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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

MADISON SQUARE BOYS & GIRLS CLUB, INC.,<sup>1</sup>  
  
Debtor.

Chapter 11

Case No. 22-10910 (SHL)

**OBJECTION OF THE ROCKEFELLER UNIVERSITY TO THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION FOR  
ORDER SHORTENING NOTICE WITH RESPECT TO MOTION OF THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY  
OF AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING  
EXAMINATIONS AND PRODUCTION OF DOCUMENTS OF CERTAIN INSURERS**

The Rockefeller University (the "University"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Motion for Order Shortening Notice with Respect to Motion of the Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examinations and Production of Documents of Certain Insurers* [Docket No. 112] (the "Motion to Shorten") filed by the Official Committee of Unsecured Creditors (the "Committee") of Madison Square Boys & Girls Club, Inc. (the "Debtor"), which seeks to shorten notice in connection with the *Motion of the Official Committee*

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 6792. The Debtor's mailing address is 250 Bradhurst Avenue, New York, New York 10039.

*of Unsecured Creditors for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Examinations and Production of Documents of Certain Insurers* [Docket No. 111] (the “Insurer 2004 Motion”) and respectfully states as follows:<sup>2</sup>

### **OBJECTION**

1. The Motion to Shorten should be denied with respect to all requested discovery concerning the University’s insurance policies.

2. Bankruptcy Rule 9006(c)(1) authorizes the Court to reduce notice periods “for cause shown,” however, no such cause has been shown here with respect to the University’s insurance policies. Indeed, although the relief requested by the Committee is predicated solely on an urgency to locate *the Debtor’s* insurance policies and related information to further the ongoing mediation *with the Debtor*, the Committee does not even mention either the University by name or its insurers in the Motion to Shorten. *See, e.g.*, Motion to Shorten ¶¶ 11-13, 20, 23. As the Court knows, the University has been excluded from the mediation at the request of the Committee and no claims have yet been asserted against the University by the Debtor, rendering the entire premise of the Motion to Shorten inapplicable to the University’s insurance policies. And indeed, the Insurer 2004 Motion and well as the Motion to Shorten fail to provide adequate notice of their applicability to the University or the University’s insurers: (i) absent a full review of the exhibits to the Insurer 2004 Motion, neither the Court nor the parties in interest would be on notice that 18 of the 38 proposed Requests target information concerning the University’s insurance policies, not, as the Insurer 2004 Motion and Motion to Shorten state, the Debtor’s, and (ii) given the Committee’s decision to serve the University’s insurers by mail, those insurers are effectively precluded from objecting to the Motion to Shorten and intentionally being provided a very limited

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion to Shorten.

time to respond to the Insurer 2004 Motion.<sup>3</sup> And such time is needed.

3. Specifically, while the University needs further time to fully evaluate the potential implications of the Insurer 2004 Motion to address all of its concerns in the University's opposition to the Insurer 2004 Motion, a number of concerns with the relief requested in the Insurer 2004 Motion are immediately apparent. *First*, unlike the Debtor's insurance policies, the University's insurance coverage is not property of the Debtor's estate. And while the Committee may argue that there are potential estate claims against the University, the University disputes that it has any such liability to the Debtor.

4. *Second*, discovery as to the University's insurance coverage directly from the University's insurers is entirely improper under Bankruptcy Rule 2004 as it would represent an impermissible end-run around New York common law and N.Y. Insurance Law § 3420, which prohibit a third party (such as the Committee and the plaintiffs that are the members of the Committee) from commencing a direct action against an insurance company before a judgment is obtained against the insured (here, the University). *See Commonwealth Land Title Ins. Co. v. American Signature Servs., Inc.*, No. 13-CV-3266 (JFB) (WDW), 2014 WL 672926, at \*6 (E.D.N.Y. Feb. 20, 2014). Thus, the requested discovery into matters that are not even permissible until after judgment is entered is entirely premature, even under Bankruptcy Rule 2004, the purpose of which is to investigate estate causes of action. Consequently, at the very least, the Motion to Shorten should be denied to permit the University and the targeted insurers ample time to present their arguments as to why the Committee's requests concerning the University's insurance policies are not property of the Debtor's estate and seek discovery well beyond the

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<sup>3</sup> Of the 18 proposed Requests, 16 specifically reference the University by name (Requests for Production Nos. 3, 6, 9, 14, 17, 20, 21, 22, 25, 28, 31, 32, 33, 34, 35, 38) and 2 additional proposed Requests seek information about "any Insurance Policies that are responsive to these Requests," which would include the University's insurance policies (Requests for Production Nos. 10, 11). 2004 Motion, Exh. B.

permissible scope of Bankruptcy Rule 2004.

5. *Third*, the Insurers 2004 Motion is an attempt to obtain third party discovery that would be very prejudicial to the University. Specifically, the University is in ongoing coverage litigation with certain of the insurers that are named in to the Insurer 2004 Motion. Insurer 2004 Motion, Exhibit A (Subpoena Parties). As will be described more fully in the University's objection to the Insurer 2004 Motion, the Committee's attempt to interpose itself, a non-party, into the middle of highly contentious coverage disputes and obtain discovery that is neither permitted nor needed in the mediation on an expedited timeframe, and before the University itself has obtained discovery in its own coverage action, will benefit no party and would be highly prejudicial to the University. Therefore, the Motion to Shorten should be denied as to the University's insurance policies, so that the University can properly consider and address how it would be prejudiced on regular notice, especially where the Committee's alleged emergency is unfounded and unsubstantiated.

**WHEREFORE**, the University respectfully requests that the Court deny the Motion to Shorten with respect to all discovery concerning the University's insurance policies to permit the University to respond on regular notice.

Dated: August 11, 2022  
New York, New York

**ROPES & GRAY LLP**

/s/ Gregg M. Galardi

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**CERTIFICATE OF SERVICE**

I certify that on August 11, 2022, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York.

/s/ Gregg M. Galardi  
Gregg M. Galardi