*, *Circino v. City of New York (In re World Trade Ctr. Disaster Site Litig.)*, 754 F.3d 114, 126 (2d Cir. 2014) ("In mass tort cases, district courts have routinely capped attorneys' fees *sua sponte."*).

32. For example, in *Eifler v. Peabody Coal Co.*, 13 F.3d 236, 238 (7th Cir. 1993), then-Chief Judge Posner wrote for a unanimous panel that federal courts have inherent authority to review attorney's fees awarded under the Longshoremen's and Harbor Workers' Compensation Act and the Black Lung Benefits Act. Although that case turned on statutory interpretation, Judge Posner noted that "[t]he concern behind these provisions, which is related to the concern behind the common law rule that empowers courts to set aside contingent-fee agreements…is that the claimant's attorney and the employer may collude by agreeing to a large attorney's fee but a small compensation award." *Id.* (citing *Dunn,* 602 F.2d at 1108). Judge Posner went on to write that "[t]he necessity of official approval is especially great when both compensation and fee are the subject of a settlement," in other words, where a common fund had been established under judicial supervision. *Id.*

33. More recently, courts have relied on *Dunn* and other authorities in the class action context to deny, reduce, or cap attorney's fees and review contingency fee agreements in mass tort cases brought as Multi-District Litigations ("**MDLs**"). *See, e.g., In re Nat'l Football League Players' Concussion Inj. Litig.*, 2018 WL 1658808, at *2 (E.D. Pa. Apr. 5, 2018) (concluding that the court had the inherent authority to cap fees in the MDL or class action context and capping fees at 22%); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 2008 WL 3896006, at *10 (D. Minn. Aug. 21, 2008) (capping contingency fees at 28%). As the *NFL* court put it:

> In complex mass litigation, 'excessive fees can create a sense of overcompensation and reflect poorly on the court and its bar,' negatively impacting '[p]ublic understanding of the fairness of the judicial process.' *In re Zyprexa Prod. Liab. Litig.*, 424 F. Supp. 2d 488, 493-94 (E.D.N.Y. 2006). Consequently, courts must curb such excessive or unreasonable fees to safeguard the public's perception of the courts and the legitimacy of the legal system's handling of massive MDLs and class actions. The way to curb such fees is with a cap.

2018 WL 1658808, at *2. That opinion went on to state: "District courts also derive authority to cap fees from their power to review an individual attorney's fee agreement. Third Circuit law unequivocally supports the proposition that this Court possesses the inherent authority to regulate the contingent fees of lawyers appearing before it and any lawyer representing a class member in this Settlement is clearly subject to this authority." *Id*. (quotation marks and citations omitted).

34. Out-of-circuit authority also underscores this Court's inherent authority to deny or reduce attorney's fees in the bankruptcy context. Most prominently, in the *A.H. Robins* case, the bankruptcy court concluded that it had the inherent authority to reduce the attorney's fees to 10% of the tort claimants' pro rata distributions in that case, relying extensively on the Third Circuit's *Dunn* opinion in doing so.

35. As the *A.H. Robins* bankruptcy court put it, the attorneys' argument that the bankruptcy court could not review their fees could "be readily dismissed on the principle that attorney contingency fee contracts are subject to the inherent powers of the court and cannot be construed in the same fashion as ordinary commercial contracts." *In re A.H. Robins Co., Inc.*, 182 B.R. at 135 (citing, *inter alia*, *Dunn,* 602 F.2d at 1108). Later in that opinion, the *A.H. Robins* bankruptcy court cited the Southern and Eastern Districts of New York's approval of a class settlement in the Johns-Manville class action litigation—which limited attorneys' fees to 25% of each claimant's recovery—in its discussion of its inherent equitable power to oversee attorneys' fees:

> In *any* mass tort case, there is an opportunity for a small number of attorneys, each individually representing large numbers of potential claimants, to secure for themselves huge attorneys' fees under individual contingency fee contracts that bear little or no relation to the actual work to be done or the risks in the case. The problem is particularly acute in the context of a stipulated settlement such as the instant one, where subsequent legal work on behalf of most individual claimants will be relatively routine, mechanical and almost certain to result in recovery.

182 B.R. at 138 (quoting and adding emphasis to *In re Joint E. & S. Districts Asbestos Litig.*, 878 F. Supp. 473, 559 (E.D.N.Y. 1995)).

36. The *A.H. Robins* bankruptcy court went on to state:

> Throughout the Robins bankruptcy, a relatively small number of lawyers have represented a large number of claimants. These lawyers, in general, have been paid handsomely considering the low risk levels involved in the generally routine and mechanical representation of Dalkon Shield Claimants. This is not to say that attorneys lacked diligence in representing their clients, especially in the few cases which have proceeded to arbitration or litigation; rather, the Court determines that attorney compensation on the underlying recovery, ranging from one-quarter to one-half of the amount recovered, is commensurate with the risk level and degree of *legal* skill required of such representation."

182 B.R. at 138.

37. That opinion was unanimously affirmed in full by the Fourth Circuit, which also had no trouble concluding that the bankruptcy court had inherent authority to review attorneys' fees and the contingency fees contracts in that case. As the Fourth Circuit stated, "the law of this circuit has long been clear that federal district courts have inherent power and an obligation to limit attorneys' fees to a reasonable amount." *In re A.H. Robins Co., Inc.*, 86 F.3d at 373 (citing, *inter alia*, *Allen v. United States,* 606 F.2d 432, 435 (4th Cir.1979) and *Dunn*, 602 F.2d at 1108)).

38. As the Fourth Circuit put it in *A.H. Robins*, the bankruptcy court's opinion in that case…

> Simply applied the settled principle that attorneys' fees must be reasonable. The court had this clear authority. This authority is so clear that it is not necessary to discuss the additional sources of such authority such as the federal court's power to enforce state law standards of ethical conduct and a federal district court's inherent power to regulate the conduct of the court's officers, including attorneys.

86 F.3d at 373. That authority is equally clear in this case in light of longstanding Third Circuit precedent and this Court's prior Orders.

III. **This Court has Jurisdiction to Deny or Reduce the Slater Firm's Fees and Disallow its Liens, Consistent with *A.H. Robins.***

39. As the Third Circuit has noted, bankruptcy courts derive their jurisdictional authority from 28 U.S.C. §§ 1334 and 157. *See Geruschat v. Ernst Young LLP (In re Seven Fields Dev. Corp.)*, 505 F.3d 237, 253 (3d Cir. 2007). "Fleshed out, district courts have jurisdiction over four types of title 11 matters…(1) cases under title 11, (2) proceeding[s] arising under title 11, (3) proceedings arising in a case under title 11, and (4) proceedings related to a case under title 11." *Mesabi Metallics Co., LLC v. Chippewa Cap. Partners, LLC. (In re Essar Steel Minnesota, LLC)*, 47 F.4th 193, 197 (3d Cir. 2022). The dispute presently before the court is a "core" proceeding "arising under" Title 11, just as the attorneys' fees dispute in *A.H. Robins* was, as the underlying

contingency fee agreements and attorneys' liens would not have occurred but for the bankruptcy. *In re A.H. Robins Co.*, 86 F.3d at 372.

40. As the Fourth Circuit opined in one of the most important mass tort bankruptcies in American history: "The A.H. Robins Title 11 bankruptcy produced the Trust and the CRF, which established the expedited procedures required to process and pay almost 200,000 claims from all over the world. This unusual bankruptcy resulted from worldwide use of a product by hundreds of thousands of women and made it possible for the attorneys to advertise for clients in publications of general interest to women." *Id.*

41. So, too, in this case. The BSA bankruptcy resulted from a need for the debtors to centralize the resolution of thousands of abuse claims from around the country because it became apparent that "BSA could not continue to defend individual abuse claims on a cases-by-case basis and would need to declare bankruptcy." *In re Boy Scouts of Am.*, 137 F.4th at 143. This bankruptcy produced a Settlement Trust with claims resolution proceedings that allowed the Trust to efficiently process thousands of claims, and also made it possible for the Slater Firm "to represent a multitude of claimants without expending the time, effort and resources that would have been required to try individual cases or to negotiate individual settlements in the usual 'offer and counter offer' way." *In re A.H. Robins Co.*, 86 F.3d at 372. Moreover, without a bankruptcy proceeding, there would have been no pro rata distribution in either the *A.H. Robins* or BSA cases, as this feature "is unique to this bankruptcy proceeding." *Id.*

42. In the alternative, as the Fourth Circuit also held in *A.H. Robins*, this Court has jurisdiction under the "related to" prong of Section 1334 because the current dispute over the contingency fee agreement and attorneys' liens "could have an effect on the estate being administered." *Id.* In *A.H. Robins*, the Fourth Circuit rejected the argument "that there is no

jurisdiction under the 'related to' prong because there is no estate being administered [and] only the Trust remains" as "too restrictive." *Id.* As the Fourth Circuit determined:

> A.H. Robins has gone out of existence, but the Dalkon Shield Claimant Trust has taken its place, and all claims against Robins have been transferred to the Trust, and the Trust is obligated to discharge these obligations. The bankruptcy case remains open until all claims have been paid and the Trust dissolved under its terms. The present controversy could have an effect on the operation of the Trust, and it impacts its handling and administration and is therefore 'related to' the bankruptcy within the meaning of § 1334(b).

Id.

43. Once again, the same is true in this case. The Boy Scouts bankruptcy case has led to the creation of a Settlement Trust overseen by this Court, and that Settlement Trust has assumed the Debtors' obligations to abuse victims. *See* Dkt. 10296 (Plan) at 67-68. That Settlement Trust is obligated to discharge those obligations, and this bankruptcy case will remain open until all those claims have been paid for and the Trust has been dissolved under its terms—with all of those procedures taking place consistent with this Court's orders and under its auspices. *Id.*

44. Next, just as in the *A.H. Robins* case, and perhaps most consequentially for Claimants, denying or reducing the Slater Firm's fees would affect the amount that each of the Claimants would receive. This, as in *A.H. Robins*, makes it "a matter related to the administration of the Trust," which in turn supports jurisdiction. *See* 86 F.3d at 372. The Settlement Trust in this case, as with the *A.H. Robins* Trust, "*was created to protect and pay those persons who had been damaged,"* either because of their use of the Dalkon Shield or because of their association with the Boy Scouts as children and teenagers. *Id.* (emphasis added).

45. Other landmark bankruptcy cases also support this Court's exercise of jurisdiction. For instance, in *Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925 (5th Cir. 1999), a unanimous Fifth Circuit panel concluded that post-confirmation malpractice litigation against the accountant to the court-appointed examiner was within the bankruptcy court's

core jurisdiction. As *Southmark* put it, the fact that the malpractice claims "arose under state law does not prevent [the bankruptcy court] from involving core jurisdiction." 163 F.3d at 930. Furthermore, *Southmark* also held that the bankruptcy court's core jurisdiction was implicated by the fact that professional malpractice claims against court-appointed professionals also "bear [] directly on the distribution of the debtor's estate. If the estate is not marshaled and liquidated or reorganized expeditiously, there will be far less money available to pay creditors' claims. Excessive professional fees or fees charged for mediocre or, worse, phantom work also cause the estate and the creditors to suffer." *Id.* at 931.

46. The Third Circuit substantially relied on Judge Jones' opinion in *Southmark* when it concluded that the bankruptcy court had jurisdiction "to resolve a state-law malpractice, negligence, and fraud suit that appellants, creditors in a consolidated Chapter 11 bankruptcy proceeding, brought in a state court against the accountants who performed work during the bankruptcy." *In re Seven Fields Dev. Corp.*, 505 F.3d at 239. As the unanimous *Seven Fields* panel concluded, that case, just like *Southmark*, involved "alleged malpractice [that] implicated the entire bankruptcy process" and that the **"**alleged malpractice was inseparable from the bankruptcy context." *Id.* at 260–61. *The Seven Fields* court went on to note that "[i] n addition to the reasoning of *Southmark,* we also note that section 157 specifically provides that core proceedings include "matters concerning the administration of the estate" and "other proceedings affecting the liquidation of the assets of the estate." *Id.* at 262 (citing 28 U.S.C. § 157(b)(2)(A) and (O)).

47. It should also be emphasized that, in addition to the Third and Fifth Circuits, the Second, Fourth, Ninth, and D.C. Circuits have also concluded that malpractice suits involving professionals in a bankruptcy case also implicate the bankruptcy court's core jurisdiction under Title 28. *See Walsh v. Nw. Nat'l Ins. Co. of Milwaukee (In re Ferrante)*, 51 F.3d 1473, 1476 (9th

Cir. 1995); *Grausz v. Englander*, 321 F.3d 467, 471 (4th Cir. 2003); *Capitol Hill Grp. v. Pillsbury, Winthrop, Shaw, Pittman, LLC*, 569 F.3d 485, 490 (D.C. Cir. 2009); *Baker v. Simpson*, 613 F.3d 346, 351 (2d Cir. 2010). Indeed, in *Grausz*, the Fourth Circuit, following the reasoning of its earlier *A.H. Robins* opinion, easily disposed of the argument that there was no jurisdiction over a malpractice claim for work performed in the bankruptcy case. *See* 321 F.3d at 471-72 (noting that *A.H. Robins*' "broad interpretation of 'arising in' jurisdiction surely means that jurisdiction exists over a malpractice claim against a lawyer for providing negligent advice to a debtor in a bankruptcy case."); *see also Baker*, 613 F.3d at 351 (noting that the former client's relationship with his former bankruptcy lawyers, whom he sued for legal malpractice, "arose only in connection with his Title 11 proceeding[.]"). No fair reading of these cases suggests that what is true for debtors' counsel or other professionals does not apply to a creditor's counsel.

48. In this case, Claimants have not brought *any* state law malpractice claims at this stage. Instead, they assert a basis for relief that lies entirely in federal law and the bankruptcy court's inherent equitable powers to regulate the fees of attorneys who appear at its bar and to regulate the distribution of assets out of the estate. The relief sought by Claimants squarely implicates this Court's core jurisdiction, as no controversy would exist here but-for the bankruptcy case.

49. Because this is a core proceeding, the fact that Claimants have brought their Motion post-confirmation does not change the jurisdictional outcome. *See In re Essar Steel*, 47 F.4th at 198-99 (holding that post-confirmation core proceedings are not subject to the Third Circuit's close nexus test). As *Essar Steel* recognized, post-confirmation proceedings that arise out of bankruptcy court's previously entered orders are core proceedings; that is precisely the case here, as this

proceeding arises out of the Plan and this Court's order establishing the Settlement Trust's audit program. *Id.* at 200.[5]

50. Last, this Court also has both inherent and statutory authority to invalidate the Slater Firm's liens against the Claimants' awards.[6] First, the amount and validity of the Slater Firm's liens is dependent on the amount and validity of the Slater Firm's contingency fee agreements—which, as described above, this Court has inherent authority to review. Second, section 157(b)(2)(K) explicitly states that bankruptcy core jurisdiction includes "determinations of the validity, extent, or priority of liens." 28 U.S.C. § 157(b)(2)(K). The relief sought by Claimants would invariably involve this Court's determination of the "validity, extent, or priority" of the Slater Firm's liens. *Id.* As such, their Motion explicitly falls within this Court's statutory jurisdiction.

IV. <u>This Court's Power to Interpret its Own Orders and the Plan Further Makes Clear that this Court has the Power to Deny or Reduce the Slater Firm's Fees and Invalidate Its Liens.</u>

51. Finally, this Court can exercise "core" bankruptcy jurisdiction to interpret its own prior orders, as well as the confirmed Plan. The Third Circuit has repeatedly—and recently—reaffirmed that disputes asking the Court to interpret and enforce its own orders fall within a bankruptcy court's core jurisdiction. *See, e.g., In re Somerset Reg'l Water Res., LLC*, 949 F.3d

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[5] Another example of post-confirmation core jurisdiction recognized by Judge Ambro's unanimous opinion in *Essar Steel* were "[c]ivil contempt proceedings arising out of core matters." 47 F.4th at 200 (quoting *Gowdy v. Mitchell* (*In re Ocean Warrior, Inc.)*, 835 F.3d 1310, 1318 (11th Cir. 2016) and *Mountain Am. Credit Union v. Skinner (In re Skinner)*, 917 F.2d 444, 448 (10th Cir. 1990)); *see also Garrett v. Coventry II DDR/Trademark Montgomery Farm, L.P. (In re White-Robinson)*, 777 F.3d 792, 795 (5th Cir. 2015) (holding that the contempt order at issue in that case was among the statutorily enumerated examples of core proceedings).

[6] The Slater Firm has already acknowledged the existence of its liens against the Claimants' awards. *See* Dkt. 13217 at 11, 16.

837, 844 (3d Cir. 2020); *In re Essar Steel*, 47 F.4th at 200; *In re Congoleum Corp.*, 149 F.4th 318, 328 (3d Cir. 2025).

52. The present controversy implicates a multitude of this Court's orders, including the Confirmation Order, *see* Dkt. 10316 at 23-24, and the Plan, *see* Dkt. 10296 at 67-76, which created the Settlement Trust. That same Plan also established this Court's retention of jurisdiction, *id.* at 136-140, which is explicitly described as "the fullest and most extensive jurisdiction that is permissible, including the jurisdiction necessary to ensure that the purposes and intent of the Plan are carried out," *id.* at 136.

53. This controversy also implicates this Court's order approving the Settlement Trust's audit program, which has been triggered with regard to all the claims submitted by the Slater Firm, and which directly implicates Claimants' rights and distributions. *See* Dkt. 11526. In that order, this Court stated that: "Pursuant to Article XI of the Plan, the Court retains jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order." *Id.* at 3. That language is also consistent with this Court's jurisdictional mandate in the Plan, which grants it jurisdiction to "hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Chapter 11 Cases." Dkt. 10296 at 139.

54. Claimants' dispute with the Slater Firm is, at a minimum, "related to" the interpretation of the Court's order creating the audit program, which Claimants have now been subjected to entirely as a result of the Slater Firm's misconduct and through no fault of their own. When read *in pari materia* with the Plan, according to which "the Bankruptcy Court shall retain the fullest and most extensive jurisdiction that is permissible, including the jurisdiction necessary

to ensure that the purposes and intent of the Plan are carried out," this Court's jurisdiction is unmistakable. *See* Dkt. 10296 at 136.

CONCLUSION

55. For the reasons stated above, this Court has jurisdiction over the Motion and should proceed to request further briefing on the merits.

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